

MINUTES OF MAY 20, 2003

COMMISSION CONFERENCE

COMMENCED: 9:35 a.m.

ADJOURNED: 1:40 p.m.

COMMISSIONERS PARTICIPATING: Chairman Jaber
Commissioner Deason
Commissioner Baez
Commissioner Bradley
Commissioner Davidson

Parties were allowed to address the Commission on items designated by double asterisks (**).

1Approval of Minutes

April 15, 2003 Regular Commission Conference

DECISION: The minutes were approved.

Commissioners participating: Jaber, Deason, Baez, Bradley, Davidson

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ITEM NO. CASE

2**Consent Agenda

PAA A) Applications for certificates to provide alternative local exchange telecommunications service.

<u>DOCKET NO.</u>	<u>COMPANY NAME</u>
030386-TX	Volo Communications of Florida, Inc. d/b/a Volo Communications Group of Florida, Inc.
030041-TX	FeroNetworks, Inc.

PAA B) Applications for certificates to provide interexchange telecommunications service.

<u>DOCKET NO.</u>	<u>COMPANY NAME</u>
030240-TI	Telrite Corporation
030387-TI	Volo Communications of Florida, Inc. d/b/a Volo Communications Group of Florida, Inc.
030109-TI	Consolidated Communications Operator Services, Inc.

PAA C) Application for certificate to provide alternative access vendor service.

<u>DOCKET NO.</u>	<u>COMPANY NAME</u>
030343-TA	NUMINA COMMUNICATIONS CORP.

PAA D) Application for certificate to provide pay telephone service.

<u>DOCKET NO.</u>	<u>COMPANY NAME</u>
030341-TC	GKN Properties, LLC

PAA E) DOCKET NO. 030351-TP - Request for approval of indirect transfer of control of Universal Access, Inc. d/b/a UAI of Florida, Inc. (holder of ALEC Certificate No. 7271 and

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IXC Certificate No. 7272) to CityNet Telecom, Inc.
(holder of ALEC Certificate No. 7974).

PAA F) Request for cancellation of alternative local exchange
telecommunications certificate.

<u>DOCKET NO.</u>	<u>COMPANY NAME</u>	<u>EFFECTIVE DATE</u>
030309-TX	FairPoint Communications Solutions Corp.	12/31/02

RECOMMENDATION: The Commission should approve the action
requested in the dockets referenced above and close these
dockets.

DECISION: The recommendation was approved.

Commissioners participating: Jaber, Deason, Baez, Bradley, Davidson

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3**PAADocket No. 991222-TP - Request for submission of proposals for relay service, beginning in June 2000, for the hearing and speech impaired, and other implementation matters in compliance with the Florida Telecommunications Access System Act of 1991.

Critical Date(s): Budget approval is needed for FTRI's fiscal year which begins July 1, 2003. Time is also needed to allow LECS & ALECS to effect any surcharge billing changes by July 1, 2003.

Commissioners Assigned: Full Commission
Prehearing Officer: Deason

Staff: CMP: Salak, Moses, Futrell, Howard
GCL: Rojas

ISSUE 1: Should Mr. Richard Kottler, Mr. Tom Kemble, and Ms. Nancy Schnitzer be named to the TASA Advisory Committee?
RECOMMENDATION: Yes. Mr. Richard Kottler, Mr. Tom Kemble, and Ms. Nancy Schnitzer should be named to the TASA Advisory Committee.

ISSUE 2: Should Florida Telecommunications Relay, Inc.'s proposed budget for the fiscal year 2003-2004 be approved effective July 1, 2003, and the TASA surcharge increased to \$.12 per access line?

RECOMMENDATION: Yes. Florida Telecommunications Relay, Inc.'s proposed budget (Attachment A of staff's May 8, 2003 memorandum) for fiscal year 2003-2004 should be approved and the surcharge should be increased to \$.12 per access line.

ISSUE 3: Should this docket be closed?

RECOMMENDATION: No. This docket should not be closed.

DECISION: The recommendations were approved.

Commissioners participating: Jaber, Deason, Baez, Bradley, Davidson

ITEM NO.

CASE

4Docket No. 020119-TP - Petition for expedited review and cancellation of BellSouth Telecommunications, Inc.'s Key Customer promotional tariffs and for investigation of BellSouth's promotional pricing and marketing practices, by Florida Digital Network, Inc.
Docket No. 020578-TP - Petition for expedited review and cancellation of BellSouth Telecommunications, Inc.'s Key Customer promotional tariffs by Florida Competitive Carriers Association.
Docket No. 021252-TP - Petition for expedited review and cancellation or suspension of BellSouth Telecommunications, Inc.'s Key Customer tariff filed 12/16/02, by Florida Digital Network, Inc.

Critical Date(s): None

Commissioners Assigned: Full Commission
Prehearing Officer: Baez

Staff: CMP: Barrett, Bulecza-Banks, Casey, Garcia,
Gilchrist, Simmons
GCL: Banks, Dodson
MMS: Watts

ISSUE A: What is the Commission's jurisdiction in this matter?

RECOMMENDATION: Pursuant to Chapter 364, Florida Statutes, the Commission has authority to regulate telecommunications companies. As such, the Commission has jurisdiction to review the promotional tariff filings which are at issue under its regulatory authority.

ISSUE 1: How should Section 364.01, Florida Statutes, be interpreted in evaluating a BellSouth promotional tariff for compliance with Chapter 364, Florida Statutes?

RECOMMENDATION: Section 364.01, Florida Statutes, provides the Commission with the authority to promote competition. As such, staff believes that Section 364.01, Florida Statutes, should be interpreted as giving the Commission authority to promote competition by preventing any conduct or practice which contravenes the goal of Section 364.01, Florida Statutes, to promote competition.

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ISSUE 3D: What criteria, if any, should be established to determine whether geographic targeting in a BellSouth promotional tariff is unfair, anticompetitive or discriminatory?

(i): Pursuant to Section 364.051(5)(a)(2), Florida Statutes, how should "meeting offerings by any competitive provider" be interpreted?

