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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION
TALLAHASSEE, FLORIDA

IN RE: Petition by AT&T Communications of the Southern
States, Inc.

DOCKET NO. 960833-TP

IN RE: Petition by MCI Telecommunications Corporation and
MCI Metro Access Transmission Services, Inc.

DOCKET NO. 960846-TP

IN RE: Petition by American Communications Services, Inc.
and American Communications Services of Jacksonville, Inc.

DOCKET NO. 960916-TP

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BEFORE:

CHAIRMAN SUSAN F. CLARK
COMMISSIONER J. TERRY DEASON
COMMISSIONER JULIA L. JOHNSON
COMMISSIONER DIANE K. KIESLING
COMMISSIONER JOE GARCIA

PROCEEDING:

AGENDA CONFERENCE

ITEM NUMBER:

7A

DATE:

December 2, 1996

PLACE:

4075 Esplanade Way, Room 148
Tallahassee, Florida

REPORTED BY:

JANE FAUROT, RPR
Notary Public in and for the
State of Florida at Large

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FPSC-RECORDS/REPORTING

STAFF RECOMMENDATIONS

- 1
- 2 Issue A: Should the Commission grant MCI's and AT&T's
- 3 motions to strike BellSouth's Notice of Order of the Eighth
- 4 Circuit Court of Appeal's Order Granting Stay Pending
- 5 Judicial Review and Request for Relief?
- 6 Recommendation: Yes. The Commission should take official
- 7 notice of the 8th Circuit Court of Appeal's Order, but
- 8 strike the remainder of BellSouth's pleading from the record
- 9 in this proceeding.
- 10 Issue 1(a): Are the following items considered to be network
- 11 elements, capabilities, or functions? If so, is it
- 12 technically feasible for BellSouth to provide AT&T or MCI
- 13 with these elements?
- 14 A. Network Interface Device
- 15 B. Unbundled Loops
- 16 C. Loop Distribution
- 17 D. Loop Concentrator/Multiplexer
- 18 E. Loop Feeder
- 19 F. Local Switching
- 20 G. Operator Systems (DA service/911 service)
- 21 H. Multiplexing/Digital Cross-Connect/Channelization
- 22 I. Dedicated Transport
- 23 J. Common Transport
- 24 K. Tandem Switching
- 25 L. AIN Capabilities
- M. Signaling Link Transport
- N. Signal Transfer Points
- O. Service Control Points/Database
- Recommendation: Yes. All elements listed are considered to
- be network elements as defined by Section 3(29) of the Act.
- The following items are technically feasible for BellSouth
- to provide on an unbundled basis:
- A. Network Interface Device
- B. Unbundled Loops
- C. Loop Distribution
- F. Local Switching
- G. Operator Systems
- H. Multiplexing/Digital Cross-Connect/Channelization
- I. Dedicated Transport
- J. Common Transport
- K. Tandem Switching
- L. AIN Capabilities
- M. Signaling Link Transport
- N. Signal Transfer Points
- Issue 1(b): What should be the price of each of the items
- considered to be network elements, capabilities, or
- functions?
- Recommendation: The Commission should set permanent rates
- based on BellSouth's TSLRIC cost studies. However, the cost

1 studies filed by BellSouth do not cover all of the unbundled
2 network elements requested by AT&T and MCI. Therefore,
3 modified Hatfield-based rates or BellSouth tariff rates are
4 recommended as interim rates only for those elements for
5 which no other cost information exists in the record until
6 permanent rates can be set. Also, BellSouth shall file a
7 TSLRIC cost study, for those unbundled elements for which
8 BellSouth has not already provided a cost study, within 60
9 days of the date the order is issued. The following
10 recurring rates in Table 1 and nonrecurring rates in Table 2
11 should be set. These rates cover BellSouth's TSLRIC costs
12 and provide some contribution toward joint and common costs.
13 (Table 1 and 2 are shown in staff's memorandum dated
14 November 14, 1996.)

15 If AT&T or MCI cannot negotiate a rate, or rates, for
16 AIN capabilities, then BellSouth should file a TSLRIC cost
17 study with this Commission within 30 days from the date of a
18 bona fide request.

19 Issue 2: Should AT&T and MCI be allowed to combine
20 BellSouth's unbundled network elements in any manner they
21 choose, including recreating existing BellSouth services?
22 Recommendation: Yes. The Commission should allow AT&T and
23 MCI to combine unbundled network elements in any manner they
24 choose, including recreating existing BellSouth services, as
25 provided in Section 251(c)(3) of the Act and the FCC's Order
96-325 at Section 340.

Issue 3: What services provided by BellSouth, if any, should
be excluded from resale?

Recommendation: BellSouth should be required to offer for
resale any services it provides at retail to end user
customers who are not telecommunications carriers. These
services include all grandfathered services (both current
and future), promotions that exceed 90 days, volume
discounts, contract service arrangements (both current and
future), Lifeline and LinkUp services, and 911/E911 and N11
services.

Issue 4: What are the appropriate wholesale rates for
BellSouth to charge when AT&T or MCI purchases BellSouth's
retail services for resale?

Recommendation: BellSouth should offer retail services at a
wholesale discount rate of 21.83% for residential services
and 16.81% for business services.

Issue 5: What terms and conditions, including use and user
restrictions, if any, should be applied to resale of
BellSouth's services?

Recommendation: No restrictions should be allowed except
for the resale of grandfathered services, residential
services, and Lifeline/LinkUp services to end users who are
eligible to purchase such service directly from BellSouth.
BellSouth has not sufficiently rebutted the FCC's

1 presumption against resale restrictions for volume discount
2 offerings or against tariff limitations in general, other
than the ones specified.

3 Issue 6: Should BellSouth be required to provide notice to
its wholesale customers of changes to BellSouth's services?
4 If so, in what manner and in what time frame?

5 Recommendation: If BellSouth provides internal notice 45 or
more days in advance of the change, BellSouth should provide
6 45 days notice to its wholesale customers. If BellSouth
provides notice less than 45 days in advance of the change,
7 wholesale customers should be noticed concurrently with
BellSouth's internal notification process. BellSouth should
8 not be held liable if it modifies or withdraws a resold
service after the notice is provided; however, BellSouth
should notify the resellers of these changes as soon as
possible.

9 Issue 7: What are the appropriate metrics, service
restoration, and quality assurance related to services
10 provided by BellSouth for resale and for network elements
provided to AT&G or MCI by BellSouth?

11 Recommendation: BellSouth, AT&T and MCI should adhere to
the service restoration intervals, direct measures of
12 quality, service assurance warranties, and other quality
assurance measures proposed by MCI and AT&T in their
13 proposed agreements. If AT&T's and MCI's proposed
agreements do not contain specific performance standards,
14 BellSouth should be required to provide the same quality of
service for resale and network elements to AT&G and MCI that
15 it provides to its customers and itself. The Commission
should not arbitrate provisions for liquidated damages in
16 the AT&T and MCI interconnection agreements with BellSouth.

17 Issue 8A: When AT&T or MCI resells BellSouth's services, is
it technically feasible or otherwise appropriate for
18 BellSouth to brand operator services and directory service
calls that are initiated from those resold services?

19 Recommendation: Yes. BellSouth should provide branding and
unbranding for operator service and directory service calls
for AT&T and MCI.

20 Issue 8(b): When BellSouth's employees or agents interact
with AT&T's or MCI's customers with respect to a service
21 provided by BellSouth on behalf of AT&T or MCI, what type of
branding requirements are technically feasible or otherwise
22 appropriate?

23 Recommendation: When representing AT&T or MCI, BellSouth
personnel should 1) advise customers that they are
representing AT&T or MCI; 2) provide customers with AT&T or
24 MCI supplied "leave behind" cards; and, 3) refrain from
marketing BellSouth directly or indirectly to AT&T or MCI
25 customers.

Issue 9: When AT&T or MCI resells BellSouth's local

1 exchange service or purchases unbundled local switching, is
2 it technically feasible or otherwise appropriate to route 0+
3 and 0- calls to an operator other than BellSouth's, to route
4 411 and 555-1212 directory assistance calls to an operator
5 other than BellSouth's, or to route 611 repair calls to a
6 repair center other than BellSouth's?

7 Recommendation: Yes. When AT&T or MCI resells BellSouth's
8 local exchange service or purchases unbundled local
9 switching, it is technically feasible or otherwise
10 appropriate to route 0+ and 0- calls to an operator other
11 than BellSouth's, to route 411 and 555-1212 directory
12 assistance calls to an operator other than BellSouth's, and
13 to route 611 repair calls to a repair center other than
14 BellSouth's. The Commission should require BellSouth to
15 provide customized routing using line class codes, on a
16 first-come, first-served basis.

17 Issue 10: Do the provisions of Sections 251 and 252 apply
18 to access to unused transmission media (e.g., dark fiber,
19 copper coaxial, twisted pair)? If so, what are the
20 appropriate rates, terms, and conditions?

21 Recommendation: No. Sections 251 and 252 of the Act do not
22 apply to AT&T and MCI's request for access to dark fiber.

23 Issue 11: Is it appropriate for BellSouth to provide copies
24 of engineering records that include customer specific
25 information with regard to BellSouth poles, ducts, and
conduits? How much capacity, if any, is appropriate for
BellSouth to reserve with regard to its poles, ducts and
conduits?

Recommendation: BellSouth should not be required to provide
AT&T and MCI copies of its engineering records. BellSouth
should allow AT&T and MCI access to its engineering records
and drawings as they pertain to poles, ducts, conduit, and
rights-of-way owned or controlled by BellSouth. Access
should be provided within a reasonable time frame and the
appropriate proprietary provisions should apply.

BellSouth should allow AT&T and MCI to reserve capacity
under the same time frames, terms and conditions it affords
itself.

Issue 12: How should BellSouth treat a PIC change request
received from an IXC other than AT&T or MCI for an AT&T or
MCI local customer?

Recommendation: BellSouth should be prohibited from making
any PIC change for a customer that receives its local
exchange service from a local exchange carrier other than
BellSouth. BellSouth should forward the request of the
customer to their local exchange carrier and provide the
customer a contact number for their local carrier.

Issue 13: Should BellSouth be required to provide real-time
and interactive access via electronic interfaces as
requested by AT&G and MCI to perform the following:

- 1 Pre-Service Ordering
 2 Service Trouble Reporting
 3 Service Order Processing and Provisioning
 4 Customer Usage Data Transfer
 5 Local Account Maintenance

6 If the process requires the development of additional
 7 capabilities, in what time frame should they be deployed?
 8 What are the costs involved and how should these costs be
 9 recovered?

10 Recommendation: Yes. BellSouth should be required to
 11 provide real-time and interactive access via electronic
 12 interfaces to perform pre-service ordering, service trouble
 13 reporting, service order processing and provisioning,
 14 customer usage data transfer, and local account maintenance.

15 Processes that require the development of additional
 16 capabilities should be developed by BellSouth by January 1,
 17 1997. If BellSouth cannot meet that deadline, BellSouth
 18 should file a report with the Commission that outlines why
 19 it cannot meet the deadline, its plans for developing the
 20 real-time interactive electronic interface, the date by
 21 which such system will be implemented, and a description of
 22 the system or process which will be used in the interim.
 23 BellSouth, AT&T and MCI should also establish a joint
 24 implementation team to assure the implementation of the
 25 real-time and interactive interfaces. These electronic
 interfaces should conform to industry standards where such
 standards exist or are developed.

BellSouth should not require MCI and AT&G to obtain prior
 written authorization from each customer before allowing
 access to the customer service records (CSRs). MCI and AT&T
 should issue a blanket letter of authorization to BellSouth
 which states that it will obtain the customer's permission
 before accessing the CSRs. Further, BellSouth should
 develop a real-time operational interface to deliver CSRs to
 ALECs, and the interface should only provide the customer
 information necessary for MCI and AT&T to provision
 telecommunications services.

Each party should bear its own share of the cost of
 developing and implementing such systems and processes
 because these systems will benefit all carriers. If a
 system or process is developed exclusively for a certain
 carrier, those costs should be recovered from the carrier
 who is requesting such customized system.

Issue 14(a): Should BellSouth be required to use the CMDS
 process for local and intraLATA calls in the same manner as
 used today for interLATA calls?

Recommendation: Yes, CMDS should be expanded to be used for
 intraLATA collect, third party and calling card calls.

1 Issue 14(b): What are the appropriate rates, terms, and
2 conditions, if any, for rating information services traffic
between AT&T or MCI and BellSouth?

3 Recommendation: AT&T's proposal, to have BellSouth rate and
4 bill and collect AT&T's customers' calls to ISPs, should be
5 approved as an interim process with the exception that AT&T
6 should not be paid in connection with any call by its
7 customers to an ISP until it negotiates its own contracts
8 with the appropriate rates, terms and conditions. MCI
9 concurred with AT&T's position on this issue except that MCI
10 appears to wish to bills its own customers. The Commission's
11 decision should apply to MCI as well.

12 To the extent that BellSouth incurs additional costs as
13 a result of handling ISP traffic on behalf of the other
14 carriers, that are not covered under its contract with the
15 ISP, nothing in the Commission's decision should preclude
16 BellSouth from recovering those costs through incremental
17 charges to AT&T and/or MCI.

18 Issue 15: What billing system and what format should be
19 used to render bills to AT&T or MCI for services and
20 elements purchased from BellSouth?

21 Recommendation: The Commission should require BellSouth to
22 provide CABS-formatted billing for both resale and unbundled
23 elements within 120 days of issuance of the order in this
24 proceeding. BellSouth can continue to use its CRIS billing
25 system, but the output from the CRIS system should be
translated into the CABS-format. In the interim, BellSouth
should provide bills for resale and unbundled elements to
AT&T and MCI using its CRIS and CABS billing systems.

26 Issue 16: Should BellSouth be required to provide Process
27 and Data Quality Certification for carrier billing, data
28 transfer, and account maintenance?

29 Recommendation: BellSouth, AT&T and MCI should adhere to
30 quality standards pertaining to process and data quality
31 certification for carrier billing, data transfer, and
32 account maintenance proposed by MCI and AT&T in their
33 proposed interconnection agreements. If AT&T's and MCI's
34 proposed agreements do not contain specific standards,
35 BellSouth should be required to provide the same quality of
service for carrier billing, data transfer, and account
maintenance to AT&T and MCI that it provides to its
customers and itself. The Commission should not arbitrate
provisions for liquidated damages in the AT&T and MCI
interconnection agreements with BellSouth.

36 Issue 17: Should BellSouth be required to allow AT&T and
37 MCI to have an appearance (e.g. logo or name) on the cover
38 of the white and yellow page directories?

39 Recommendation: No. AT&T and MCI should contract with the
40 directory publisher for an appearance on the cover of the
41 white page and yellow page directories.

1 Issue 18: Should BellSouth be required to provide interim
 2 number portability solutions besides remote call forwarding?
 3 If so, what are the costs involved and how should they be
 4 recovered?

5 Recommendation: The parties have agreed that BellSouth will
 6 provide the following interim number portability solutions:

- 7 a. Remote Call Forwarding
- 8 b. Direct Inward Dialing
- 9 c. Route Index Portability Hub
- 10 d. Local Exchange Routing Guide to the NXX Level

11 The Commission should address cost recovery for interim
 12 number portability in Docket No. 950737-TP. Until
 13 completion of that proceeding, the Commission, on an interim
 14 basis, should require each carrier to pay for its own costs
 15 in the provision of the interim number portability solutions
 16 listed above. Further, the Commission should require each
 17 telecommunications carrier to this proceeding to track its
 18 cost of providing the interim number portability solutions
 19 with sufficient detail to verify the costs in order to
 20 consider recovery of these costs in Docket No. 950737-TP.