(ii): Pursuant to Section 364.051(5)(a)(2), Florida Statutes, how should "specific geographic market" be interpreted?

(iii): Pursuant to Sections 364.051(5)(a)(2), and 364.08, Florida Statutes, how should "similarly situated" or "substantially similar" be interpreted?

RECOMMENDATIONS: 3D: Staff recommends that no criteria should be established, other than that included in Section 364.051(5)(a)(2) Florida Statutes, to determine whether geographic targeting in a BellSouth promotional tariff is unfair, anticompetitive or discriminatory.

3D (i): Staff recommends that the phrase "meeting offerings by any competitive provider" implies that BellSouth should have the ability to respond to offerings made by competitors in BellSouth wire centers.

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3D (ii): Staff recommends that for purposes of this docket, the phrase "specific geographic market" can mean a wire center, a subset of a wire center, a grouping of wire centers, or it could mean something else depending on how competitors elect to compete.

3D (iii): Staff recommends that for purposes of this docket, "similarly situated" or "substantially similar" should be interpreted as customers facing similar competitive alternatives in a "specific geographic market" as defined in Issue 3D ii.

ISSUE 3D (iv): Is the BellSouth Key Customer tariff filing (Tariff Number T-020035) unfair, anticompetitive, or discriminatory under the criteria, if any, established pursuant to this issue?

ISSUE 3D (v): Is the BellSouth Key Customer tariff filing (Tariff Number T-020595 or a subsequent tariff filing that extends the expiration date thereof) unfair, anticompetitive, or discriminatory under the criteria, if any, established pursuant to this issue?

RECOMMENDATIONS:

3D (iv) AND 3D (v): No. Based on Section 364.051(5)(a)(2), Florida Statutes, staff recommends that the BellSouth January and June Key Customer tariff filings are not unfair, anti-competitive, or discriminatory pursuant to this issue.

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ISSUE 2: What criteria, if any, should be established to determine whether the pricing of a BellSouth promotional tariff offering is unfair, anticompetitive, or discriminatory?

(i): Pursuant to the cost standard identified in Sections 364.051(5) and 364.3381, Florida Statutes.

(ii): Pursuant to any other provisions of Chapter 364, Florida Statutes.

(iii): How should the appropriate criteria identified in Issues 2(i) and 2(ii) be applied to a tariff under which varying customer configurations are possible?

(iv): Is the BellSouth Key Customer tariff filing (Tariff Number T-020035) unfair, anticompetitive, or discriminatory under the criteria, if any, established pursuant to Issues 2(i), 2(ii) and 2(iii)?

(v): Is the BellSouth Key Customer tariff filing (Tariff Number T-020595 or a subsequent tariff filing that extends the expiration date thereof) unfair, anticompetitive, or discriminatory under the criteria, if any, established pursuant to Issues 2(i), 2(ii) and 2(iii)?

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RECOMMENDATIONS:

2(i) & (ii): The existing criteria set forth in the Florida Statutes are sufficient to determine whether the pricing of a promotional tariff offering is appropriate.

2(iii): The existing criteria set forth in the Florida Statutes should be applied uniformly to a tariff under which varying customer configurations are possible.

2(iv) & (v): No. Based upon the evidence in the record of this proceeding, the BellSouth Key Customer tariff filings (Tariff Number T-020035, Tariff Number T-020595 or a subsequent tariff filing that extends the expiration date thereof) are not unfair, anticompetitive, or discriminatory. The existing criteria set forth in the Florida Statutes are sufficient to determine whether the pricing of a promotional tariff offering is appropriate.

ISSUE 3A: What criteria, if any, should be established to determine whether the termination liability terms and conditions of a BellSouth promotional tariff offering are unfair, anticompetitive, or discriminatory?

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(i): Is the BellSouth Key Customer tariff filing (Tariff Number T-020035) unfair, anticompetitive, or discriminatory under the criteria, if any, established pursuant to this issue?

(ii): Is the BellSouth Key Customer tariff filing (Tariff Number T-020595 or a subsequent tariff filing that extends the expiration date thereof) unfair, anticompetitive, or discriminatory under the criteria, if any, established pursuant to this issue?

RECOMMENDATIONS:

3A: Staff does not believe any specific criteria should be established outside of the existing guidance from the Florida Statutes to determine whether the termination liability terms and conditions of a BellSouth promotional tariff are unfair, anticompetitive, or discriminatory.

3A(i) & 3A(ii): The Key Customer tariff filings at issue in this proceeding are not unfair, anticompetitive, or discriminatory pursuant to the Florida Statutes.

Staff recommends, however, that BellSouth should revise the applicable portion of its current Key Customer tariff, Tariff No. T-021241, to clearly disclose that the termination liability does not apply

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in a "split-service" scenario. The corresponding revision should be made to the standard contract used to enroll subscribers as well. Additionally, on a going-forward basis, all future BellSouth promotional tariffs that are based on total billed revenue should clearly disclose that the termination liability does not apply in a "split-service" scenario.

ISSUE 3B: What criteria, if any, should be established to determine whether the duration (term of individual contracts, length and succession of promotions) of a BellSouth promotional tariff offering is unfair, anticompetitive, or discriminatory?

(i): Is the BellSouth Key Customer tariff filing (Tariff Number T-020035) unfair, anticompetitive, or discriminatory under the criteria, if any, established pursuant to this issue?

(ii): Is the BellSouth Key Customer tariff filing (Tariff Number T-020595 or a subsequent tariff filing that extends the expiration date thereof) unfair, anticompetitive, or discriminatory under the criteria, if any, established pursuant to this issue?

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RECOMMENDATIONS:

3B: Staff recommends that no criteria should be established, other than that included in Section 364.051(5)(a)(2) Florida Statutes, to determine whether the duration (term of individual contracts, length and succession of promotions) of a BellSouth promotional tariff offering is unfair, anticompetitive, or discriminatory.

3B(i) & (ii): No. Based on Section 364.051(5)(a)(2), Florida Statutes, staff recommends that the BellSouth Key Customer tariff filings are not unfair, anticompetitive, or discriminatory regarding the term, length and succession of the promotional offerings.

ISSUE 3C: What criteria, if any, should be established to determine whether the billing conditions or restrictions of a BellSouth promotional tariff offering are unfair, anticompetitive, or discriminatory?

(i): Is the BellSouth Key Customer tariff filing (Tariff Number T-020035) unfair, anticompetitive, or discriminatory under the criteria, if any, established pursuant to this issue?

(ii): Is the BellSouth Key Customer tariff filing (Tariff Number T-020595 or a subsequent tariff filing

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that extends the expiration date thereof) unfair, anticompetitive, or discriminatory under the criteria, if any, established pursuant to this issue?

RECOMMENDATIONS:

3C: Staff does not believe any specific criteria should be established outside of the existing guidance from the Florida Statutes to determine whether the billing conditions or restrictions of a BellSouth promotional tariff offering are unfair, anticompetitive, or discriminatory.

3C(i) & 3C(ii): No.

ISSUE 3E: What criteria, if any, should be established to determine whether any other terms or conditions of a BellSouth promotional tariff offering are unfair, anticompetitive, or discriminatory?

(i): Is the BellSouth Key Customer tariff filing (Tariff Number T-020035) unfair, anticompetitive, or discriminatory under the criteria, if any, established pursuant to this issue?

(ii): Is the BellSouth Key Customer tariff filing (Tariff Number T-020595 or a subsequent tariff filing that extends the expiration date thereof) unfair,

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anticompetitive, or discriminatory under the criteria, if any, established pursuant to this issue?

RECOMMENDATIONS:

3E: No other criteria should be established to determine whether any other terms or conditions of a BellSouth promotional tariff offering are unfair, anticompetitive, or discriminatory.

3(i) & 3E(ii): No other criteria were established in Issue 3E to determine whether the BellSouth Key Customer tariff filings at issue in this proceeding are unfair, anticompetitive, or discriminatory.

ISSUE 4A: Under what terms and conditions should BellSouth promotional tariff offerings be made available for ALEC resale?

(i): Does the BellSouth Key Customer tariff filing (Tariff Number T-020035) meet the resale terms and conditions established pursuant to this issue?

(ii): Does the BellSouth Key Customer tariff filing (Tariff Number T-020595 or a subsequent tariff filing that extends the expiration date thereof) meet the resale terms and conditions established pursuant to this issue?

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RECOMMENDATIONS:

4A: BellSouth's promotional tariff offerings should be and are made available for ALEC resale in accordance with the terms and conditions required by state and federal law. The law provides that incumbent LECs offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to noncarrier subscribers. Also, promotions of more than 90 days must be available for resale at the promotional rate minus the wholesale discount. Further, the incumbent LECs must not prohibit or impose unreasonable or discriminatory conditions or limitations on the resale of such telecommunications service.

4A(i) & 4A(ii): The BellSouth Key Customer tariff filings at issue in this proceeding meet the resale terms and conditions established in Issue 4A.

ISSUE 4B: What is the competitive impact, if any, of the resale of BellSouth promotional tariff offerings?

RECOMMENDATION: Resale of BellSouth's promotional tariff offerings provides ALECs with another means of competing with BellSouth and is not detrimental to the development of viable competition.

ISSUE 5A: In the context of marketing promotional tariffs, what waiting period or other restrictions, if any, should be applicable to BellSouth?

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RECOMMENDATION: In the context of marketing promotional tariffs, staff recommends that the Commission acknowledge BellSouth's voluntary 10-day waiting period after a customer leaves BellSouth for an ALEC before any type of winback activity is implemented. Staff also recommends that the Commission affirm its finding contained in Order No. PSC-02-0875-PAA-TP, prohibiting BellSouth from including any marketing information in its final bill sent to customers who have switched providers.

ISSUE 5B: In the context of marketing promotional tariffs, what restrictions, if any, should be placed on the sharing of information between BellSouth's wholesale and retail divisions?

RECOMMENDATION: In the context of marketing promotional tariffs, staff recommends that the Commission affirm its finding contained in Order No. PSC-02-0875-PAA-TP prohibiting BellSouth's wholesale division from sharing information with its retail division, such as informing the retail division when a customer is switching from BellSouth to an ALEC.

ISSUE 6: If the Commission determines that a BellSouth promotional tariff is unlawful, what effect, if any, should this decision have on customers who have already contracted for service under the promotional tariff?

RECOMMENDATION: If the Commission finds that the Key Customer tariffs of this proceeding are lawful in Issues 2,

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3, and 4 and its subparts, this decision should have no effect on customers who have already contracted for service under the promotional tariffs. However, if the Commission finds in Issues 2, 3, and 4 and its subparts, that the Key Customer tariffs of this proceeding are unfair, anticompetitive, or discriminatory pursuant to Chapter 364, Florida Statutes, staff believes that the customers who have contracted for service under these offerings should be given 45 days from the date of approval of this recommendation to choose to terminate, or to continue their individual contracts. BellSouth should be ordered to waive the applicable termination liability charges for a customer terminating an individual contract to seek an alternative service plan. In addition, no new customers should be allowed to sign contracts under the current tariff from the date of approval of this recommendation.

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ISSUE 7: Should these dockets be closed?

RECOMMENDATION: If the Commission finds that the Key Customer tariffs of this proceeding are lawful and BellSouth has completed the tariff and contract modifications to the current Key Customer tariff that were recommended in Issue 3A, these dockets should be closed. However, if the Commission finds in Issues 2, 3, or 4 and the subparts, that the Key Customer tariffs of this proceeding are unfair, anticompetitive, or discriminatory pursuant to Chapter 364, Florida Statutes, these dockets should remain open pending the disposition of further proceedings.

DECISION: The recommendations were approved.

Commissioners participating: Jaber, Deason, Baez, Bradley, Davidson

ITEM NO.