21 Issue 19: Do the provisions of Section 251 and 252 apply to
 22 the price of exchange access? If so, what is the
 23 appropriate price for exchange access?

24 Recommendation: No. Sections 251 and 252 of the Act do not
 25 address the pricing of exchange, or switched, access.
 (Switched access is referred to as exchange access in
 Section 251(c)(2)(A) of the Act. No changes to switched
 access rates need to be made in this proceeding.)

26 Issue 20: What are the appropriate trunking requirements
 27 between AT&T and BellSouth for local interconnection?

28 Recommendation: The parties have reached an agreement.
 29 Therefore, the Commission should consider this issue moot.

30 Issue 21: What should be the compensation mechanism for the
 31 exchange of local traffic between AT&T and BellSouth?

32 Recommendation: A reciprocal rate of \$.00125 per minute
 33 for tandem switching and \$.002 for end office termination
 34 should be approved. While it is understood that BellSouth's
 35 costs are LRIC, these rate levels would be sufficient to
 cover TSLRIC, in addition to providing some contribution to
 common costs.

36 Issue 22: What are the appropriate general contractual
 37 terms and conditions that should govern the arbitration
 38 agreement (e.g. resolution of disputes, performance
 39 requirements, and treatment of confidential information)?

40 Recommendation: The Commission should not arbitrate the
 41 general contractual terms and conditions that govern the
 42 arbitration agreement. The Commission's authority to
 43 arbitrate disputed issues under the Act is limited to those

1 items enumerated in Sections 251 and 252 and matters
2 necessary to implement those items. General contractual
3 terms and conditions do not fall within the scope of
4 arbitration.

5 Issue 23: What should be the cost recovery mechanism for
6 remote call forwarding (RCF) used to provide interim local
7 number portability in light of the FCC's recent order?

8 Recommendation: The Commission should implement the cost
9 recovery mechanism established in Issue 18.

10 Issue 24: What intrastate access charges, if any, should be
11 collected on a transitional basis from carriers who purchase
12 BellSouth's unbundled local switching element? How long
13 should any transitional period last?

14 Recommendation: This issue was affected by the Eighth
15 Circuit's stay of portions of the FCC Order. Therefore,
16 existing Florida law and policy should apply because they
17 are not inconsistent with the Act. No additional charges
18 should be assessed for unbundled Local Switching over and
19 above those approved in Issue 1(b) for that element.

20 However, with respect to toll traffic, existing Florida law
21 does not allow ALECs to bypass switched access charges.
22 Therefore, under the Commission's toll default policy
23 established in Order No. PSC-96-1231-FOF-TP in Docket No.
24 950985-TP, the company terminating a toll call should
25 receive terminating switched access from the originating
company unless the originating company can prove that the
call is local.

Issue 25: What are the appropriate rates, terms, and
conditions for collocation (both physical and virtual)?

Recommendation: For physical collocation, the Commission
should approve BellSouth's Telecommunications Handbook for
collocation in the interim until this Commission has set
cost-based rates for physical collocation.

MCI should bear the costs of converting from virtual to
physical collocation where MCI requests the conversion. The
establishment of physical collocation should be completed in
three months and the establishment of virtual collocation
should be completed in two months. BellSouth should
demonstrate to the Commission on a case-by-case basis where
these time frames are not sufficient to complete the
collocation work.

For virtual collocation, the rates, terms, and conditions
set forth in BellSouth's Access tariff filed with this
Commission should apply in the interim until this Commission
has set cost-based rates.

In addition, the Commission should grant MCI the ability
to:

1. Interconnect with other collocators that are

- 1 interconnected with BellSouth in the same central office.
- 2 2. Purchase unbundled dedicated transport from BellSouth
3 between the collocation facility and MCI's network.
- 4 3. Collocate subscriber loop electronics in a BellSouth
5 central office.
- 6 4. Select physical over virtual collocation, where space
7 and/or other considerations permit.

8 BellSouth should file a TSLRIC cost study for physical
9 and virtual collocation within 60 days of the date the order
10 is issued in this proceeding. The cost study should comply
11 with Section 51.323 of the FCC's rules and with the expanded
12 interconnection guidelines set out in the FCC's order.

13 Issue 26: What are the appropriate rates, terms, and
14 conditions related to the implementation of dialing parity
15 for local traffic?

16 Recommendation: BellSouth should be required to provide
17 dialing parity to MCI on local calling (intra-exchange and
18 flat rate EAS).

19 Issue 27: What are the appropriate arrangements to provide
20 MCI with nondiscriminatory access to white and yellow page
21 directory listings?

22 Recommendation: This issue is for informational purposes
23 only. This issue does not require a Commission vote.

24 Issue 28: What terms and conditions should apply to the
25 provision of local interconnection by BellSouth to MCI?

Recommendation: This issue is for informational purposes
only. This issue does not require a Commission vote.

Issue 29: Should the agreement be approved pursuant to the
Telecommunications Act of 1996?

Recommendation: Yes, the arbitrated agreements should be
submitted by the parties for approval under the standards in
Section 252(e)(2)(B). The Commission's determination of the
unresolved issues should comply with the standards in
Section 252(c) which include the requirements in Section
252(e)(2)(B).

Issue 30: What are the appropriate post-hearing procedures
for submission and approval of the final arbitrated
agreement?

Recommendation: The parties should submit a written
agreement memorializing and implementing the Commission's
decision within 30 days of issuance of the Commission's
arbitration order. Staff should take a recommendation to
agenda so that the Commission can review the submitted
agreements pursuant to the standards in Section 252(e)(2)(B)
within 30 days after they are submitted.

If the parties cannot agree to the language of the

1 agreement, each party should submit its version of the
2 agreement within 30 days after issuance of the Commission's
3 arbitration order, and the Commission should decide on the
4 language that best incorporates the substance of the
5 Commission's arbitration decision.

6 Issue 31: Should these dockets be closed?

7 Recommendation: No. In Issue 1b, staff has requested
8 BellSouth to file additional cost information. In addition,
9 there are outstanding requests for confidentiality of
10 information which has been entered into the record.
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P R O C E E D I N G S

1
2 CHAIRMAN CLARK: Item 7A. Commissioners, what is
3 your preference, to go issue-by-issue here?
4 COMMISSIONER JOHNSON: Yes.
5 CHAIRMAN CLARK: Okay.
6 COMMISSIONER KIESLING: If I could just get a
7 clarification, since there was some confusion in my
8 office about which of these was which number. The one
9 that we deferred from last Tuesday is 7A, am I correct?
10 CHAIRMAN CLARK: Correct.
11 COMMISSIONER KIESLING: Great. Thank you.
12 COMMISSIONER GARCIA: There is no changes, though.
13 CHAIRMAN CLARK: The only changes were the staff
14 memorandum from November 21 on some numbers.
15 COMMISSIONER GARCIA: Okay.
16 COMMISSIONER DEASON: There is a question of an
17 alternative recommendation that was included in GTE
18 that I think needs to orally be paid for BellSouth.
19 CHAIRMAN CLARK: That's correct, and we will take
20 it up when we get to it.
21 COMMISSION STAFF: All right.
22 CHAIRMAN CLARK: Okay. Issue A.
23 COMMISSIONER DEASON: Move staff.
24 CHAIRMAN CLARK: Without objection, Issue A is
25 approved.

1 MR. REITH: Commissioners, Issue 1(a) deals with
2 what elements should be considered to be network
3 elements. And if so, is it technically feasible for
4 BellSouth to provide those elements. I would like to
5 point out to you that in the recommendation statement
6 staff is not recommending that Item D, loop
7 concentration/multiplexer, or loop feeder, Item E, or
8 O, service control point/data base, we are not
9 recommending that those are technically feasible to
10 provide as unbundled elements. The reason for D and E
11 not being recommended is because that request was
12 dropped. And O, service control points, we are not
13 recommending that that is technically feasible to
14 provide at this time because there are some questions
15 about access directly to that database and that point
16 in the signaling system network.

17 CHAIRMAN CLARK: I'm sorry, Mike, would you repeat
18 that? I think you may be answering my question. I
19 have a question on Page 29. It wasn't clear to me.

20 MR. REITH: On Page 29, AT&T was asking that this
21 item be unbundled.

22 CHAIRMAN CLARK: What item?

23 MR. REITH: Item D and E. Loop
24 concentrator/multiplexer, and E, loop feeder.
25 Originally in their petition they had requested that

1 these be unbundled, but at the hearing they said that
2 they had dropped their request and they were going to
3 work with Bell on this. MCI had not requested that
4 those items be unbundled.

5 CHAIRMAN CLARK: What about subloop?

6 MR. REITH: These are part of a subloop unbundling
7 arrangement. MCI asked for the third piece of subloop
8 unbundling, which would be loop distribution. That's
9 Number C, Item C in that list. So we had went ahead
10 and made a recommendation with respect to MCI on this
11 item, since it was only particular to them, and staff
12 is recommending that BellSouth unbundle this element
13 specifically the way MCI has requested it, which is a
14 limited request in our opinion.

15 CHAIRMAN CLARK: You're not recommending that --

16 MR. REITH: Can I try it a different way?

17 CHAIRMAN CLARK: Yes.

18 MR. REITH: For subloop unbundling in this issue
19 there are three pieces that were originally requested.
20 Loop feeder is the first piece, loop concentration
21 would have been the second piece, and loop distribution
22 would have been the third piece, walking it from the
23 central office down to the house. The request for loop
24 feeder --

25 CHAIRMAN CLARK: Let me just ask would that be

1 unbundled loop distribution at the feeder distribution
2 interface, is that what you're talking about the third
3 element?

4 MR. REITH: The third element would be loop --
5 yes, ma'am.

6 CHAIRMAN CLARK: Okay. And you're recommending
7 that that be offered?

8 MR. REITH: Yes, I am.

9 CHAIRMAN CLARK: Okay. Any other --

10 COMMISSIONER DEASON: I can move staff if there
11 are no other questions.

12 COMMISSIONER JOHNSON: I had a question on the
13 network interface device.

14 MR. REITH: Yes.

15 COMMISSIONER JOHNSON: With respect to that
16 element, I know that the FCC kind of left it up to the
17 states to determine whether or not there was -- it
18 could be unbundled in a technically feasible manner.
19 Bell had raised some arguments with respect to their
20 concerns with AT&T's request as it was stated would
21 violate the national electric codes. And I wanted to
22 better understand what we decided to do and whether or
23 not there were any safety concerns there to the extent
24 that we were making the company, the LEC more
25 vulnerable than perhaps they should be. And why we

1 believe that the necessary safeguards are in place to
2 ensure that their system and infrastructure can be
3 protected.

4 MR. REITH: What we were recommending in the
5 network interface device arrangement is that to the
6 extent that there is fair capacity in the NID, in
7 BellSouth's NID, that they allow AT&T to directly
8 connect their loops the same way that BellSouth
9 directly connects their loops to that NID. And we
10 believe that is covered in the national electric code,
11 because there is a way to do it, and BellSouth is doing
12 it, and AT&T can repeat those same procedures that
13 BellSouth --

14 COMMISSIONER JOHNSON: Okay. You may be helping
15 me out here. So there is a way to do this, and Bell
16 follows those procedure now, and you're saying that
17 AT&T would just replicate the national standards?

18 MR. REITH: Yes. Only to the extent that there is
19 fair capacity in that NID. Now there are some out
20 there that there is no spare capacity, and there is a
21 question on what is the proper way of doing that. AT&T
22 did say that their technicians would be licensed to go
23 ahead and provide that. Go ahead and connect to that
24 NID and take off BellSouth's loop and ground it
25 properly, while without a lack of standards and codes

1 we are kind of hesitant to go ahead and say blanketly
2 do it, because these would have to be handled on a
3 case-by-case basis. There is a varied mix out there.
4 And you have to remember we are talking about business
5 and residential customers.

6 COMMISSIONER JOHNSON: So tell me again what we do
7 when there is not spare capacity.

8 MR. REITH: When there is not spare capacity, we
9 are recommending that they follow the FCC's order,
10 which says put a NID next to BellSouth's NID and you
11 run a jump wire between the two to connect it. That
12 way both loops would be properly grounded and
13 protected. And we feel that to the extent there is
14 spare capacity in that NID, AT&T can go ahead and
15 connect their loop, and BellSouth's loop would stay
16 connected and would be grounded.

17 COMMISSIONER JOHNSON: Okay.

18 MR. REITH: And BellSouth's witness Miller, I
19 believe, acknowledged that. Millender, excuse me.

20 COMMISSIONER JOHNSON: Acknowledged that that
21 would not be problematic?

22 MR. REITH: Acknowledged that it would be grounded
23 if it stayed connected.

24 COMMISSIONER JOHNSON: Okay.

25 CHAIRMAN CLARK: Let me ask a question with

1 respect to the definition of technically feasible. I
2 take it that staff believes that the FCC definition is
3 appropriate, or is it the definition in the statute?

4 MR. REITH: The FCC's definition is the definition
5 staff used. We used that as a guidance, because that
6 order is still in effect.

7 CHAIRMAN CLARK: Excuse me?

8 MR. REITH: We used that as guidance, because that
9 order is still in effect, and that is the definition we
10 used.

11 CHAIRMAN CLARK: Have we contested that portion of
12 the order.

13 MR. REITH: No, ma'am, I don't believe we have.

14 CHAIRMAN CLARK: So we are comfortable that that
15 definition is the same definition we should use?

16 MR. REITH: Yes.

17 CHAIRMAN CLARK: Let me ask a different question.
18 From a legal standpoint, while we may agree with them,
19 it may nonetheless be -- my question is, is it an area
20 we are comfortable that they have the authority to tell
21 us what technically feasible means?

22 MS. BROWN: Well, Commissioner, I'm not exactly
23 sure what you're asking. I can repeat what Mr. Reith
24 said. This is not an area that we have appealed. So,
25 therefore, I think this is one that we will and should

1 follow. Is that what you were asking?

2 CHAIRMAN CLARK: Well, my question is, I'm
3 concerned about regardless of whether we agree with
4 what the FCC has done on the substantive basis, even if
5 it is what we might recommend, my question is is it
6 within their authority to say that this is what it's
7 going to be, or is it something that has been reserved
8 to the states? Because my view is that just because
9 you agree with them doesn't mean you don't -- on the
10 substantive issue -- doesn't mean you don't say to them
11 we don't think you have the authority to set these
12 guidelines, it's within our responsibility. And I want
13 to make very sure that our pleadings in the Eighth
14 Circuit, we set out where we think they have
15 overstepped their bounds, even though we may agree that
16 the method they have chosen is one that we would
17 independently choose, it's important to me that we sort
18 of make sure that we have alerted the court to where we
19 think that they have entered into our authority,
20 because what happens if they change technically
21 feasible and we don't think it's the correct way to
22 define it? If we haven't challenged it, we may have
23 lost our ability to challenge it.

24 MR. GREER: Commissioners, there is to me some
25 concern with the definition that the FCC has for

1 technical feasibility, and that concern essentially is
2 they do not pay any attention to whatever the economic
3 costs are to do something that is technically feasible.
4 I mean, that's our biggest concern with their
5 definition. And I have to defer to the legal folks,
6 but I think we haven't questioned that at the courts.

7 COMMISSION STAFF: That's what I was going to
8 state, Chairman Clark. I don't believe that was one of
9 the issues that we presented in terms of disagreements.
10 I do think though that internally we have discussed
11 this and we do have some concerns about technical
12 feasibility as Mr. Greer has stated, and concerns about
13 its not requiring an economic consideration.

14 CHAIRMAN CLARK: Well, I need an answer to my
15 question.

16 COMMISSION STAFF: We have not raised the issue.

17 MS. BROWN: Well, I think what you're trying to
18 say is there are two ways that we can make our attitude
19 or our opinions known; either by directly appealing
20 certain matters, or in the decisions that we make on a
21 case-by-case basis, saying there are other aspects of
22 the FCC order that we don't agree with, and, therefore,
23 we are going to take this stance. And then the parties
24 that have the opportunity to object to that through the
25 regular appellate process that is laid out in the Act,

1 is that what you're getting at?

2 CHAIRMAN CLARK: What I'm concerned about is the
3 FCC has issued their order on interconnection and
4 various other things, and we have a concern that they
5 have overstepped their authority in setting some
6 guidelines. My question is, is the Act clear that it
7 is up to the FCC to describe what is technically
8 feasible, that term?

9 MS. BROWN: I don't directly know the answer to
10 that question.

11 CHAIRMAN CLARK: Well, we need an answer.
12 Somebody needs to get Rob down here or Cindy down here
13 and get an answer to that question.

14 MS. BROWN: Well, we can probably go through it.
15 What I was also going to suggest to you, though, is
16 that my understanding from this recommendation is that
17 there is not any problem in applying, and I want
18 technical staff to help me with this, the FCC's
19 definition here. There may at some future point be a
20 problem with it, but in this case we agree with it as
21 it applies to these issues. Is that right?

22 COMMISSION STAFF: Yes.

23 CHAIRMAN CLARK: That's fine. And that will get
24 us through this piece, but it needs to be made clear as
25 to whether or not we think it's within our authority to

1 say what is technically feasible and what is not, or is
2 something that we have to follow the FERC order.

3 MR. GREER: Commissioners, I don't think there is
4 anything in the Act that specifically identifies the
5 FCC's authority to define technical feasibility. I
6 mean, I don't recall seeing anything in there. They
7 have -- and I guess the way we looked at that time from
8 staff's perspective, is that they have defined it. We
9 didn't appeal it, so that's what we used when we were
10 analyzing the requirements for this recommendation.

11 Now, Ms. Brown is correct in that probably for
12 1(a) there is no problems for interim number
13 portability. I'm not for sure I would use that
14 definition, because it is an interim solution, but we
15 have, and that may be a problem for that interim number
16 portability issue.

17 MS. BROWN: Except that interim number portability
18 and number portability is pretty clear in the Act that
19 it's within the FCC's authority.

20 MR. GREER: Yes, I think that's true.

21 CHAIRMAN CLARK: That's my question about
22 feasibility. Commissioners Kiesling.

23 COMMISSIONER KIESLING: Well, I guess I'm
24 confused, because I read this and when I talked to
25 staff and asked the questions I had, I was operating

1 from the perspective that those portions of the FCC
2 order that were not state were in effect and we were
3 going to follow them. And it's my understanding that
4 we did not challenge the definition, the authority of
5 the FCC to define technical feasibility, and it is not
6 a portion of the order that was stayed. Therefore, I
7 thought we followed it. And I guess I'm trying to
8 understand --

9 CHAIRMAN CLARK: What my concern is?

10 COMMISSIONER KIESLING: Yes, in terms of whether
11 we are bound by those portions of the FCC order that
12 were not appealed and were not stayed.

13 CHAIRMAN CLARK: Well, I think that we may -- I
14 don't disagree that we may need to follow it, but my
15 question is, if we think they have overstepped their
16 authority in that area, we should be appealing it. And
17 if they haven't stayed it, we might have to do what is
18 still in effect, but with the notation that we believe
19 it's within our authority to say what is technically
20 feasible. I guess throughout these issues I wanted to
21 be clear as to what was up to us to do with respect to
22 what the law gives us the authority to do. What are we
23 doing because the FCC has set out some guidelines, and
24 do we think that the FCC has the authority to set out
25 those guidelines. If we don't think they have the

1 authority to do it, I hope we are appealing it.

2 MS. BROWN: Well, Commissioner, I haven't recently
3 read the appeal that we filed. It appears to me that
4 we primarily appealed the pricing actions that the FCC
5 attempted to make in its order. Generally speaking,
6 the order contemplates that the FCC will implement
7 those aspects of the 1996 Act.

8 CHAIRMAN CLARK: The order or the Act?

9 MS. BROWN: The Act contemplates that the FCC will
10 implement those aspects of the Act, not that the states
11 will except in particular areas that we have appealed.
12 Where we have not, I agree with Commissioner Kiesling
13 that we need to follow it. Perhaps we can make some
14 notation that we don't agree with it, but if we haven't
15 appealed it, I think we do need to follow it unless we
16 want to take an action contrary to that which then the
17 parties would appeal and, you know, that's another way
18 to go. But, generally speaking, we have not written
19 that recommendation that way.

20 CHAIRMAN CLARK: Here is what I'm trying to get at
21 from an overall perspective. I think that in this
22 docket we should be doing what we think is appropriate
23 for Florida which is consistent with the
24 Telecommunications Act of 1996, and where we believe
25 that a particular definition or a particular activity

1 is within our jurisdiction and not subject to
2 guidelines that the FCC, I hope we are appealing that.
3 That we have identified it and we are appealing it to
4 the FCC. And my question is with respect to technical
5 feasibility, is it solely within the jurisdiction of
6 the FCC to say it is our definition, it is our
7 responsibility to set the definition, and here it is?

8 MS. BROWN: Well, as I said before, I want to go
9 back and read it again. Off the top of my head, I
10 would say yes.

11 CHAIRMAN CLARK: That it is within their
12 jurisdiction?

13 MS. BROWN: Yes, because there are certain parts
14 of the statute that say the states will determine some
15 things and the technical feasibility part of it is not
16 in there.

17 CHAIRMAN CLARK: All right. That may be true.

18 MR. GREER: And, Commissioner, I would be willing
19 to -- I mean, I haven't seen the specific appeals, but
20 I believe this is one that at least one or two parties
21 have appealed.

22 CHAIRMAN CLARK: Well, I guess what I'm trying to
23 convey is despite the fact that we may agree that they
24 have come up with the right definition, the question in
25 my mind is is it within their jurisdiction or ours to

1 define it. Rob.

2 MR. VANDIVER: We did not specifically raise the
3 technical feasibility issue as to who decides it under
4 251 in our appeal. In other words, it was not our
5 primary thrust. It just never came up. We have not
6 argued this issue. I have not completed reading all of
7 the intervenor briefs that have been filed in this
8 matter, and I would note that some of the intervenors
9 have raised differing kinds of issues, and I'm not
10 concern whether technical feasibility is one or not. I
11 just haven't finished reading the briefs. But I would
12 say that the general issue of who decides each of these
13 matters under 251 and 252 is going to be decided by the
14 courts. And I think I know what has been stayed by the
15 courts, and I know what we raised, and this is not
16 among those issues. I mean, we did not raise this
17 issue of technical feasibility, and that it was the
18 state's exclusive province to decide this.

19 CHAIRMAN CLARK: We did decide that?

20 MR. VANDIVER: No, we just never mentioned it. It
21 has not been discussed, and to my knowledge it has not
22 been discussed on our conference calls with the
23 lawyers, or any of the other matters. And so it's one
24 of those issues that's out there.

25 CHAIRMAN CLARK: Let me try again. Here is my

1 concern, that I think our appeal is going to determine
2 with respect to that order what was within their
3 jurisdiction and what was not. And if we don't raise
4 it in that appeal, we will not have the opportunity to
5 raise it again.

6 MR. VANDIVER: I believe that to be correct.

7 CHAIRMAN CLARK: Okay. And while we may agree
8 with technical feasibility today, what happens if a
9 year from now we don't agree with it? We have no
10 opportunity to say to them it was within our
11 jurisdiction and not yours.

12 MR. VANDIVER: My memory of the order is that
13 there is a waiver process that the FCC has set up, and
14 what I would recommend that you do at that time is
15 build a record here in Florida as to why the federal
16 definition should not be applied here because of the
17 unique circumstances and/or conditions in Florida. We
18 build that record, we take that record to the FCC, and
19 we say it does not make sense to apply this definition
20 in Florida for the following reasons that we got from
21 sworn testimony and exhibits in our proceeding, and we
22 would go that route. And if they unreasonable deny
23 that, or arbitrarily and capriciously -- a term of art
24 -- deny that, then we would have an appellate avenue to
25 go on that. And I'm thinking that would be the process

1 that you all would use were you all to differ with the
2 particular definition that they had. In other words,
3 build a record, show why we are right, seek a waiver.

4 CHAIRMAN CLARK: Well, Rob, I guess my concern
5 about that is that sounds to me to be similar to what
6 the Chairman in the FCC was suggesting with respect to
7 the pricing, that we could do that. The bottom line
8 issue in my mind, and the question I have for staff is
9 have we reviewed the order to determine what areas we
10 think are legitimately within their jurisdiction, and
11 what are the ones that are within our jurisdiction
12 order according to the Act.

13 MR. VANDIVER: That project is underway. We are
14 looking at the Act. There are so many -- there is a
15 myriad of issues that just haven't come to the surface
16 yet. States are implementing this all over the
17 country. In some cases they are going in different
18 directions, in some cases they are going in similar
19 directions. It's a new act, and I wish I had the
20 perfect knowledge to sit here and tell you.

21 CHAIRMAN CLARK: Let me ask you this, when is our
22 brief due?

23 MR. VANDIVER: Our brief has been submitted.

24 CHAIRMAN CLARK: In the Eighth Circuit?

25 MR. VANDIVER: Yes, it has.

1 CHAIRMAN CLARK: So that for all intents and
2 purposes that we have identified those areas that we
3 disagree with?

4 MR. VANDIVER: Yes, ma'am. That is not to say,
5 though, that some of the intervenors possibly didn't
6 raise this issue. In other words, there were issues, I
7 have read several of the intervenors' briefs where
8 issues not originally raised have been raised by other
9 parties.

10 CHAIRMAN CLARK: Okay. Well, I guess I'm
11 comfortable with the notion of following technically
12 feasible as it is defined at this point, but I would
13 like staff to find out, make a judgment as to whether
14 or not it is within our authority or the FCC's
15 authority to determine what is technically feasible.
16 If we think it is not within their jurisdiction, I
17 would like to see us raise that.

18 MR. VANDIVER: And it is inextricably bound up,
19 frankly, in the language of 152(B) and the intrastate
20 jurisdiction, and there is a confusion, if you will,
21 because the FCC has given some authority to set
22 unbundled elements which could be traditionally
23 considered intrastate. And it's going to be the court
24 decision that is going to drive how this comes out, and
25 I can't tell you right now whether it's the state or

1 the FCC. I would like to stay the state, and I would
2 like to take that position, but we just haven't
3 discussed it as of yet.

4 CHAIRMAN CLARK: But you would agree with me that
5 to the extent it isn't raised, we don't give the court
6 the opportunity to say this matter is within the state
7 jurisdiction or this matter is within the FCC
8 jurisdiction.

9 MR. VANDIVER: That's correct. However, I would
10 say that depending on how the court writes the opinion
11 that issue may well shake out of the 152(B) intra/inter
12 who has got jurisdiction over what debate. And I know
13 that's not much comfort for you.

14 COMMISSIONER JOHNSON: Procedurally, to the extent
15 that we determine that there were issues here where the
16 FCC overstepped its bounds and we discovered them
17 through this proceeding, and no other states raised it
18 as an issue, where do we go? I mean, have we waived
19 our rights to raise before a state court, before the
20 federal court, do we have any options?

21 MR. VANDIVER: Any appeals of your decisions, as I
22 understand them under 251 and 252, will go to the
23 federal district court here in Tallahassee. That judge
24 will decide. It will not be the state judges, the
25 state supreme court that traditionally hears your

1 telephone appeals. Those things will come up as they
2 are individually challenged by your decisions. If one
3 of the parties is dissatisfied with your present
4 acceptance of the FCC definition, they could challenge
5 that and Judge Stafford or whomever will make that
6 decision at the appropriate time.

7 COMMISSIONER JOHNSON: No, what about us? I mean,
8 what if we looked at this and thought, oh gosh, with
9 respect to technical feasibility, the FCC has a
10 definition here, and we disagree with it. And, in
11 fact, we think we have the authority to define it
12 differently. Do we challenge what the FCC has done, do
13 we just apply our own definition, what would we do?

14 MR. VANDIVER: I think you would do what you think
15 is right, okay.

16 COMMISSIONER JOHNSON: Thanks.

17 MR. VANDIVER: And having done that, having done
18 that, then parties may take issue with what you have
19 done through the normal appellate process, of course.
20 We would go to federal court, defend your action, your
21 right to deviate, if you will, based upon the record
22 evidence which you were referring to. And we would
23 certainly argue that the state would be entitled to do
24 technically feasible, because what is technically
25 feasible in Nevada may not be technically feasible in

1 Florida. And that is again the individual variance
2 between geography and things like that, that we have
3 been arguing should place most of this decision making
4 process in the state and on your side of the street
5 because you know what is technically feasible in
6 Florida, and it may not be that one size fits all
7 nationwide.

8 CHAIRMAN CLARK: But, Rob, if we don't raise it
9 now, there is a substantial chance that --

10 MR. VANDIVER: Commissioner Clark, we have not
11 raised it now. We have not raised it in the joint
12 state brief that has already been filed. This is the
13 first time it has been presented. Unless it has been
14 raised, I believe, by one of the parties, be it
15 intervenor -- and as I said, I haven't read all the
16 briefs yet, I'm trying to get through them -- but to
17 the extent it has not been raised and is not discussed
18 in the answer brief and the reply brief process, I
19 think it probably is too late for challenging that
20 particular assertion of jurisdiction at this time.
21 That is not to say that you couldn't go through the
22 waiver process, and/or on an adequate record here say
23 we do not believe this to be appropriate for the
24 following reasons, and we will take our chances in
25 federal court.

1 CHAIRMAN CLARK: Cindy, do you have anything to
2 add?

3 MS. MILLER: Just to think about it generally, you
4 know, Section 251 largely sets forth the carriers' role
5 and the FCC's implementing rule. And Section 252 is
6 what the states get to do. And technically feasible is
7 in 251. And so from a general framework and just
8 reviewing it on the spot right now, it surely seems to
9 me that it doesn't jump out as a state authority.

10 CHAIRMAN CLARK: That's a good answer.

11 MS. MILLER: And the other thing is there are
12 other avenues. I'm like Rob, I don't believe it has
13 been raised in any of the state's joint appeal of this,
14 and the only other way would be like a petition to
15 initiate rulemaking where you go back to them and you
16 say even if you do have authority, we think you have
17 done it wrong. Or, you know, there are other avenues
18 if we really see something that gives us concern.