CASE

5**PAADocket No. 001503-TP - Cost recovery and allocation issues for number pooling trials in Florida. (Deferred from March 18, 2003 conference; revised recommendation filed.)

Critical Date(s): None

Commissioners Assigned: Full Commission
Prehearing Officer: Baez

Staff: CMP: Ileri, Casey, Bulecza-Banks
GCL: Christensen, Fordham

ISSUE 1: Does BellSouth's cost recovery petition for state-mandated number pooling trials comply with the filing requirements established pursuant to FPSC Order No. PSC-02-0466-PAA-TP?

RECOMMENDATION: Yes. Staff recommends that BellSouth's cost recovery petition for state-mandated number pooling trials complies with the filing requirements established pursuant to FPSC Order No. PSC-02-0466-PAA-TP.

ISSUE 2: Should BellSouth be allowed to recover its requested carrier-specific costs of \$3,506,844 associated with implementing state-mandated pooling trials?

PRIMARY RECOMMENDATION: No. Staff recommends that BellSouth should be allowed to recover carrier-specific costs of \$2,970,762 associated with implementing state-mandated pooling trials.

ALTERNATIVE RECOMMENDATION: Yes. Staff recommends that BellSouth should be allowed to recover its requested carrier-specific costs of \$3,506,844 associated with implementing state-mandated pooling trials.

ISSUE 3: If the FPSC approves Issue 1, and staff's primary or alternative recommendation in Issue 2, how should BellSouth recover its carrier-specific costs associated with state-mandated number pooling trials?

RECOMMENDATION: If the FPSC approves Issue 1, and staff's primary or alternative recommendation in Issue 2, staff recommends that BellSouth recover its carrier-specific costs associated with state-mandated number pooling trials through a one-time charge assessed on all of BellSouth's Florida end-user lines in service as of June 30, 2003. Equivalency factors regarding end-user lines should be the same as those

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5**PAA

Docket No. 001503-TP - Cost recovery and allocation issues for number pooling trials in Florida. (Deferred from March 18, 2003 conference; revised recommendation filed.)

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used for local number portability cost recovery. BellSouth should submit its final calculation of the end-user line charge to staff prior to putting any assessment on customer bills. Staff should be allowed to approve the calculation of the final assessment administratively; however, any material difference between the estimated one-time charge and the final assessment should be brought before the FPSC for approval.

ISSUE 4: Should this docket be closed?

RECOMMENDATION: No. If no person whose substantial interests are affected by the proposed agency action files a protest within 21 days of the issuance of the order, this order will become final upon issuance of a consummating order. Staff recommends that this docket should remain open pending review of cost recovery petitions from other carriers.

DECISION: This item was deferred. Staff is to provide information for a future agenda on the issues of:

- amount of cost recovery
- nature and substance of notice to customers.

Commissioners participating: Jaber, Deason, Baez, Bradley, Davidson

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6**PAADocket No. 030411-TI - Compliance investigation of Panther Telecommunications Corporation for apparent violation of Rule 25-4.043, F.A.C., Response to Commission Staff Inquiries.

Critical Date(s): None

Commissioners Assigned: Full Commission
Prehearing Officer: Administrative

Staff: CMP: Buys
GCL: Knight

ISSUE 1: Should the Commission impose a \$10,000 penalty on Panther Telecommunications Corporation for apparent violation of Rule 25-4.043, Florida Administrative Code, Response to Commission Staff Inquiries, to be paid to the Florida Public Service Commission within fourteen calendar days after the issuance of the Consummating Order?

RECOMMENDATION: Yes. If PTC fails to timely protest the Commission's Order and fails to pay the \$10,000 penalty within fourteen calendar days after the issuance of the Consummating Order, Certificate No. 8002 should be cancelled and the company should also be required to immediately cease and desist providing interexchange telecommunications service, including prepaid calling service, in Florida.

ISSUE 2: Should this docket be closed?

RECOMMENDATION: The Order issued from this recommendation will become final upon issuance of a Consummating Order, unless a person whose substantial interests are affected by the Commission's decision files a protest within 21 days of the issuance of the Proposed Agency Action Order. If the Commission's Order is not protested, this docket should be closed upon receipt of the payment of the penalty or the cancellation of the company's certificate.

DECISION: The recommendations were approved.

Commissioners participating: Jaber, Deason, Baez, Bradley, Davidson

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7**PAADocket No. 030288-TI - Application for transfer of IXC Certificate No. 4031 from Broadwing Communications Services Inc. to C III Communications Operations, LLC; and petition for waiver of carrier selection requirement of Rule 25-4.118, F.A.C., for transfer of customers.

Critical Date(s): None

Commissioners Assigned: Full Commission

Prehearing Officer: Administrative

Staff: CMP: Williams

GCL: Rojas

ISSUE 1: Should the Commission approve the request for transfer of IXC Certificate No. 4031 from Broadwing Communications Services, Inc. to C III Communications Operations, LLC?

RECOMMENDATION: Yes.

ISSUE 2: Should the Commission approve the waiver of the carrier selection requirements of Rule 25-4.118, Florida Administrative Code, in the transfer of certain long distance customers from Broadwing Communications Services, Inc. to C III Communications Operations, LLC?

RECOMMENDATION: Yes.

ISSUE 3: Should this docket be closed?

RECOMMENDATION: If no person whose substantial interests are affected by the proposed agency action files a protest within 21 days of the issuance of the order, this docket should be closed upon the issuance of a consummating order.

DECISION: The recommendations were approved.

Commissioners participating: Jaber, Deason, Baez, Bradley, Davidson

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8**PAADocket No. 030328-TI - Bankruptcy cancellation by Florida
Public Service Commission of IXC Certificate No. 4068 issued
to RSL COM U.S.A., Inc., effective 4/7/03.

Critical Date(s): None

Commissioners Assigned: Full Commission
Prehearing Officer: Administrative

Staff: CMP: Isler
GCL: Teitzman

ISSUE 1: Should the Commission grant RSL COM U.S.A., Inc.'s
request for cancellation of its IXC Certificate No. 4068
due to bankruptcy?