19 CHAIRMAN CLARK: My desire is to be careful that
20 as we -- and I was reading this it was sometimes not
21 clear to me as to whether or not we were doing
22 something because we were following the FCC order and
23 we believe they had authority to do it, or we were
24 simply following the FCC order because we liked it, or
25 we were -- and they probably had the authority, or if

1 we were following it because it was in the order and we
2 didn't think they had the authority. My concern is
3 just that as we through this process where we are
4 following the FCC order, as opposed to the Act, I want
5 to know if we think it's clearly within their authority
6 to set out the guidelines in this area, and for that
7 reason we should be following it, or whether it's
8 something we think they have overstepped their
9 jurisdiction. I would like to know, and I would like
10 to know if we have addressed that in our brief. Okay?

11 COMMISSION STAFF: Sounds good.

12 CHAIRMAN CLARK: And I think your answer to the
13 technical, from an overall standpoint, it makes sense
14 to me that technical feasibility probably should be set
15 on an overall basis, and that the waiver is
16 appropriate, but I still want to know from your reading
17 of the statute whose responsibility is it. And you're
18 saying that that is in 251, and it would appear to be
19 within their authority to do? I'm satisfied with that.

20 COMMISSIONER JOHNSON: And then taking your
21 thoughts one step further, because I had those same
22 concerns as I read the recommendation, but even in
23 those areas where I was assuming where staff cited to
24 the FCC, staff assumed the FCC had the authority to do
25 whatever they did. But even given that, I had some

1 conversations and meetings with staff, I would like to
2 see an articulation of still whether or not we think
3 it's a good idea. They have the authority, if we could
4 set a record for things that might negatively impact
5 Florida, and in that way when we are ready to go up to
6 the FCC for issues that they should consider in
7 revising their rules, we will at least have a record
8 basis for that. And that was one of my main concerns.
9 I would understand, particularly like on some of the
10 unbundling stuff, we would just layout the law says
11 this, the FCC said that, and this is how it's applied.
12 But we wouldn't say, well, what does that mean to
13 Florida? You know, what does that mean to our
14 customers? What does that mean to our companies?
15 Should we be concerned? Those kind of things, that's
16 information that I think we need, our legislature
17 needs, our companies need to better understand and be
18 able to respond to. So that's something that I would
19 like to see.

20 On the issue of the unbundling, like under loop
21 distribution, I know that one of Bell's witnesses seems
22 to stress a lot that in order do what AT&T had
23 requested there would be need for additional facilities
24 and I know it was in the staff recommendation, but let
25 me see if I can find it. In order to do what AT&T said

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1 needed to be done -- it's on Page 27 on the bottom --
2 the Bell witness, I think this is a Bell witness,
3 maintained that additional facilities would need to be
4 built, such is replacement of existing cross-connection
5 boxes and that subloop unbundling would impede Bell's
6 ability to install new technology.

7 Now, they raised that as an issue, and to me they
8 were kind of saying thus all of these things we would
9 have to do. In fact, this isn't technically feasible.
10 What I saw staff then doing was to go back and say,
11 well, even though you have to do these things, the FCC
12 has determined that that's okay. You may have to go in
13 be a replace some things, you may have to add
14 additional services, but the FCC said that was okay to
15 do, and that it fit within technical feasibility it
16 might not be -- it may cost you something, but that
17 doesn't mean it can't be done. And, therefore, we
18 would agree with AT&T that it should be unbundled.
19 What we didn't go on to say is, and I would have liked
20 to hear from Stan, and I did actually -- I mean from
21 Mike -- in subsequent conversations whether or not that
22 is a good idea. Not just that the FCC said it was a
23 good idea, but does it make sense and why it made
24 sense. Because to the extent staff had come back to me
25 and said, well, you know, the FCC is requiring us to do

1 this, and I think they have the authority to require it
2 under law, look at the impact that it has on us. That
3 kind of analysis is something that I would like to see.

4 And back to that point, Mike, you may need to help
5 me with this one with the loop distribution. I think
6 I'm recalling from my notes from our meeting that you
7 did agree with what the FCC's rule required, and that
8 you did think that even though Bell would be required
9 to do certain things that it was still technically
10 feasible.

11 MR. REITH: Well, let me go ahead and though a few
12 caveats right off the bat. The FCC stopped short of
13 recommending subloop unbundling. They said, states,
14 you go ahead and look at it on a case-by-case basis as
15 it is brought up in your arbitration proceedings, and
16 make a decision. What we did use, and as you alluded
17 to, is the FCC's definition of technical feasibility on
18 this. Just because BellSouth has to add additional
19 facilities, if that is the case, that doesn't mean it's
20 not technically feasible to provide. Now, thinking out
21 loud, there is a few things we need to look at here,
22 and I wish we had a better developed record to answer a
23 lot of your questions. From a policy standpoint is
24 subloop unbundling a good idea? At one point it
25 encourages some facilities of the ALEC, their own

1 facilities be connected with LEC facilities further
2 down in the loop than if they just bought an unbundled
3 loop and resold it.

4 By the same token, BellSouth has a point that in
5 certain instances it may restrict them on proceeding
6 with the technology that they want to put in because
7 they are going to have to give consideration to other
8 ALECs hooking in at that point. And unfortunately
9 there wasn't enough to take it any step further. MCI
10 is asking a specific case. They say, listen, we are
11 going to bring our own facilities to that point. We
12 want BellSouth technicians to hook into it, we want
13 BellSouth to maintain it, and it's still going to be a
14 BellSouth facility, so there shouldn't be any sort of
15 security concerns of having too many people in the box
16 at the same time. If we were going to have AT&T, MCI,
17 and BellSouth all monkeying with that box at the same
18 time, I have seen some of those boxes, they are a mess
19 now. They are getting cleaned up, but that would be a
20 concern that we would have, also. But that is not the
21 case here in this instance. And I must point out that
22 this is a limited instance in which I'm making the
23 recommendation on. But there is a huge amount of
24 different technology out there, and that is something
25 that we are going to have to look at in the future.

1 COMMISSIONER JOHNSON: But you think it's
2 something that we could look at on a case-by-case
3 basis, and that this isn't a precedent for establishing
4 what must be done in all cases.

5 MR. REITH: Yes, ma'am, I think so. And I think
6 we are going to see this again. I mean, anytime you
7 are dealing with what is going to happen with the LEC's
8 facilities, I think there is going to be instances as
9 technology goes on that we are going to be revisiting a
10 lot of these things that is going to be on our own
11 volition.

12 COMMISSIONER JOHNSON: And you think that the
13 FCC's definition gives us -- well, first of all, on the
14 subloop unbundling, we have more authority. But even
15 with respect to what they said in Section 51.5, you
16 still think we have enough flexibility within that
17 definition to look at this on a case-by-case basis and
18 make --

19 MR. REITH: Yes, ma'am, I do.

20 CHAIRMAN CLARK: Mike, just so I'm clear, again,
21 with respect to subloop unbundling, we are only
22 recommending that they unbundle loop distribution as a
23 feeder distribution interface?

24 MR. REITH: Yes. The point of where the feeder
25 and the distribution network connect.

1 CHAIRMAN CLARK: Any other questions on --

2 COMMISSIONER DEASON: That is the so-called green
3 box?

4 MR. REITH: Yes, sir.

5 CHAIRMAN CLARK: Any other questions on 1(a)? Is
6 there a motion?

7 COMMISSIONER DEASON: I move staff.

8 CHAIRMAN CLARK: Without objection, 1(a) is
9 approved. 1(b).

10 MR. GREER: Commissioners, Issue 1(b) addresses
11 the rates for those network elements requested by the
12 parties and determined to be technically feasible in
13 Issue 1(a). Staff recommends that the Commission
14 approve staff's proposed permanent rates which cover
15 BellSouth's TSLRIC costs and provide some contribution
16 to joint and common costs.

17 Staff also recommends that the Commission require
18 BellSouth to provide TSLRIC cost studies for those
19 elements that it has not provided cost studies for. In
20 addition, staff has not provided or recommended rates
21 that should be used in the event the stay of the FCC's
22 order is lifted. If you will recall in a previous
23 docket we provided a two-part recommendation where we
24 had staff's recommended rates, and then those rates,
25 you know, that conformed to the FCC's pricing

1 guidelines.

2 CHAIRMAN CLARK: Questions, Commissioners?

3 COMMISSIONER DEASON: When you had the alternative
4 was that where you were recommending proxy rates in the
5 previous recommendations?

6 MR. GREER: I think essentially that's true,
7 Commissioners.

8 COMMISSIONER DEASON: What happens if at some
9 point -- well, is it even possible that the stay is
10 going to be lifted at some point before there is a
11 final decision, or is that not an issue any further?

12 MS. BROWN: That is not an issue anymore, it seems
13 to me, because the stay has been upheld twice and will
14 continue in effect until the final decision is made on
15 the appeals.

16 MR. VANDIVER: I think that's correct,
17 Commissioner Deason, since it has gone to the U.S.
18 Supreme Court, it will remain in effect until such time
19 as the Eighth Circuit rules.

20 COMMISSIONER DEASON: And just for the sake of
21 argument, let's say that the Eighth Circuit rules and
22 basically upholds the FCC's decisions, where does that
23 put us?

24 MR. VANDIVER: Appealing to the Supreme Court.

25 COMMISSIONER DEASON: And this process is going to

1 be taking months, if not years?

2 MR. VANDIVER: Oh, yes, sir. There is no question
3 about that.

4 CHAIRMAN CLARK: Suppose it goes through all the
5 appeals and ultimately it is decided that the FCC had
6 the authority to set the guidelines, then we would have
7 to go back and see if we complied with the guidelines
8 otherwise?

9 MR. VANDIVER: Yes, ma'am.

10 CHAIRMAN CLARK: Or they could be left in effect
11 until somebody raises the issue that they are not in
12 compliance with the guidelines.

13 MR. VANDIVER: Right. And the only thing that I
14 would say is that the stay was a limited stay. We had
15 asked for a much broader stay. We had asked for a stay
16 of the whole order, and the court said, no, we are
17 going to stay the pricing rules and the pick and choose
18 provisions at your behest. And that has now been all
19 the way through the appellate process, and I think it
20 will stay into effect until such time as the court
21 rules.

22 CHAIRMAN CLARK: Questions, Commissioners?

23 COMMISSIONER JOHNSON: I had a question, and
24 maybe, again, it is procedurally in what we would do.
25 But on Page 42 we talk about geographic deaveraging of

1 unbundled elements, and I guess the legal opinion is
2 that the Act itself could be read to allow geographic
3 deaveraging, but we don't believe that the Act requires
4 it. Now, the FCC order did what, required it?

5 MR. GREER: Yes, it requires geographic
6 deaveraging.

7 COMMISSIONER JOHNSON: I'm just trying to kind of
8 look out into the future. We didn't think we had
9 enough -- let me back way up. On the issue of
10 geographic deaveraging, we don't state an opinion one
11 way or the other on how we feel about that, do we? We
12 just say that there is not enough information in the
13 record even if we wanted to geographically deaverage,
14 but we don't touch whether or not we wanted to
15 geographically deaverage here.

16 MR. GREER: Correct. I think that's true.

17 COMMISSIONER JOHNSON: Are you -- and I'm just
18 trying to see where staff is on some of this stuff.
19 Are you just suggesting that perhaps we don't have an
20 opinion until we are forced to face the issue?

21 MR. GREER: Well, there is a lot of issues dealing
22 with geographic deaveraging. When you deaverage them,
23 you know, the companies indicate that they need to be
24 able to move their residential rates and all that kind
25 of stuff. That hasn't happened. We don't have that

1 type of information in the record as far as how to go
2 about that. Personally, I don't know that if the costs
3 are different, it makes sense that maybe you come up
4 with some geographic deaveraging. But fortunately I'm
5 sitting way down here from Walter. And we just don't
6 have that type of information.

7 COMMISSIONER JOHNSON: If the FCC order was
8 upheld, would we have to come back and then revisit
9 this whole issue and get information on the
10 deaveraging?

11 MR. GREER: If we lose the appeal and we lose the
12 pricing issues, I would think we would have to come
13 back and develop deaveraging for all unbundled
14 elements.

15 CHAIRMAN CLARK: But the issue of deaveraging is
16 part of pricing, so we have already engaged this issue,
17 right?

18 MR. VANDIVER: That has been raised by some
19 intervenors. We raised the geographic deaveraging
20 issue in our stay motion, we did not discuss it in our
21 brief on the merits, but other intervenors have.

22 CHAIRMAN CLARK: Well, it seems to me deaveraging
23 is part of pricing, and if we are challenging their
24 guidelines of pricing, that's part of it. Am I
25 mistaken?

1 MR. GREER: That is the section that it's in in
2 the FCC's order, is the pricing section.

3 CHAIRMAN CLARK: Okay. I mean, is there a
4 disagreement that deaveraging is a part of pricing and
5 that's what is being appealed?

6 MR. VANDIVER: I would have to go back and look.
7 I know that that is an issue in the Eighth Circuit
8 appeal, because I read the intervenors' brief. I
9 believe it was small rural LECs that raised that
10 specific issue, and that issue is before the court.

11 MR. GREER: And I guess we have interpreted it to
12 mean that deaveraging is included in the pricing and
13 has been stayed.

14 MR. VANDIVER: And we did seek -- we did mention
15 that in our stay motion. It was not included in our
16 brief on the merits in the Eighth Circuit, because that
17 was not something that we specifically authored, but
18 was rather a democratic process of states voting which
19 arguments to make.

20 CHAIRMAN CLARK: Well, I guess my thinking is if
21 the court says that pricing is within our jurisdiction,
22 I can't imagine that they would allow the FCC to say
23 you have to deaverage.

24 MR. VANDIVER: And what you're suggesting is that
25 pricing is a whole jurisdictional piece and that is

1 certainly the way I hope the court rules. The court
2 has said that we have a better than even chance of
3 persuading them on the merits.

4 CHAIRMAN CLARK: Other questions on 1(b)? I did
5 have a question on Page 56. It was not clear to me
6 what cost of money you did use. Your last paragraph
7 before conclusion and recommendations says, "Staff
8 recommended rates take into consideration that
9 BellSouth cost of money assumption may be at the upper
10 range of reasonableness." And my question is what cost
11 of capital did you use?

12 MR. REITH: We took into consideration AT&T's
13 complaint on this, and what we did is use what the FCC
14 recommended, and that's an 11.25 percent.

15 CHAIRMAN CLARK: For equity.

16 MR. REITH: I think it's an overall cost of money,
17 is it not? No, return on equity. I'm sorry, you're
18 right.

19 COMMISSIONER KIESLING: I just want to be sure
20 that I understand the changes that were in the November
21 21 memo, since this is the issue that it relates to.
22 So, for example, on Page 38, the second line down,
23 instead of where it says \$12, it should say 10, is that
24 right?

25 MR. REITH: That's correct.

1 COMMISSIONER KIESLING: Okay. And then further
2 down on the channelization it should be 480?

3 MR. REITH: Yes.

4 COMMISSIONER KIESLING: And then where I do put in
5 the \$1.50, since there wasn't a line for that? Do I
6 add a line?

7 COMMISSION STAFF: Yes, it's an additional line
8 item.

9 COMMISSIONER KIESLING: Okay. I'm with you now.
10 Thank you. I just wanted to be sure that I had written
11 all the changes in correctly.