RECOMMENDATION: Yes. The Commission should grant the
company a bankruptcy cancellation of its IXC Certificate No.
4068 with an effective date of April 7, 2003. In addition,
the Division of the Commission Clerk and Administrative
Services will be notified that the 2002 and 2003 RAFs, plus
penalty and interest charges for the year 2002, should not
be sent to the Florida Department of Financial Services for
collection, but that permission for the Commission to write
off the uncollectible amount should be requested. If the
certificate is cancelled in accordance with the Commission's
Order from this recommendation, the company should be
required to immediately cease and desist providing
interexchange telecommunications service in Florida.

ISSUE 2: Should this docket be closed?

RECOMMENDATION: The Order issued from this recommendation
will become final upon issuance of a Consummating Order,
unless a person whose substantial interests are affected by
the Commission's decision files a protest within 21 days of
the issuance of the Proposed Agency Action Order. The
docket should then be closed.

DECISION: The recommendations were approved.

Commissioners participating: Jaber, Deason, Baez, Bradley, Davidson

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ITEM NO.

CASE

9**Docket No. 000824-EI - Review of Florida Power Corporation's earnings, including effects of proposed acquisition of Florida Power Corporation by Carolina Power & Light.

Critical Date(s): None

Commissioners Assigned: Full Commission
Prehearing Officer: Baez

Staff: ECR: Slemkewicz, Devlin
GCL: Brubaker

ISSUE 1: Should Progress Energy Florida, Inc.'s Request for Oral Argument and, in the Alternative, for an Evidentiary Hearing, be granted?

RECOMMENDATION: Progress Energy Florida Inc.'s request for oral argument should be granted. Progress Energy Florida, Inc.'s request for an evidentiary hearing should be denied.

ISSUE 2: What considerations should the Commission take into account in deciding whether to approve the Motion for Enforcement of Settlement Agreement?

RECOMMENDATION: The Commission should take into account the matters listed in the analysis portion of staff's May 8, 2003 memorandum in the evaluation of the positions of the Movants and PEFI. Also, the Commission should consider a compromise position that is based on Commission ratemaking practices.

ISSUE 3: Should the docket be closed?

RECOMMENDATION: Yes. Upon final disposition of this matter by the Commission, this docket should be closed.

DECISION: The item was deferred. Oral argument on the motion in limine and any other pending procedural matters will be heard on 6/30/03, with a vote to be taken that date. A special agenda conference will be held on 7/9/03.

Commissioners participating: Jaber, Deason, Baez, Bradley, Davidson

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ITEM NO.

CASE

10**Docket No. 030315-EI - Petition for approval of proposed revision to Tariff Sheet Nos. 6.050 and 6.052 to expand application of current residential budget billing program to customers served under GS-1 rate on experimental basis, by Florida Power & Light Company.

Critical Date(s): 6/3/03 (60-day suspension date)

Commissioners Assigned: Full Commission
Prehearing Officer: Administrative

Staff: ECR: Baxter
GCL: Vining

ISSUE 1: Should the Commission approve FPL's Experimental Program expanding optional budget billing to its GS-1 Customers?

RECOMMENDATION: Yes. FPL should provide a report to the Commission staff on the results of the Pilot Program including the participation rate of the program and the effect on bad debt no later than the fourth quarter of 2004.

ISSUE 2: Should this docket be closed?

RECOMMENDATION: Yes. If Issue 1 is approved, revised Tariff Sheet No. 6.050 and original Tariff Sheet No. 6.052 should become effective on May 20, 2003. If a protest is filed within 21 days of the issuance of the order, these tariffs should remain in effect with any increase held subject to refund pending resolution of the protest. If no timely protest is filed, this docket should be closed upon the issuance of a consummating order.

DECISION: The recommendations were approved.

Commissioners participating: Jaber, Deason, Baez, Bradley, Davidson

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ITEM NO.

CASE

11**PAADocket No. 030332-EQ - Petition for approval to close standard offer contract for purchase of firm capacity and energy from small qualifying facility or municipal solid waste facility, by Tampa Electric Company.

Critical Date(s): None

Commissioners Assigned: Full Commission
Prehearing Officer: Administrative

Staff: ECR: Harlow
GCL: Jaeger

ISSUE 1: Should TECO's petition to close its current Standard Offer Contract, based upon a combustion turbine unit with an in-service date of May 2005, be approved?
RECOMMENDATION: Yes. The subscription period for TECO's Standard Offer Contract, as established in the approved Standard Offer Contract, has expired with no offerings presented.

ISSUE 2: Should this docket be closed?

RECOMMENDATION: Yes. If no person whose substantial interests are affected by this proposed agency action files a protest within 21 days of the issuance of the order, this docket should be closed upon the issuance of a consummating order.

DECISION: The recommendations were approved.

Commissioners participating: Jaber, Deason, Baez, Bradley, Davidson

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ITEM NO.

CASE

12**PAADocket No. 020439-SU - Application for staff-assisted rate case in Lee County by Sanibel Bayous Utility Corporation. Docket No. 020331-SU - Investigation into alleged improper billing by Sanibel Bayous Utility Corporation in Lee County in violation of Section 367.091(4), Florida Statutes. (Deferred from January 21, 2003 conference; revised recommendation filed.)

Critical Date(s): Waived.

Commissioners Assigned: Full Commission
Prehearing Officer: Deason (020439)
Bradley (020331)

Staff: ECR: Merta, Iwenjiora, Massoudi, Davis
GCL: Jaeger

ISSUE 1: Is the quality of service provided by Sanibel Bayous Utility Corporation considered satisfactory?

RECOMMENDATION: No. The quality of the wastewater plant-in-service provided by SBUC should not be considered satisfactory. The utility should complete any and all improvements to the system that are necessary to satisfy the standards set by the Florida Department of Environmental Protection (FDEP). Also, it is recommended that a local emergency phone number, which can be easily seen, be posted at the plant and at each lift station. The emergency phone number should be posted at all locations no later than 90 days from the date of the Consummating Order for this rate case.