12 COMMISSIONER JOHNSON: I had a question on the
13 Hatfield model. I know that staff went through in its
14 analysis and pointed out several, for lack of a better
15 word, errors or why the models -- or actually the
16 inputs were not accurate as it related to Florida and
17 Florida companies. What I didn't understand, and it's
18 just me perhaps on reading this, on Page 51, where we
19 talk about the cumulative impact. I guess we found
20 three adjustments that we thought needed to be made in
21 order to make this more accurate for Florida. And
22 after we applied those adjustments, are we saying -- we
23 then ran the model and the costs came out actually
24 higher than the TS, because Bell did TSLRIC, TSLRIC
25 studies of the Bell Company?

1 MR. REITH: No, it raised the costs that the
2 Hatfield model produced. When we changed the inputs
3 from what they originally, you know, used then it
4 raised the total cost. So what we were saying is that
5 the Hatfield model without these adjustments was
6 understating the cost.

7 COMMISSIONER JOHNSON: Why didn't we feel
8 comfortable applying the Hatfield methodology with the
9 adjustment?

10 MR. REITH: We didn't have any other information
11 in the record to base a rate, so for an interim rate we
12 took the Hatfield results and we just bumped them up a
13 little to reflect what we feel or what we believe is an
14 appropriate interim rate.

15 MR. GREER: Commissioner, those things on Page 51,
16 those three elements, were not specifically all the
17 elements, because we just made three modifications and
18 only identified those three at the time that we got
19 through it. It does not necessarily mean that is the
20 only three that when you make those assumptions, make
21 those changes that we would buy off on.

22 COMMISSIONER JOHNSON: This is just kind of for
23 example to try to educate us, but perhaps if I had
24 suggested that you go back and list them all it would
25 have been a much more comprehensive list then?

1 MR. GREER: Yes, it could have been.

2 MR. REITH: It could have.

3 CHAIRMAN CLARK: I guess I'm confused. I thought
4 the way Commissioner Johnson stated it was, in fact,
5 what happened. That there were adjustments that you
6 thought needed to be made to the Hatfield study, and
7 when you made them, it resulted in a sum that is
8 greater than BellSouth's TSLRIC loop cost, so you used
9 the TSLRIC loop cost.

10 MR. REITH: Well, we are staying with -- being
11 consistent by staying with BellSouth's cost studies and
12 basing the rates on BellSouth's costs. All we are
13 pointing out is that when we made those adjustments to
14 the Hatfield results, overall it ended up being -- the
15 Hatfield result ended up being higher than BellSouth's,
16 you know, TSLRIC costs.

17 CHAIRMAN CLARK: So you went with the BellSouth
18 costs?

19 MR. REITH: Yes, because there is maybe other
20 assumptions that would have to be looked at than the
21 Hatfield model.

22 COMMISSIONER JOHNSON: And you still don't feel
23 comfortable with all the inputs in the Hatfield model.

24 MR. GREER: No, we have not had time to go through
25 that.

1 MR. REITH: It's a very large model and would take
2 a lot of time to go completely through.

3 COMMISSIONER JOHNSON: How do you feel about the
4 model, in general, the way that it's set up? To the
5 extent that we could go back through it and work out
6 the inputs, do you think that it is the type of model
7 that we might be interested in applying at a later
8 date?

9 MR. GREER: I think the biggest concern with the
10 model, at least from staff's standpoint, is that it is
11 not necessarily representative of what the network is
12 and what it could be. It makes a lot of assumptions on
13 the distribution side. It may be a useful tool if you
14 get all the assumptions right to gauge whether or not a
15 cost study is in the ballpark. As to whether or not
16 it's an actual thing to be used, I would hate to make
17 that statement without go through it in very
18 considerable detail and determining whether all the
19 assumptions are right or wrong.

20 COMMISSIONER JOHNSON: So right now you are just
21 suggesting that having the companies do the TSLRIC kind
22 of real cost studies would be the most appropriate way
23 to determine what the costs and prices should be?

24 MR. REITH: It's the best representation of
25 BellSouth's network that we can use, BellSouth's cost

1 studies.

2 COMMISSIONER JOHNSON: And the way you get there
3 is going back through and kind of critiquing some of
4 the inputs in the Hatfield model and seeing all of the
5 deficiencies or inaccuracies there?

6 MR. GREER: You mean about how we decide that the
7 Hatfield model is not necessarily a good thing? Yes,
8 Commissioner, we do. And, I mean, we didn't take
9 BellSouth's cost studies at face value, either. I
10 mean, we looked through to see whether or not they made
11 appropriate engineering assumptions, and even BellSouth
12 took an actual sample and used some of that data. And
13 when the sample was not necessarily a forward-looking
14 type sample, say like they did copper further than
15 12,000 feet, they changed it over to a digital loop
16 carrier system and modified the numbers based on that.

17 COMMISSIONER DEASON: Let me ask a question. If
18 we are going to reject the Hatfield model, and I agree
19 that there are some definite problems with the model,
20 but if we are going to reject it, where does that put
21 the ALECs? First of all, do they have the information
22 to do a TSLRIC cost study themselves to present, or are
23 they just going to be put it in the situation of trying
24 to look at Bell's studies and find flaws in Bell's
25 studies as opposed to doing their own studies? As I

1 understand it, one of the advantages of the Hatfield
2 model, even though there are numerous problems, is that
3 it is an independent study that is done by someone else
4 and not just the ILEC. Where do ALECs go if they want
5 to challenge a cost study? Do they have the capability
6 of doing their own, or are they just simply going to be
7 trying to find flaws in the ILEC cost studies?

8 MR. REITH: Well, in this case, AT&T did look at
9 BellSouth's cost studies and they did raise their
10 concerns. And I think they had -- their witnesses
11 actually had experience with BellSouth's cost studies
12 in the past. I mean, it wasn't totally unfamiliar to
13 them. And we took into account their criticisms.

14 COMMISSIONER DEASON: And I understand that, and I
15 agree that that is one of the options available. If we
16 reject the Hatfield model then is that the only option
17 available to the ALECs is to find problems with the
18 ILEC's cost study, or do they have the capability of
19 presenting their own cost study other than that derived
20 from the Hatfield model?

21 MR. GREER: I would assume they have the ability
22 to do their own cost studies. I mean, they are in the
23 industry and they to some extent know what it costs to
24 lay facilities from one point to another. They know
25 what the trenching costs are and all of that kind of

1 stuff. So, I mean, they would have evidence to present
2 that they could either do their own cost study or even
3 to some extent identify criticisms for BellSouth's cost
4 studies and maybe modify the assumptions and present to
5 us the assumptions of the Hatfield that they have
6 modified the assumptions to better reflect the cost of
7 providing the facilities and use that. I'm not totally
8 just saying Hatfield is not worth anything.

9 CHAIRMAN CLARK: Commissioners, I view the
10 Hatfield study a continuing project and of benefit in
11 the sense at least in this case it was a sanity check.
12 When you made those adjustments, you found that it --
13 made appropriate adjustments, you got higher than what
14 BellSouth had produced and that might give you some
15 comfort that it is within the range of reasonableness
16 with respect to the study done by BellSouth. But it
17 doesn't mean in the future that that study can't be
18 further refined with appropriate input such that you
19 would be more comfortable with a Hatfield-type study.
20 But in this case, I think it was used as a useful
21 sanity check.

22 COMMISSIONER DEASON: I don't disagree with that.

23 CHAIRMAN CLARK: I see it as continuing to be
24 useful as it is further refined. I can't remember the
25 gentleman's name that sort of responded to the

1 questions, but I thought he gave some very good
2 information on how it was developed and its usefulness.

3 COMMISSIONER JOHNSON: I think one of problems, if
4 I'm correct, and I guess it proved itself out with some
5 of the inputs that staff actually went back and got
6 some actual numbers, but it was a national kind of
7 model, and it wasn't Florida-specific. And I know that
8 on a national level that there are several parties that
9 have been trying to come up with a model that will
10 accurately reflect the cost of all the local exchange
11 companies, but I think this case kind of proved out how
12 difficult that is to do. And when we and our own staff
13 members began to critically analyze the model, the
14 accuracy becomes questionable. Do you know is there an
15 effort, and I don't even remember if the gentleman
16 testified as to this issue, but are they looking at the
17 Hatfield model, AT&T or whoever sponsored it, are they
18 starting to look at it on a state-by-state basis, or is
19 it more of just refining the national model?

20 MR. GREER: A state-by-state basis would help.
21 There are some concerns as was just pointed out to me,
22 that we have essentially, I believe, in the FCC
23 comments shown some concern with scorched node
24 (phonetic) type approach, which the Hatfield model to
25 some extent does, or actually has. So, I mean, we

1 would have to kind of get around those concerns, too, I
2 think.

3 COMMISSIONER JOHNSON: So you're saying that even
4 if they had all the inputs right, when it comes to the
5 fact they are going to look at the scorched node only
6 looking at central office to central office and maybe
7 reconfiguring the actual architecture that we may have
8 problems with that? .

9 MR. GREER: Could possibly, yes.

10 COMMISSIONER JOHNSON: Well, let me raise another
11 one. This is kind of a hypothetical question. To the
12 extent that the order is upheld and we have to go back
13 and apply the TELRIC kind of a formula where we would
14 look at the scorched node, and instead of -- it looks
15 as if the way we looked at it was looked at the
16 architecture and the development and made sure it was
17 efficient and cost-effective, but we did not say, well,
18 let's start over, and let's look at central office to
19 central office and find the most efficient way to do
20 that today, since we didn't do that kind of analysis
21 with TSLRIC, would we have to go back and look at
22 network configuration and determine costing in that
23 manner?

24 MR. GREER: Possibly. I would almost argue that
25 the TSLRIC -- I mean, it all hedges on whether or not

1 you agree with the assumptions in the study, the
2 engineering assumptions. And if the engineering
3 assumptions are right and you're not applying, say, an
4 analog switch in the switching function then TSLRIC and
5 TELRIC should be very close, if not the same. Would
6 you, instead of using actual data to determine loops
7 look at whether or not, you know, it is over 12,000
8 feet or whether it's under 12,000 feet when you
9 determine the cost, that would probably be how we would
10 try to implement a TELRIC study, I would think, instead
11 of using actual data on a specific loop category. And
12 I don't now how that would play out when we try to do a
13 TELRIC cost study. I would almost be willing to try to
14 argue that these TSLRIC studies are very close to
15 TELRIC studies, and that it may not need to be modified
16 if the FCC's order is changed.

17 COMMISSIONER JOHNSON: Okay.

18 CHAIRMAN CLARK: I have one further question. It
19 was not clear to me that -- you used the Bell study
20 where they provided one. Where they had no TSLRIC
21 study, you are recommending interim rates based on the
22 Hatfield study results or BellSouth's tariffs. Can you
23 tell me which ones you used their tariffs and one which
24 ones you used the Hatfield study?

25 MR. REITH: For example, Commissioner Clark, the

1 network interface device rate, that is a Hatfield based
2 rate. The loop distribution rate is a Hatfield rate,
3 based rate.

4 CHAIRMAN CLARK: The \$7?

5 MR. REITH: Yes, ma'am.

6 COMMISSIONER DEASON: They are the ones with the
7 asterisk.

8 CHAIRMAN CLARK: Are they?

9 MR. REITH: The ones with the asterisk represent
10 interim rates which could be either based on the
11 Hatfield or on the tariff.

12 CHAIRMAN CLARK: All right. Well, what about the
13 four-wire analog, then?

14 MR. REITH: That was BellSouth's recommended rate.
15 There was no tariff rate or Hatfield rate, so we just
16 took what they recommended. What they proposed, and
17 were using that, because we have no other rate to use.

18 CHAIRMAN CLARK: Well, I guess I'm confused
19 because they have \$2 and you had 12. Have I read that
20 wrong? I'm looking at Page 57.

21 COMMISSIONER DEASON: I think that next column
22 needs to be shifted up, doesn't it?

23 MR. REITH: No, the \$2 is for the two-wire analog.

24 CHAIRMAN CLARK: Yes, so that should be shifted
25 up. All right.

1 MR. REITH: And if we drop down to --

2 CHAIRMAN CLARK: Switched local channel?

3 MR. REITH: Under the DA transport, we have
4 switched local channel, there is three of them, those
5 are all --

6 CHAIRMAN CLARK: Let me ask you this question.
7 What drove your decision to use the Hatfield as opposed
8 to the tariff and vice versa?

9 MR. REITH: The tariff rates probably have much --
10 I would argue have higher levels of contribution and
11 wouldn't represent what a competitive market would use.
12 We felt it would be better to use the Hatfield rate or
13 make a rate, you know, based on the Hatfield model. It
14 would be more closer to what would be used in a
15 competitive market.

16 CHAIRMAN CLARK: Well, I guess -- did you use the
17 Hatfield where they had not proposed a tariffed rate?

18 MR. REITH: I'm sorry, Commissioner.

19 CHAIRMAN CLARK: Did you use the Hatfield when
20 they didn't have a tariffed rate, and when they did
21 have a tariffed rate, you used the tariffed rate?

22 COMMISSION STAFF: No. We used cost studies
23 first, the Hatfield results second, and then tariffed
24 rates when nothing else existed.

25 CHAIRMAN CLARK: Okay. So you had no Hatfield

1 recommended on the four-wire analog?

2 COMMISSION STAFF: Right.

3 CHAIRMAN CLARK: Okay. Any other questions on
4 1(b)? Is there a motion?

5 COMMISSIONER DEASON: I move staff.

6 CHAIRMAN CLARK: Without objection, 1(b) is
7 approved. Issue 2.

8 MR. REITH: Commissioners, Issue 2 concerns
9 whether or not AT&T and MCI should be allowed to
10 combine BellSouth's unbundled network elements in any
11 manner they choose, including recreating its existing
12 BellSouth services. Based on the Act and the FCC's
13 order, staff recommends that AT&T and MCI should be
14 able to combine unbundled network elements in any
15 manner they wish.

16 COMMISSIONER DEASON: Was this part of the FCC
17 order stayed?

18 MR. REITH: No.

19 COMMISSIONER DEASON: Okay.

20 MR. REITH: Then there is a question as to an
21 interpretation of the Act --

22 COMMISSIONER DEASON: And even though that part of
23 the FCC order has not been stayed, do we still have the
24 authority to question the FCC's interpretation of the
25 Act in regard to this issue?

1 MS. BROWN: That sounds to me like pretty much the
2 same question that was asked earlier. Maybe I can go
3 through this a little bit and read to you some of the
4 sections of Section 251 and 252 to expand a little bit
5 on what Cindy said before. I think the answer that I
6 would give you to your question first is probably no,
7 and the reason I say that is that the Act section on
8 unbundled action comes in Section 251, and as Cindy
9 said, that appears to be the section between these two,
10 251 and 252, that the FCC is charged with implementing,
11 which it has done through its order. For instance,
12 Section 251 -- I think it's C3 is unbundled access, and
13 it charges the LECs with the duty to provide to any
14 requesting telecommunications carrier nondiscriminatory
15 access to network elements on an unbundled basis at any
16 technically feasible and nondiscriminatory point, or
17 point on rates, terms, and conditions that are just and
18 reasonable. Then this section goes on, Section 251
19 goes on to charge in the section entitled
20 implementation in general within six months after the
21 date of enactment of the Telecommunications Act of
22 1996, the Commission -- and that is the FCC -- shall
23 complete all actions necessary to establish regulations
24 to implement the requirements of this section. That's
25 why I think Cindy is correct that the FCC is charged

1 with the authority to issue regulations to implement
2 these sections. Then when you get to 252, and it
3 discusses the obligations that the states have to
4 conduct arbitration proceedings, it says that the
5 states will conduct arbitration proceedings. Let's
6 see, excuse me for a minute. And the standard that
7 they show you is for the conduct of those arbitration
8 proceedings is to determine that the decisions they
9 make ensure that the resolution and the conditions
10 which are that decision meets the requirements of
11 Section 251, including the regulations prescribed by
12 the Commission pursuant to Section 251. So the answer
13 to your question, I believe, is that the FCC has
14 implemented the unbundled access part of 251, and the
15 state commissions are obligated to see that their
16 arbitration decisions comport with that decision.

17 COMMISSIONER DEASON: So have we challenged that
18 decision --

19 MS. BROWN: I don't think so.

20 COMMISSIONER DEASON: -- on unbundling.

21 MR. VANDIVER: Not specifically, Commissioner.

22 MR. GREER: And I would like to point out,
23 Commissioners, I think our interpretation of the Act
24 would fall right in line with the FCC interpretation.

25 COMMISSIONER DEASON: Oh, I realize that. That's

1 very clear in your recommendation.

2 MR. GREER: And additionally I would --

3 COMMISSIONER DEASON: Let me finish. I understand
4 that you think that the FCC's interpretation, their
5 rules are consistent with the Act and your
6 interpretation of the Act, so you're perfectly content
7 with following the FCC's rule in this situation, and
8 you think that that is a fair resolution of the issue.
9 The concern that I have is just reading the Act as a
10 whole, I have a question as to why there are specific
11 resale provisions that are made available to foster
12 competition, and reading that with the Act as a whole,
13 how you mesh the concept that the ALECs have the
14 authority to on an unbundled basis to reconstitute what
15 is, in essence, could be obtained by resale. And I'm
16 having a problem -- to me that is a conflict, and I'm
17 having a problem resolving that apparent conflict with
18 just the plain reading of the Act. What are your
19 thoughts on that?

20 MR. GREER: Well, I agree that there are some
21 areas that appear to be in conflict, but I think they
22 set up two separate ways to develop competition; the
23 resale aspect and then the unbundled aspect. And
24 carriers can pick and choose whichever best fits them.
25 And I think their intent, just based on the language of

1 the Act, is that if they think that it's better for
2 them to bundle up all the unbundled features and
3 provide certain services versus purchasing it on a
4 resale basis, I think that's what they intended.

5 COMMISSIONER DEASON: Have we done an analysis of
6 what the price would be to a ALEC for taking each
7 unbundled piece and constituting what a service that
8 they could obtain under resale and what the price would
9 be under resale?

10 MR. GREER: Depending on the service, I think it
11 falls on both sides; some are below and some are above.
12 Clearly there are ones by the time you buy an unbundled
13 loop, you're already above, if you purchase unbundled
14 loops. I'm sure there are some dedicated facilities
15 that the resale thing may be higher than the unbundled
16 portion. We haven't looked at any of those specific
17 details.

18 COMMISSIONER DEASON: Do you know what it would be
19 for B-1?

20 MR. GREER: Without having looked at it, by the
21 time you add up the loops and the switching, I would
22 think it would be that the unbundling would be less
23 than the resale. Just trying to go off the top of my
24 head, I don't know what all they would include in that,
25 what all features and functions they would ask for.

1 COMMISSIONER DEASON: What other motivations would
2 an ALEC have other than price of trying to choose
3 whether they would want to take unbundled elements and
4 rebundle them to constitute the same service they could
5 obtain under resale? What would drive their decision
6 other than price? Does it have anything to do with the
7 joint marketing limitations within the Act?

8 MR. REITH: I know that that has been raised and
9 that the FCC in its order said that they don't view it
10 to be in conflict because the two services are
11 different. You can't look at purchasing a resold
12 service at wholesale being the same thing as buying
13 unbundled elements and recombining it to recreate the
14 service. When you buy a wholesale service, you know,
15 the risk, the level of risk is not the same because in
16 an unbundled -- when you purchase all the unbundled
17 elements and recombine it, the company isn't
18 necessarily getting any guaranteed return, you know,
19 from that cost from their end user.

20 COMMISSIONER DEASON: Absolutely. Isn't that what
21 competition is all about? We are not guaranteeing any
22 return to anybody anymore.

23 MR. REITH: No, and that's why the FCC said if
24 they want to do it that way --

25 COMMISSIONER DEASON: Well, why are we concerned

1 about what the relative risk is to the ALEC? It seems
2 to me like our job is to try to determine what the cost
3 is, the price on cost, and they make their own
4 assessments as to what is more risky or less risky.
5 What is best for them and their corporate plan and what
6 is best for their customers, and how they are going to
7 perform better in the competitive model. That is not
8 our function. Do you agree or disagree with that?

9 MR. REITH: No, I agree. And I'm just saying that
10 there is a pricing difference, but there is pricing
11 difference because there is a risk difference. And we
12 are not saying, you know, that it's right or wrong,
13 it's just that the Act says that they must provide
14 these unbundled elements and allow them to recombine
15 them. And, I mean, we can read that in the Act and
16 that's our position.

17 COMMISSIONER DEASON: Just one second. I'm still
18 unclear on the impact, if any, the ability to recombine
19 unbundled elements has on any joint marketing
20 restrictions?

21 CHAIRMAN CLARK: I agree with that. It is not
22 clear to me how that makes a difference in the joint
23 marketing. I realize that was an argument and the
24 staff addressed it on 64, but I still don't understand
25 it.

1 COMMISSIONER DEASON: And you even quoted some
2 language from the FCC. To be quite honest, that was
3 confusing, as well to me. And I'm looking at Page 64.

4 MR. GREER: Commissioner, I think that the FCC
5 leaves that they will when a customer that there would
6 be some joint marketing type things long distance local
7 those types of things when they are dealing with
8 unbundled elements. I think that's where they focused
9 that at, and I believe it's in the order where it talks
10 about interexchange whether or not to bypass access
11 charges for interexchange. When they get that
12 customer, they are going to market local and toll, no
13 matter which way they go.

14 COMMISSIONER DEASON: Now, if they choose the
15 resale option, do the joint marketing restrictions
16 apply to that situation?

17 MR. GREER: When they choose the resale option,
18 they are only going to be purchasing like an R-1 resale
19 service. And then they would still have their toll,
20 just as you would today. You know, you would get your
21 toll bill from AT&T or if it's billing and collection
22 the incumbent LEC does it for them. So, I mean,
23 purchasing on a resale service on that basis you're
24 getting the resale local, but you could have a
25 different carrier for toll. You could in the unbundled

1 situation, too, but I wouldn't think you would.

2 COMMISSIONER DEASON: No, I'm talking about an
3 ALEC that chooses to provide -- they get a customer, or
4 they are marketing to a customer, and the way that they
5 are going to provision that service is by they are
6 going to obtain local service by reselling the ILEC's
7 service and then they are going to provide toll service
8 to that customer. Are they in any way prohibited from
9 jointly marketing that package when the package is put
10 together by reselling local?

11 MR. GREER: And I hope my legal folks will help me
12 out here. I would look at 271 for BellSouth. It's
13 different depending on which one you're talking about.

14 COMMISSIONER DEASON: We are doing BellSouth.

15 COMMISSIONER GARCIA: Exactly. We are not doing
16 BellSouth, right, in your hypothesis?

17 MR. GREER: No, this is BellSouth.

18 COMMISSIONER GARCIA: No, I understand, but in
19 your hypothesis you said an ALEC rebundles a BellSouth
20 basic service, and then -- why don't you present it
21 again, because their answer didn't --

22 COMMISSIONER DEASON: I'm trying to understand
23 what the joint marketing restrictions are on Bell and
24 -- of course, right now Bell doesn't even have
25 interLATA service, but the joint marketing restrictions

1 as they apply to Bell and as they apply, if at all, to
2 an ALEC which resells Bell's local service.

3 MR. GREER: The ALEC -- to me, 271 says that IXCs
4 cannot joint market local and toll until Bell gets into
5 the interLATA market. So I would assume that those
6 restrictions would apply, whether it's on a resale
7 basis or whether it's on an unbundled basis.

8 COMMISSIONER DEASON: So you're saying that if
9 they choose -- there is no inherent advantage,
10 regardless of price, there is no inherent advantage by
11 the structure of the law for a company to choose the
12 unbundled rate elements and reconstituting those, as
13 opposed to simply choosing the resale option. That
14 whatever joint marketing restrictions apply, they are
15 going to apply regardless of whether the service is
16 resold or whether it is provided by obtaining unbundled
17 elements and reconstituting those elements?

18 COMMISSIONER GARCIA: Our attorneys agree with
19 that?

20 MS. BROWN: No, Commissioner, I don't think we
21 really do agree with that. Let me just read it to you.
22 I'm in 271(e)(1), joint marketing of local and long
23 distance service. It basically says that a
24 telecommunications carrier that serves greater than 5
25 percent of the nation's presubscribed access lines may

1 not jointly market in the RBHC's state telephone
2 exchange service obtained from such company pursuant to
3 Section 251(c)(4). 251(c)(4) is the resale provision.
4 So it doesn't appear to me that this provision does
5 contemplate what you do with unbundled elements and how
6 you put them back together.

7 COMMISSIONER DEASON: Well, then you do you think
8 that there would be an incentive to an ALEC to obtain
9 -- what they could obtain by resale, to obtain it by
10 purchasing unbundled elements and reconstituting those
11 so they can circumvent the joint marketing
12 restrictions?

13 MS. BROWN: I know that that is the position that
14 Bell has taken in the appeal before the Eighth Circuit,
15 as well. I don't really know whether I want to make an
16 evaluation of someone else's motives that way, but,
17 yes, perhaps there would be that incentive.

18 COMMISSIONER DEASON: See, what I'm trying to make
19 a determination of is that we have the obligation to
20 set the price here. And I think we need to set that
21 price based upon cost, and not trying to make an
22 assessment of what is more risky or less risky on the
23 ALECs, they need to incorporate their own business
24 plan. But we shouldn't be in the position of putting
25 blinders on and not evaluating whether there is going

1 to be a motivation to circumvent our pricing because of
2 other factors. And that factor being whether there are
3 going to be reasons that have to do with joint
4 marketing. And that goes further in my -- when I
5 started off this whole conversation as to the
6 interpretation of the Act, since the Act specifically
7 provides for resale, whether it is consistent with the
8 reading of that to allow unbundled elements to be
9 bought and then reconstituted to provide a service that
10 could be obtained simply by resale. And it's a
11 dilemma.

12 CHAIRMAN CLARK: Well, I think you have raised two
13 excellent points to me, and they need to be addressed.
14 The first being in a sense when you set a resale price
15 that is higher than what can be -- than the price you
16 would be charged if you simply rebundled something, you
17 would, in effect, set the resale price at that rate.
18 And, secondly, the concern about how you purchase the
19 service having effect on how you market. I can't see
20 the logic of saying that you can joint market if you do
21 unbundled, but you can't joint market if you do resold.
22 It doesn't make sense to me. Yet what I hear you
23 saying, Martha, is because there is a reference to
24 271(c)(4), that's exactly what it means.

25 MS. BROWN: No, Commissioner, I wasn't saying

1 that. I was trying to describe to you what I thought
2 the scope of the limitation was by the terms of the
3 Act. It seems to me that the scope of the limitation
4 on the joint marketing has to do with resale. Whether
5 that means that the Act contemplated it would be okay
6 to do it the other way, I don't know.

7 CHAIRMAN CLARK: Well, the restriction -- but the
8 argument is the restriction on 271(e) only applies that
9 there is a prohibition against joint marketing if the
10 company obtained the service pursuant to resale. And
11 there is not a like prohibition if it is unbundling.

12 MS. BROWN: I don't see it there.

13 COMMISSIONER DEASON: Which in my mind raises the
14 question as to whether the Act really intended for the
15 ALEC to be allowed to purchase all of the unbundled
16 elements necessary to provide a service that could be
17 provided simply by reselling an existing service.
18 Because I think there is an inconsistency there to me.

19 MS. BROWN: This question comes to mind, and I'm
20 not sure what the answer to that dilemma is. The FCC
21 has proposed that it does allow that unbundling and
22 recombination. The question that comes to my mind in
23 trying to sort through it is if that isn't what is
24 intended, what is? And what is this unbundled access
25 provision intended to permit, what would be the scope

1 of it?

2 COMMISSIONER DEASON: I don't question at all that
3 unbundling is a necessary part of allowing ALECs the
4 opportunity to compete, and that when they need an
5 unbundled element to combine with other services and
6 elements that they can provide on their own to provide
7 a service in competition or for some new type of
8 service, that that is exactly what is contemplated.
9 The problem I have is when we read it to say that they
10 can take all of the unbundled elements and put them --
11 buy them separately, put them together and basically
12 provide a service that is identical to what can be
13 bought on a resale basis. And then that raises a
14 question is that really what is intended by the Act.
15 And I go to the Act, because I think that's where our
16 real obligation is, is to make our decisions consistent
17 with our reading of the Act, not necessarily what the
18 FCC says the Act says. And I understand that some
19 things have been appealed and some things have not, and
20 perhaps this is one that has not been appealed, at
21 least not been appealed by the Florida jurisdiction.

22 MS. BROWN: It has not been peeled by this
23 Commission. Am I right, Cindy?

24 COMMISSION STAFF: I believe that's correct. I
25 think what we are seeing here is what is expected when

1 a new law is passed. It's like when the clean air was
2 passed and you're fleshing out a new law that has no
3 case law with it. And as you have had your proceeding,
4 you've gotten now very involved in how this all plays
5 through and new issues are coming to the forefront. I
6 think that's what is happening.

7 CHAIRMAN CLARK: Commissioner Deason, I guess I
8 share some of your view, but I really -- I guess I
9 don't have a problem in being able to unbundle and
10 recombine such that you, in effect, use all of their
11 network, but you have combined it yourself. But I do
12 have a problem when that price is less than the resale
13 price, and I have a problem if it allows them to
14 circumvent this joint marketing, Because I don't think
15 they should be able to do that. And perhaps that is
16 the way we should do our decision, that at least with
17 the joint marketing we are doing it with the
18 understanding that the joint marketing applies whether
19 they do it through unbundling -- whether they offer the
20 service by putting together unbundled elements or they
21 resell it. I just don't see the logic in making --

22 COMMISSIONER DEASON: I tend to agree with you,
23 but do we have the jurisdiction to say what can and
24 can't be jointly marketed? I think that is something
25 that is clearly outside our jurisdiction. And if you

1 allow the practice of reconstituting on -- obtaining
2 unbundled elements and reconstituting to provide a
3 service that could be provided by resale, we don't have
4 the authority to say you can do that, but you can't
5 jointly market that. That is not within our
6 jurisdiction. The only way that we can be consistent
7 with the Act, it seems to me with our jurisdiction is
8 to prohibit that practice.

9 MS. BROWN: Well, then you run up against the
10 FCC's decision otherwise.

11 MR. GREER: And I would argue that you even do it
12 in the specific language of the Act under the unbundled
13 access. I mean, it says an incumbent local exchange
14 carrier shall provide such unbundled network elements
15 in a manner that allows requesting carriers to combine
16 such elements in order to provide such
17 telecommunications service. That to us seems pretty
18 clear that they can combine them however they want to
19 to provide their services. I would also like to point
20 out that I believe on the state level the Commission
21 has also allowed them to rebundle services. I mean,
22 unbundled elements to provide a retail service.