DECISION: The recommendation was approved, as modified, with establishment of a 12-month time frame or the time frame set in DEP's consent order, whichever is longer, for the utility to satisfy standards.

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<u>ITEM NO.</u>	<u>CASE</u>
12**PAA	<p>Docket No. 020439-SU - Application for staff-assisted rate case in Lee County by Sanibel Bayous Utility Corporation. Docket No. 020331-SU - Investigation into alleged improper billing by Sanibel Bayous Utility Corporation in Lee County in violation of Section 367.091(4), Florida Statutes. (Deferred from January 21, 2003 conference; revised recommendation filed.)</p> <p>(Continued from previous page)</p> <p><u>ISSUE 2:</u> What portions of Sanibel Bayous Utility Corporation are used and useful? <u>RECOMMENDATION:</u> The utility wastewater treatment plant should be considered to be 67% used and useful. The wastewater collection system should be considered to be 100% used and useful.</p> <p><u>DECISION:</u> The recommendation was approved.</p> <p><u>ISSUE 3:</u> What is the appropriate test year rate base for the utility? <u>RECOMMENDATION:</u> The appropriate test year rate base for the utility is \$52,147. The utility should be required to complete all pro forma additions, as discussed in the analysis portion of staff's May 8, 2003 memorandum, within six months of the Commission's Consummating Order.</p> <p><u>DECISION:</u> The recommendation was approved.</p> <p><u>ISSUE 4:</u> Should SBUC's return on equity be reduced by 100 basis points for unsatisfactory quality of service and mismanagement? <u>RECOMMENDATION:</u> Yes. Staff recommends that SBUC's return on equity be reduced by 100 basis points for unsatisfactory quality of service and mismanagement.</p> <p><u>DECISION:</u> The recommendation was approved.</p>

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<u>ITEM NO.</u>	<u>CASE</u>
12**PAA	<p>Docket No. 020439-SU - Application for staff-assisted rate case in Lee County by Sanibel Bayous Utility Corporation. Docket No. 020331-SU - Investigation into alleged improper billing by Sanibel Bayous Utility Corporation in Lee County in violation of Section 367.091(4), Florida Statutes. (Deferred from January 21, 2003 conference; revised recommendation filed.)</p> <p>(Continued from previous page)</p> <p><u>ISSUE 5:</u> What is the appropriate rate of return on equity and the appropriate overall rate of return for this utility? <u>RECOMMENDATION:</u> The appropriate rate of return on equity is 9.23% with a range of 9.23% to 11.23%. The appropriate overall rate of return is 9.23%.</p> <p><u>DECISION:</u> The recommendation was approved.</p> <p><u>ISSUE 6:</u> What is the appropriate test year revenue? <u>RECOMMENDATION:</u> The appropriate test year revenue for this utility is \$43,560.</p> <p><u>DECISION:</u> The recommendation was approved.</p> <p><u>ISSUE 7:</u> What is the appropriate amount of operating expense? <u>RECOMMENDATION:</u> The appropriate amount of operating expense for this utility is \$58,538. The utility should be required to provide the Commission with proof of: the purchase of insurance within 90 days of the Consummating Order, removal of vegetation from the pond berm, the addition of baffles in the chlorine contact chamber and the addition of new diffusers in some of the aeration tanks, as discussed in the analysis portion of staff's memorandum, within six months of the Consummating Order.</p> <p><u>DECISION:</u> The recommendation was approved.</p>

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12**PAA	Docket No. 020439-SU - Application for staff-assisted rate case in Lee County by Sanibel Bayous Utility Corporation. Docket No. 020331-SU - Investigation into alleged improper billing by Sanibel Bayous Utility Corporation in Lee County in violation of Section 367.091(4), Florida Statutes. (Deferred from January 21, 2003 conference; revised recommendation filed.)

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ISSUE 8: What is the appropriate revenue requirement?

RECOMMENDATION: The appropriate revenue requirement is \$63,352.

DECISION: The recommendation was approved.

ISSUE 9: What are the appropriate rates, rate structure, and billing cycle for the system?

RECOMMENDATION: The appropriate rate structure for this system is the flat rate structure. Customers should be billed on a quarterly basis. The recommended rates should be designed to produce revenue of \$62,896 excluding miscellaneous service charge revenue, as shown in the analysis portion of staff's May 8, 2003 memorandum. The approved rates should be effective for service rendered on or after the stamped approval date on the tariff sheet, pursuant to Rule 25-30.475(1), F.A.C. Customers must receive notice of the rate increase plus the late fee and the miscellaneous services charges, and such notice should be submitted to staff for prior approval. The rates should not be implemented until notice has been received by the customers. The utility should provide proof of the date notice was given within 10 days after the date of the notice.

DECISION: The recommendation was approved.

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ISSUE 10: What is the appropriate amount by which rates should be reduced four years after the established effective date to reflect the removal of the amortized rate case expense as required by Section 367.0816, Florida Statutes?
RECOMMENDATION: The wastewater rates should be reduced as shown on Schedule No. 4 of staff's May 8, 2003 memorandum, to remove rate case expense grossed up for regulatory assessment fees and amortized over a four-year period. The decrease in rates should become effective immediately following the expiration of the four-year rate case expense recovery period, pursuant to Section 367.0816, Florida Statutes. The utility should be required to file revised tariffs and a proposed customer notice setting forth the lower rates and the reason for the reduction no later than one month prior to the actual date of the required rate reduction. If the utility files this reduction in conjunction with a price index or pass-through rate adjustment, separate data should be filed for the price index and/or pass-through increase or decrease and the reduction in the rates due to the amortized rate case expense.

DECISION: The recommendation was approved.

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ISSUE 11: Should the utility be authorized to collect service availability charges, and if so what are the appropriate charges?

RECOMMENDATION: No. The utility should not be authorized to collect service availability charges. The utility should cease collecting the temporary service availability charge upon issuance of the Consummating Order.

DECISION: The recommendation was approved.

ISSUE 12: Should the utility be authorized to collect late fees, and if so what are the appropriate charges?

RECOMMENDATION: Yes. The utility should be authorized to collect a \$5.00 late fee. The utility should file revised tariff sheets which are consistent with the Commission's vote within one month of the Commission's final vote. The revised tariff sheets should be approved upon staff's verification that the tariffs are consistent with the Commission's decision. If revised tariff sheets are filed and approved, the late payment charge should become effective on the stamped approval date of the revised tariff sheets, if no protest is filed and provided customers have been notified.

DECISION: The recommendation was approved.

ISSUE 13: Should the utility be authorized to collect miscellaneous service charges, and if so, what are the appropriate charges?

RECOMMENDATION: Yes. The utility should be authorized to collect miscellaneous service charges as recommended in the analysis portion of staff's May 8, 2003 memorandum. The

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utility should file revised tariff sheets which are consistent with the Commission's vote within one month of the Commission's final vote. The revised tariff sheets should be approved upon staff's verification that the tariffs are consistent with the Commission's decision. If revised tariff sheets are filed and approved, the miscellaneous service charges should become effective for connections made on or after the stamped approval date of the revised tariff sheets, if no protest is filed.

DECISION: The recommendation was approved.

ISSUE 14: Should the recommended rates be approved for the utility on a temporary basis, subject to refund, in the event of a protest filed by a party other than the utility?

RECOMMENDATION: Yes. Pursuant to Section 367.0814(7), Florida Statutes, the recommended rates should be approved for the utility on a temporary basis, subject to refund, in the event of a protest filed by a party other than the utility. Prior to implementation of any temporary rates, the utility should provide appropriate security. If the recommended rates are approved on a temporary basis, the rates collected by the utility should be subject to the refund provisions discussed in the analysis portion of staff's May 8, 2003 memorandum. In addition, after the increased rates are in effect, pursuant to Rule 25-30.360(7), F.A.C., the utility should file reports with the

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Division of Commission Clerk and Administrative Services no later than 20 days after each monthly billing. These reports should indicate the amount of revenue collected under the increased rates subject to refund.

DECISION: The recommendation was approved.

ISSUE 15: Should SBUC be required to make an additional refund to customers for amounts it collected in violation of Section 367.091(4), Florida Statutes, and if so, what is the amount of the additional refund?

RECOMMENDATION: Yes. SBUC should be required to make an additional refund in the amount of \$6,732 in service rates. In addition the utility should be required to refund approximately \$750 in unauthorized late payment fees. The refunds should be made with interest in accordance with Rule 25-30.360(4), F.A.C. Further, the refunds should be made within 90 days in accordance with Rule 25-30.360(2), F.A.C. The refunds and the accrued interest should be paid only to those customers who paid the unauthorized service rates from April 2000 through September 2002 and the unauthorized late payment fees from January 2000 to the current date. Pursuant to Rule 25-30.360(7), F.A.C., the utility shall provide monthly reports on the status of the refund by the 20th of the following month, a preliminary report within 30 days after the date the refund is completed, again in 90 days, and a final report after all administrative aspects of

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the refund are completed. The utility should treat any unclaimed refunds in accordance with Rule 25-30.360(8), F.A.C. In no instance should maintenance and administrative costs associated with any refund be borne by the customers; the costs are the responsibility of, and should be borne by, the utility.

DECISION: The recommendation was approved.

ISSUE 16: Should Sanibel Bayous Utility Corporation be ordered to show cause, in writing within 21 days, why it should not be fined for collecting rates and charges not approved by the Commission, in apparent violation of Sections 367.081(1) and 367.091(4), Florida Statutes, and Rule 25-30.135(2), F.A.C.?

RECOMMENDATION: Yes. Sanibel Bayous should be ordered to show cause, in writing within 21 days, why it should not be fined \$300 for its apparent violation of those statutes and rule. The order to show cause should incorporate the conditions stated in the analysis portion of staff's May 8, 2003 memorandum.

DECISION: The recommendation was approved.

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ISSUE 17: Should these dockets be closed?

RECOMMENDATION: No. If no timely protest is received upon expiration of the protest period, the PAA Order will become final upon the issuance of a Consummating Order. However, these dockets should remain open for an additional seven months from the Consummating Order to allow staff to verify completion of pro forma items described in Issue Nos. 3 and 6, to verify that the utility has purchased insurance within 90 days as described in Issue No. 7, to verify that the refund has been made to SBUC customers, and to process the show cause proceeding. Once staff has verified that this work has been completed, the docket should be closed administratively.

DECISION: The recommendation was approved.

Commissioners participating: Jaber, Deason, Baez, Bradley, Davidson

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ITEM NO.

CASE

13**Docket No. 030102-WS - Application for authority to transfer Certificate Nos. 620-W and 533-S in Highlands County from The Woodlands of Lake Placid, L.P. to L. P. Utilities Corporation.

Critical Date(s): None

Commissioners Assigned: Full Commission
Prehearing Officer: Baez

Staff: ECR: Clapp, Redemann, Bass
GCL: Harris

ISSUE 1: Should the transfer of Certificates No. 620-W and No. 533-S from Woodlands to LPUC be approved?

RECOMMENDATION: No. The transfer of Certificates No. 620-W and No. 533-S from Woodlands to LPUC should be denied. Instead the application should be treated as a request for approval of the reorganization and name change of The Woodlands of Lake Placid, L.P. to L.P. Utilities Corporation. The reorganization and name change should be approved. The revised tariff should be effective for services rendered or connections made on or after the stamped approval date. LPUC is responsible for submitting the utility's regulatory assessment fees for the period January 1, 2002 through September 30, 2002.

ISSUE 2: Should this docket be closed?

RECOMMENDATION: Yes. The docket should be closed.

DECISION: The item was deferred.

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ITEM NO.

CASE

14**Docket No. 030305-WU - Joint application for transfer of facilities of Florida Public Utilities Company (Fernandina Beach Division) in Nassau County to City of Fernandina Beach, and cancellation of Certificate No. 001-W.