23 CHAIRMAN CLARK: Commissioner Deason, you have
24 asked a lot of questions, do you have a resolution?

25 COMMISSIONER DEASON: Well, I don't think there is

1 a real quick and easy solution. I understand that -- I
2 have read the Act many times. Not the whole Act. I
3 have read this section of the Act that staff has quoted
4 many times, and I can read it both ways. I think there
5 is enough ambiguity there within that particular
6 section when it says such services, I can interpret
7 that to mean such services that could be obtained on a
8 basis other than resale. It seems to me that with the
9 resale provisions they can provide that. They have an
10 avenue. To me the main issue is to allow the ALEC the
11 opportunity to provide every service that the incumbent
12 LEC provides plus access to those unbundled elements to
13 constitute any type of new services that they want to
14 put together the way they want to do it, and to utilize
15 whatever facilities they already have in place. So I
16 didn't think that we would be denying them the access
17 to any type service or the ability to constitute any
18 type service they legally can provide by having the
19 restriction in there that they cannot obtain unbundled
20 elements and reconstitute those to provide a service
21 that could be obtained on a resale basis.

22 MR. GREER: My only concern, Commissioner, is that
23 the resale stuff, although you take out the avoided
24 costs, those rates may be well above their actual cost
25 and to some extent be inconsistent with the pricing

1 methodology that is proposed in the Act. I mean, that
2 things should be based on cost. I mean, to me there
3 are some concerns associated with it, but, I mean, we
4 tried to set the unbundled elements based on the cost
5 of providing those elements with some allocation of
6 joint and common. But I see that if you say that for
7 something that is 3,000 percent above cost, is it right
8 to only mark it down whatever percentage we have, 10 or
9 12 percent, and then be receiving a very large portion
10 of cost when they can combine those elements together
11 and provide a service that's cheaper.

12 COMMISSIONER DEASON: That's a very valid
13 argument. I don't deny that. Here again, there is
14 just that much ambiguity in the Act, and I guess there
15 is going to be ambiguity in any act that is as
16 comprehensive as this one.

17 MR. GREER: I'm sure there will until the courts
18 tell us what it says.

19 COMMISSIONER JOHNSON: I didn't understand your
20 last point with respect to if we were indeed to -- it
21 appears to me that you don't like the formula to just
22 using the avoided cost formula. Or at least you're
23 suggesting that that is not going to really get us to
24 cost.

25 MR. GREER: Right, that's what I would think. I

1 mean, the avoided costs are costs that you're avoiding
2 in providing the service. The rates that are set in
3 the tariffs that you would be taking your percentage
4 off of may have considerable amounts of contribution in
5 them, you know, sometimes thousands of percent. And if
6 you don't allow somebody to bundle those unbundled
7 functions up to provide that service then they are
8 going to be paying a very high contribution to a resale
9 service.

10 COMMISSIONER JOHNSON: But if I understood
11 Commissioner Deason, there will be, if we went with his
12 suggestion as to what should be allowed to be unbundled
13 and recombined, there would be elements that they could
14 buy that would be cost-based. And to the extent that
15 they had their own switches or other equipment, they
16 could recombine them themselves using some of their own
17 facilities in such a way to get that pricing advantage.

18 MR. GREER: Sure, they could. And they can lay
19 all of their facilities all the way to the customer.
20 But I don't think that's going to happen any time soon.
21 I mean, switching maybe. And maybe that's what they
22 do, is they put their switch in and then they use the
23 switching functions and combine it with loops to
24 provide the same service. I mean, that is clearly a
25 possibility.

1 COMMISSIONER JOHNSON: You said one other thing,
2 that we allow on the state level the unbundling and
3 rebundling?

4 MR. GREER: I believe that we -- and I will have
5 to make sure my folks that have actually done a lot of
6 the state stuff, I believe we did say on the state
7 level that they can bundle elements and provide
8 whatever services they want to because there was some
9 question of whether or not they could bundle unbundled
10 elements and provide a R-1 service which was restricted
11 by the state law. And I think our answer was they can
12 bundle it however they want to.

13 COMMISSIONER JOHNSON: Anybody have any
14 recollection as to how that would work? And would it
15 be the same as we were saying here, where we are
16 basically requiring the LEC to break it all out and
17 rebundle it all?

18 MR. GREER: Yes.

19 COMMISSIONER JOHNSON: Do you think the state --
20 we would require that on the state level?

21 MR. GREER: I believe that's true. I mean, I will
22 have to go back and see the orders, but I believe
23 that's true. And we did take official recognition of
24 it.

25 CHAIRMAN CLARK: I don't think we restricted it.

1 COMMISSIONER JOHNSON: You said you do?

2 CHAIRMAN CLARK: I don't. I don't remember that.

3 MR. REITH: I don't remember a specific
4 restriction, either.

5 CHAIRMAN CLARK: Let me ask a question. Do you
6 have any sort of ideas of what services the rebundling
7 -- the price for the total rebundled service which is
8 the same as what would be the service that would be
9 resold, what are the instances where that price is less
10 than what we priced it at to resale?

11 COMMISSIONER JOHNSON: Anne, don't you have those
12 numbers? We were working through that, I thought, in
13 my office to determine what those prices would be.

14 MS. SHELFER: Those were the discounts for the
15 resale. It won't apply on a service basis.

16 COMMISSIONER JOHNSON: Okay.

17 MR. REITH: Commissioner, I believe what you are
18 remembering is we walked through a scenario of what it
19 would take it to provide an R-1 through unbundled
20 loops.

21 COMMISSIONER JOHNSON: We didn't write that down,
22 though, did we?

23 MR. REITH: No, we didn't. But it doesn't answer
24 Commissioner Clark's question, either. I mean, we
25 didn't do an analysis to my knowledge on recombining

1 the unbundled elements to see if there is any instances
2 where that price would actually be lower than the
3 wholesale rate, excuse me.

4 CHAIRMAN CLARK: I hope not.

5 MR. REITH: Sure it does. It also depends on the
6 service and the equipment. And we are recommending a
7 blanket discount across the tariff services.

8 COMMISSIONER DEASON: But I thought I was told
9 earlier that it's very possible and maybe even likely
10 that in the situation of B-1, that the unbundled
11 elements, the price for those would be less than the
12 wholesale rate for B-1. Did I get that wrong? I asked
13 that question earlier today.

14 MR. GREER: Just off the top of my head thinking
15 of what you're going to combine the loop, the switching
16 and that kind of stuff, yes, it would be. I would
17 think it would be below.

18 CHAIRMAN CLARK: Commissioner Deason, I guess I
19 don't have a problem with letting them rebundle as they
20 choose if, in fact, there is -- as I think is pointed
21 out, there is some risk in sort of assuming these
22 networks and buying piece-parts that where you buy you
23 might have to buy more capacity and you are assuming
24 you have the customers as opposed to simply reselling
25 it. And if the price for those unbundled elements add

1 up to more than the resold service, I think those would
2 act as incentives to decide on the resold as opposed to
3 the rebundling. So long as that what is ultimately
4 decided with respect to joint marketing it means that
5 not only is there a limitation on joint marketing when
6 they purchase it through resale, but there is a
7 limitation when they sell it by doing bundling
8 unbundled network. I think if that is the scenario, I
9 don't have any problem.

10 COMMISSIONER DEASON: Well, that is more appealing
11 than what staff is recommending. I think it's more
12 fair and is more in line with a consistent reading of
13 the Act as a whole. The question I have is do we have
14 the authority, and I would very seriously doubt it. Do
15 we have the authority to impose any type of joint
16 marketing restrictions. It seems to me that is clearly
17 within the FCC's jurisdiction.

18 CHAIRMAN CLARK: But I think that I'm more
19 comforted that we can say to them that this ought to be
20 -- this limitation ought to also extend here. It is
21 only fair that it be done, than us taking the position
22 we are going to limit bundling, how you can bundle.
23 I'm more comfortable that we can win that battle than
24 we can win the battle that it is within our
25 jurisdiction and the correct interpretation is that

1 there is a limitation on bundling.

2 MS. BROWN: Commissioner Clark, could you repeat
3 that for me? I'm thinking in terms of what we write
4 here in the order.

5 CHAIRMAN CLARK: I guess I was thinking that I
6 think in order to promote competition that AT&T and MCI
7 should be allowed to combine the unbundled network
8 elements in any manner they choose, including the
9 existing BellSouth services. And that decision is
10 based on the understanding at this point that the price
11 for the rebundling will exceed the price they would
12 have paid for resold and that the ultimate decision
13 with respect to joint marketing is that it can't be --
14 there can't be joint marketing of interLATA services
15 and toll services as prescribed in 271(e), regardless
16 of whether it's resold or rebundled. And I just say
17 that with that understanding if that doesn't prove
18 correct, that we will revisit the issue. And that we
19 should perhaps join in the reconsideration of the FCC's
20 order and say you need to clarify this portion.

21 COMMISSIONER JOHNSON: I'm a little bit concerned,
22 too, about our jurisdictional authority. More
23 importantly, maybe the statute, and I don't have a copy
24 of my statute in front of me that you read earlier
25 regarding the joint marketing restrictions. And the

1 Act itself doesn't seem to limit joint marketing, if
2 I'm correct, when it is unbundled, just when it is
3 resold. So, I'm wondering if we have the -- maybe we
4 have the authority to do more than the Act requires,
5 because the Act itself doesn't speak to that issue. So
6 that causes me some concern.

7 MS. BROWN: Can I just suggest something? I'm not
8 sure that this will work, but I understand what you all
9 want to do. I think I do. Let me just rephrase it.
10 You want to permit the ALECs to purchase unbundled
11 elements up to the point where they use -- they
12 recombine those unbundled elements in order to avoid
13 the joint marketing restrictions in Section 271, am I
14 right on that?

15 CHAIRMAN CLARK: Hun-uh.

16 MS. BROWN: I'm wrong. I thought what you were
17 trying to say was in some of the discussion was that
18 there was -- you understood that there was a value to
19 purchase unbundled elements and combining them in a
20 variety of ways.

21 COMMISSIONER GARCIA: If you will stop right
22 there, though. I don't see where that is any
23 derivation to staff's position. I think that staff is
24 saying that in its recommendation today. My problem is
25 that, like Commissioner Johnson, I don't know if we can

1 go as far as you are going, Commissioner Clark, to try
2 to fix that. Or at least the way you are going at it.

3 COMMISSIONER JOHNSON: Yes. I'm still trying to
4 understand, Chairman Clark, your proposal or your
5 thoughts on this issue. Now, are you suggesting that
6 we allow the unbundling and rebundling, but if the
7 rebundled price is higher, you said something about as
8 if we were going to do some price comparisons, if the
9 rebundled price was higher than the resale price, or
10 lower than the resale price, then would we do? Then
11 the joint marketing restriction would kick in? I was
12 just trying to --

13 CHAIRMAN CLARK: I think then we would look at it
14 again as to why that has occurred and whether or not we
15 have to do some price adjustment.

16 COMMISSIONER GARCIA: I think it will occur. I
17 mean, if we don't speak on it, it will occur. But, I
18 don't know, Rob, you have been shaking your head.
19 Maybe you have a piece of wisdom to further confuse us.

20 MR. VANDIVER: I don't know if there is any wisdom
21 to be had from this process. Excuse me, I'm a little
22 bit hoarse.

23 COMMISSIONER DEASON: I wonder why. Did it have
24 anything to do with Saturday?

25 CHAIRMAN CLARK: You're just going to put me in a

1 worse mood.

2 MR. VANDIVER: And we certainly don't want to do
3 that, Chairman Clark.

4 MR. VANDIVER: I would just offer the following.
5 Section 271 is a result of the legislative process.
6 States were given a very, very limited role under 271
7 generally. I would note that every decision under 271
8 rests with the FCC. You are permitted to consult,
9 quote, unquote, I believe. That is your role under the
10 -- before making any determination under this
11 subsection, that being the subsection to allow the Bell
12 into the interLATA, the Commission shall consult with
13 state commissions of any state that is subject to the
14 application and verify the compliance of the Bell
15 operating company with the requirements of Subsection
16 C, that being the checklist for getting into interLATA.
17 This is one area of the Act where I would tread very
18 carefully in making state assertions simply because
19 that Congress gave us this very limited role. And I
20 can't tell you exactly what the parameters of that
21 consulting role are. We haven't had the 271
22 application process yet, and it's going to have to be
23 played out as we go forward. But I would urge caution
24 in a substantial state interpretation of the 271
25 provisions in that so much of 271 is entrusted

1 exclusively to the FCC.

2 COMMISSIONER JOHNSON: I'm confused. I'm missing
3 something, probably something real big, Rob, that you
4 are explaining. How are you connecting the 271 process
5 to this process? How are you intertwining those and
6 our authority under 251?

7 MR. VANDIVER: The point marketing restriction you
8 all are discussing appears in 271(e), I believe. And
9 what you all are discussing is another section of the
10 Act may allow, as I understand it, for some kind of
11 arbitrage or gaming between those two prices. I can't
12 help you resolve that underlying issue. The Act seems
13 to provide a couple of avenues, and I think you're
14 stuck.

15 MR. GREER: Commissioners, I would also like to
16 point out that in the FCC's order it did discuss to
17 some extent what limitations the Commission could -- or
18 state commissions could put on unbundled network
19 elements. And it states it did not, however, grant
20 states in Section 251(c)(3) the same discretion to
21 impose similar restrictions on the use of unbundled
22 elements as it did for resale services. And that is
23 talking about the joint marketing restrictions. I just
24 want to let you know that that was addressed in the
25 order.

1 COMMISSIONER GARCIA: I'm sorry, go back through
2 that, because I missed that.

3 MR. GREER: Okay. It says in the FCC's order,
4 Paragraph 338, it says -- and it's talking about the
5 provisions in 271(e), I think, the joint marketing
6 provisions. It says, "In this section, Congress
7 granted the states the discretion to impose certain
8 limited restrictions on the sale of services available
9 for resale. It did not, however, grant states in
10 Section 251(c)(3) the same discretion to impose similar
11 restrictions on the use of unbundled elements.
12 Accordingly, we are not persuaded that allowing
13 carriers to use solely unbundled elements to provide
14 services that incumbent LECs offer for resale would
15 allow competing carriers to evade a possible marketing
16 restriction that Congress intended to reserve to the
17 discretion of the states."

18 CHAIRMAN CLARK: I'm sorry, what are you reading
19 from?

20 MR. GREER: This is from the FCC's order,
21 Paragraph 338. And that is their interpretation of the
22 joint -- I believe that is their interpretation of the
23 joint marketing restrictions.

24 CHAIRMAN CLARK: Can I see that?

25 MR. GREER: Sure.

1 COMMISSIONER JOHNSON: While we are doing this,
2 could someone -- I'm real concerned about the issue
3 that Stan raised earlier regarding the Florida
4 decisions and our orders that allow for unbundling and
5 rebundling of all services. Because assuming we
6 determine that the FCC's interpretation -- not that
7 they don't have the authority to interpret the law, but
8 that their interpretation is incorrect with respect to
9 the unbundling issue, and we reach a conclusion that
10 you cannot unbundle and rebundle in the way that the
11 parties have suggested in this proceeding, would we
12 then almost -- would we be undoing our own Florida
13 decision if we determined that the federal law doesn't
14 allow that, but we have done it on a state basis, are
15 we saying what we are doing on the state basis is
16 inconsistent with the federal law? Did you understand
17 that?