Critical Date(s): None

Commissioners Assigned: Full Commission
Prehearing Officer: Administrative

Staff: ECR: Rieger, Bass
GCL: Gervasi

ISSUE 1: Should the joint application for transfer of facilities from Florida Public Utilities Company to the City of Fernandina Beach be approved and the utility's certificate cancelled?

RECOMMENDATION: Yes. The joint application for transfer of facilities from Florida Public Utilities Company to the City of Fernandina Beach should be approved as a matter of right and the utility's certificate should be cancelled. Further, staff recommends that the utility not be required to file any additional schedules for its 2002 annual report.

ISSUE 2: Should this docket be closed?

RECOMMENDATION: Yes. If staff's recommendation in Issue 1 is approved, this docket should be closed.

DECISION: The recommendations were approved.

Commissioners participating: Jaber, Deason, Baez, Bradley, Davidson

ITEM NO.

CASE

15 Docket No. 030006-WS - Water and wastewater industry annual reestablishment of authorized range of return on common equity for water and wastewater utilities pursuant to Section 367.081(4)(f), F.S. (Deferred from March 4, 2003 Commission conference.)

Critical Date(s): None

Commissioners Assigned: Jaber, Deason, Baez, Bradley
Prehearing Officer: Deason

Staff: ECR: Lester
GCL: Vining

ISSUE 1: Does the Commission have legal authority under Section 367.081(4)(f), Florida Statutes, to reestablish a utility's rate of return on common equity by the leverage graph formula where the utility already has a rate of return on common equity established by the Commission?

RECOMMENDATION: Yes. Together Sections 367.081(4)(f), 367.081(2)(a), and 367.0822, Florida Statutes, provide the Commission with the authority to adjust the rates of return on common equity for all water and wastewater utilities in one generic proceeding using the leverage formula.

DECISION: There was no vote on this issue.

ISSUE 2: Does the Commission have legal authority under Section 367.081(2)(a), Florida Statutes, to reestablish the range of returns on common equity for water and wastewater utilities that have previously established rates of return on common equity?

RECOMMENDATION: Yes. Together Sections 367.081(4)(f), 367.081(2)(a), and 367.0822, Florida Statutes, provide the Commission with the authority to adjust the rates of return on common equity for all water and wastewater utilities in one generic proceeding using the leverage formula.

DECISION: There was no vote on this issue.

ITEM NO.

CASE

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Docket No. 030006-WS - Water and wastewater industry annual reestablishment of authorized range of return on common equity for water and wastewater utilities pursuant to Section 367.081(4) (f), F.S. (Deferred from March 4, 2003 Commission conference.)

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ISSUE 3: Whether the Commission's proposed re-establishment of the range of returns on common equity for water and wastewater utilities that have previously established rates of return on common equity:

(a) violates or is inconsistent with Commission rules and/or policies for establishing rates and/or analyzing whether a utility is under-earning or over-earning;

(b) is arbitrary, capricious or speculative?

RECOMMENDATION: (a) No. The reestablishment of ROEs for all water and wastewater utilities with an authorized ROE is consistent with Commission rules, policies, and prior action, and is within the Commission's discretion to implement its statutory obligations in an administratively efficient manner.

(b) No. The reestablishment of authorized ROEs is reasonable and appropriate, and not arbitrary, capricious, or speculative, given that the Commission updates its leverage formula annually resulting in ROEs that reflect current economic conditions. Further, the responsibility of the Commission to monitor the earnings of water and wastewater utilities can be managed only in the context of current ROEs and current economic conditions. Finally, updating the authorized ROEs of water and wastewater utilities in one generic proceeding rather than in many individual proceedings is administratively efficient and cost-effective.

DECISION: There was no vote on this issue.

ITEM NO.

CASE

15 Docket No. 030006-WS - Water and wastewater industry annual reestablishment of authorized range of return on common equity for water and wastewater utilities pursuant to Section 367.081(4) (f), F.S. (Deferred from March 4, 2003 Commission conference.)

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ISSUE 4: Should the Commission use the current leverage formula to reestablish the authorized ROE for all water and wastewater utilities that currently have an authorized ROE?

RECOMMENDATION: Yes. Consideration of a utility's ROE, whether it is previously established or not, is within the Commission's jurisdiction, pursuant to Chapter 367, Florida Statutes. Given that many water and wastewater utilities have authorized ROEs outside the range set by the current leverage formula, and that the Commission can effectively monitor utility earnings only in the context of current ROEs, the Commission should utilize the current leverage formula to update the authorized ROEs for utilities that have authorized ROEs. One proceeding, rather than 94, for reestablishing these authorized ROEs is administratively efficient and cost-effective, which is in the public interest.

DECISION: The recommendation was denied.

ISSUE 5: Should this docket be closed?

RECOMMENDATION: The docket should be closed after the time for filing an appeal has run.

DECISION: The recommendation was approved with the modification verbalized by staff at the conference and pre-reflected in recommendation language on the vote sheet.

Commissioners participating: Jaber, Deason, Baez, Bradley

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ITEM NO.

CASE

16Docket No. 010098-TP - Petition by Florida Digital Network, Inc. for arbitration of certain terms and conditions of proposed interconnection and resale agreement with BellSouth Telecommunications, Inc. under the Telecommunications Act of 1996.

Critical Date(s): None

Commissioners Assigned: Jaber, Deason

Prehearing Officer: Deason

Staff: CMP: Dowds

GCL: Banks

ISSUE 1: Should the Commission approve the arbitrated interconnection agreement between BellSouth and FDN in Docket No. 010098-TP?

RECOMMENDATION: Yes. The Commission should approve the arbitrated interconnection agreement between BellSouth and FDN in Docket No. 010098-TP.

ISSUE 2: Should this docket be closed?

RECOMMENDATION: Yes. If the Commission approves staff's recommendation in Issue 1, no further action will be required in this docket. Therefore, this docket may be closed.

DECISION: The recommendations were approved.

Commissioners participating: Jaber, Deason