18 MR. REITH: I think what you're saying is if we
19 make a different decision on the federal side than we
20 have already made on the state side, do we need to
21 revisit our state decision to make sure it's consistent
22 or not. Is that basically what you're asking?

23 COMMISSIONER JOHNSON: Yes, that's it. First, I
24 want to make sure what we said on the state.

25 COMMISSION STAFF: We are getting that order right

1 now so we can confirm that decision for you.

2 COMMISSIONER DEASON: What state decision are you
3 referring to?

4 COMMISSION STAFF: I believe it's 950984,
5 unbundling and resale.

6 MR. REITH: And I believe it has to do with
7 combining unbundled elements.

8 COMMISSIONER DEASON: And what docket was that?

9 MR. GREER: 984985.

10 COMMISSIONER DEASON: Not the number, the essence
11 of the docket.

12 MR. GREER: The state proceeding on the negotiated
13 agreements and that type of stuff with --

14 COMMISSION STAFF: Unbundling and resale.

15 MR. GREER: Unbundling and resale that was done
16 with BellSouth in the state proceedings.

17 COMMISSIONER DEASON: And that was done before we
18 had a federal act, though, right?

19 MR. GREER: Yes, it was.

20 COMMISSIONER DEASON: And so we had no idea about
21 any type of joint marketing restrictions and what is
22 fair for one company versus what is fair for another
23 company, how they can market, what they can market?

24 MR. GREER: That's true.

25 COMMISSIONER JOHNSON: My only question went to

1 whether or not if our interpretation is that the
2 federal law does not allow this, what does that do with
3 respect to our previous decisions, and what would we
4 need to do? But I will wait until you get the order.

5 MS. BROWN: Commissioner, we want to take another
6 look at it, at the order that we are getting before we
7 answer your question just to see if they really are the
8 same.

9 COMMISSIONER JOHNSON: That's fine. Because I
10 think one of the fundamental issues -- and I know it's
11 something that I have been -- that has concerned me,
12 and I met with staff and we walked through some of the
13 same issues, Commissioner Deason, that you have raised.
14 And that is I think staff did an excellent job of
15 analyzing what the FCC said in its order, and how the
16 FCC believes that its interpretation is consistent with
17 the order. The question in my mind is kind of stepping
18 back from that, and as I read the Act whether or not I
19 think what the FCC did was consistent. And if I
20 determine that it wasn't consistent, then it's hard to
21 follow something that you may believe is not consistent
22 with the federal act. And I don't know if this would
23 be the forum to do something otherwise, if we have that
24 ability, or do we file something in federal court, or
25 what the process would be. And exclusively on this

1 issue of unbundling and rebundling.

2 COMMISSIONER DEASON: Let me see if I can
3 summarize staff's position. And it basically boils
4 down to we don't have a choice. This is in Section
5 271, and the FCC has interpreted 271 in a certain way
6 and we are bound. That's what it boils down to.

7 MS. BROWN: Yes, Commissioner, I would say that's
8 correct. I would point out that that particular
9 interpretation that the FCC has made is on appeal
10 before the Eighth Circuit, but based on my walking
11 through those two sections, and the obligations that
12 the FCC has, and the obligations the Commission has to
13 see that its arbitration decisions comport with the
14 FCC's regulations, I would say yes.

15 COMMISSIONER DEASON: But we also have an
16 obligation that is contained within the Act to make
17 sure that our arbitration decisions are consistent with
18 the Act. And that implies to me some authority for us
19 to interpret the Act, because that is where we gain our
20 authority in this whole arbitration process to begin
21 with.

22 MS. BROWN: Well, I agree with you, Commissioner,
23 but as you said yourself, you can read these sections
24 both ways, which leads us to the conclusion that there
25 is some ambiguity in it or there is some question.

1 Under those circumstances, I'm afraid we would defer
2 then to the FCC, who is primarily charged with
3 interpreting and implementing this act to tell us how
4 to resolve that ambiguity.

5 COMMISSIONER DEASON: And if we disagree, which I
6 don't know what the Commission's decision is going to
7 be, if we disagree with the FCC's interpretation of 271
8 as it pertains to unbundling and rebundling, what
9 recourse do we have? How do we pursue that?

10 MS. BROWN: Well, I think it is the recourse
11 available to anyone who disagrees with that
12 interpretation is through the Eighth Circuit and the
13 appeal, and that is being appealed to the Eighth
14 Circuit. In the interim, we have to make the decision,
15 I realize.

16 COMMISSIONER DEASON: The problem I have, and as
17 Cindy so correctly pointed out, is that now is the time
18 where we have delved into this subject matter, we have
19 taken evidence, we have analyzed it, our staff has made
20 a recommendation to us, we have sat through these
21 hearings, we have read briefs. The issue is now, right
22 there, how could we have had at the time when it was
23 necessary to file that appeal and given all the time
24 frames involved, have had all the information that is
25 front of us now? We could not have had. And I think

1 it is unfair, if not impossible, to have expected us to
2 have appealed that issue at that point. Perhaps we
3 could have, and perhaps other parties did, and I pat
4 them on the back, but we did not. We tried to, as I
5 understand it, appeal only those things which were the
6 most important. I mean, that is a tactical decision
7 that you make. We made that decision. But I'm not so
8 comfortable with saying, well, since we didn't appeal
9 it, we are bound by it. That just causes me concern.

10 MS. BROWN: Well, I think what you're saying is
11 you would like to make a different decision than it
12 appears that the FCC is directing you to make on this
13 matter.

14 COMMISSIONER DEASON: It could be. I'm
15 uncomfortable with it, I can tell you that.

16 MS. BROWN: I think I still have to advise you
17 that you need to make that decision. I can tell you --

18 COMMISSIONER JOHNSON: What decision? Not to
19 interrupt you, but that was a little --

20 MS. BROWN: A decision that is consistent with
21 what the FCC has directed with respect to unbundled
22 elements, even though you're uncomfortable making that
23 decision. You can put language in the order
24 memorializing your decision that expresses your
25 concern, that identifies the problem that you see, and

1 why you're worried about it. Whether you can actually
2 or should change the decision that the FCC -- do
3 something contrary to what the FCC seems to indicate, I
4 don't know whether I would counsel you to do that.

5 COMMISSIONER JOHNSON: And what would be our
6 alternatives then?

7 MS. BROWN: Dicta.

8 COMMISSIONER JOHNSON: No, I mean, how do we -- so
9 we state --

10 MS. BROWN: So how do you get around having to do
11 it?

12 COMMISSIONER JOHNSON: No, even if we do it, is
13 there a way -- was our only opportunity to attack or to
14 object to what the FCC has ordered here, was the only
15 opportunity through the Eighth Circuit appeal?

16 MS. BROWN: Well, I think we discussed that a
17 little bit earlier. I mean, that is the most
18 immediate.

19 CHAIRMAN CLARK: Well, the order --

20 MS. BROWN: But there are other avenues.

21 CHAIRMAN CLARK: The order is still on
22 reconsideration. Has the time for appeal run?

23 MR. VANDIVER: Yes, the time for appeal has run.

24 CHAIRMAN CLARK: They don't have the same -- but
25 they don't where it is on reconsideration, you can

1 appeal once that reconsideration is issued? Our orders
2 are not final and appealable until reconsideration is
3 disposed of.

4 MS. MILLER: Reconsideration is not a condition
5 precedent on their rules. They have done
6 reconsideration on things, also.

7 CHAIRMAN CLARK: But my question is, is it still
8 ripe once they do reconsideration and they are, in
9 effect, done with it, for us to appeal that
10 reconsideration and raise the issue then?

11 MS. MILLER: I will have to check that. The other
12 avenues, such as Rob mentioned, if you went ahead with
13 a different decision on that point would be to do that
14 and somebody could challenge it through the court route
15 that is set out here. Or the other option would be to
16 initiate a new petition for rulemaking, which I realize
17 would come in an odd sequence, but it is something that
18 is possible to do.

19 CHAIRMAN CLARK: Commissioner Kiesling.

20 MS. BROWN: Commissioners, can I add one other
21 point? Just a thought. I'm not sure what the timing
22 is that we are dealing with. The joint marketing
23 restriction is a limited time matter. It's either 36
24 months from the date the Act was initiated or when Bell
25 comes in and asks for 271 authority, which we

1 anticipate to be -- I mean, we don't know. Monica asks
2 herself that question every day, when are they going to
3 come in. But we anticipate it to be within the next
4 six months or so. So we are not -- I realize that this
5 is a marketing thing and it's a timing thing, but we
6 are not dealing with that long a time period before
7 this would be resolved.

8 CHAIRMAN CLARK: And also, I think, I have just
9 taken a minute to read what the FCC has said about the
10 arguments that were raised at the FCC regarding that
11 joint marketing issue, and they brought up the fact
12 that it would be difficult to police when they are
13 using all of BellSouth's elements and selling it, and
14 when they are using part of theirs and part of
15 BellSouth's. And that the Act was fairly explicit that
16 it dealt with resale. And it also notes that the
17 restriction is not forever, it's for three years. And
18 to the extent there is a lot of BellSouth's network
19 being purchased unbundled, rebundled, and sold, it
20 provides some incentive for BellSouth to hurry up so
21 that they can be in the position to joint market as
22 well and meet the guidelines. So perhaps there was
23 some balancing there.

24 COMMISSIONER DEASON: But I don't see where the
25 incentive would be to purchase resold, to resell a

1 service, to purchase at wholesale and resell it if the
2 restriction clearly applies. If anything there is
3 going to be an incentive to purchase unbundled
4 elements. It seems to be a much more cumbersome and
5 complicated and -- not necessarily costly, but perhaps
6 more inefficient method of provisioning a service. And
7 it looks to me like the way the statute -- the way the
8 Act is written, you are encouraging that very practice.

9 CHAIRMAN CLARK: I think, though -- you mean
10 unbundling and then rebundling is more difficult than
11 resale, and I think, Commissioner Deason, that could
12 have been one of the reasons they decided to limit it
13 to resale. That they could immediately go in and
14 purchase the resold service and that they ought not to
15 be able to do that and then joint market. But if they
16 choose the more cumbersome and involved route, then
17 they can joint market. I have no idea, but I
18 understand a little bit more the rationale that FCC
19 filed in not saying the joint marketing also applies
20 when you rebundle unbundled service.

21 COMMISSION STAFF: Commissioners, if I may
22 summarize so that I can understand where you are coming
23 from. I think that there are two issues here; number
24 one, the standard for arbitration states that the state
25 commission shall insure that such resolution and

1 conditions -- when you are determining an issue under
2 arbitration, they must meet the requirements of Section
3 251, including the regulations prescribed to the
4 Commission pursuant to Section 251. So the question is
5 here do you want to go by what Congress has set forth
6 as the standards at this point, and/or Number 2, do you
7 not want to go with that standard. But I would suggest
8 that since we have not appealed that and we have not
9 asked for reconsideration, that the Commission should
10 follow the standards set forth in the Act.

11 The second question is do you want staff to go
12 back and take a look at, well, if you do follow the
13 standard set forth, do you want staff to go back and,
14 number one, find out if there is an avenue for
15 reconsideration, because perhaps this issue isn't on
16 reconsideration. I don't think that it can be
17 considered, but I don't know. It's on appeal, the
18 order is on appeal, but I'm not sure that this
19 particular issue is on appeal. Cindy, you would have
20 to correct me if I'm wrong.

21 CHAIRMAN CLARK: Commissioners.

22 COMMISSIONER DEASON: I don't know if it is under
23 appeal, either. I have been told that it's not part of
24 our appeal.

25 COMMISSION STAFF: It's not part of our appeal.

1 So we could -- even with respect to technical
2 feasibility, you had concerns about this before the
3 order states that the LECs must prove to the state
4 commission that something is technically feasible. So
5 when we do our analysis of technical feasibility, we
6 can include the concerns that we have within that
7 order.

8 COMMISSIONER JOHNSON: My concern goes back to
9 something that Ms. Brown stated. Because in my mind
10 it's certainly -- the FCC's interpretation of the Act
11 is questionable in my mind as it relates to unbundling.
12 But, and I asked this question before, and I guess
13 Martha is saying maybe -- how do you have the
14 opportunity to object and what process do you follow?
15 And I hear Ms. Brown saying that she would not advise
16 us to ignore the FCC order, but that she would advise
17 us to follow it even though we believe that perhaps it
18 doesn't comply with the federal act.

19 MS. BROWN: Well, yes, I think that was the advice
20 that I would give you, and it was because -- I suppose
21 it's sort of a statutory construction sort of thing.
22 If there is an ambiguity, which I think you have
23 identified the potential of one, then it would be
24 incumbent upon you to consider the authority primarily
25 responsible for implementing the Act and the

1 interpretation that that authority has made on
2 particular provisions of the Act, and that authority is
3 the FCC, and the FCC has said you have to let
4 unbundling and rebundling. And that it does not
5 interfere the joint marketing restrictions. That's
6 what the FCC has said. Because if you think there is
7 an ambiguity in the Act, you can read it both ways,
8 then you need to first look to the FCC's interpretation
9 to give you the interpretation that you, I think, are
10 directed to follow. That was what I was saying.

11 CHAIRMAN CLARK: And that because of what Monica
12 had said, that under the arbitration we are supposed to
13 make sure it complies with the filing.

14 MS. BROWN: That's correct.

15 COMMISSIONER KIESLING: Well, since I haven't said
16 anything throughout this whole debate, I will go ahead
17 and tell you where I'm coming from in as few words as
18 possible. Because of what the Act requires as to
19 arbitration and the standard we are supposed to follow,
20 while I understand that the Act can be read in two ways
21 on this, I'm comfortable with staff's recommendation
22 because I think it is consistent with the standard that
23 is set out in the Act. And I also am comfortable with
24 it because I think that where there may be some room
25 for varying interpretations, if the primary

1 responsibility for that interpretation in the Act rests
2 with the FCC, then that's what I'm going to follow. I
3 mean, I understand what the problems are and I
4 understand where the conflict may be, but I think that
5 as the Chairman has pointed out and in some cases as
6 Commissioner Johnson has pointed out, there are
7 arguments that make it appear that this is not as
8 unreasonable as it may seem on first blush. And while
9 I'm not trying to move this along, I am at least
10 willing to move staff on Issue 2 so that, you know, we
11 can see if we have some agreement on that or not.

12 CHAIRMAN CLARK: There is a motion to move staff
13 on Issue 2. Is there a second?

14 I will second the motion.

15 COMMISSIONER DEASON: Okay. A motion has been
16 made to approve staff's recommendation on Issue 2. The
17 motion has been duly seconded. All in favor say aye.

18 COMMISSIONER KIESLING: Aye.

19 CHAIRMAN CLARK: Aye.

20 COMMISSIONER DEASON: All opposed, nay.

21 COMMISSIONER JOHNSON: Nay.

22 COMMISSIONER GARCIA: Nay.

23 COMMISSIONER DEASON: Nay. The motion fails.

24 CHAIRMAN CLARK: I'm willing to entertain another
25 motion.

1 COMMISSIONER JOHNSON: Can we have discussion or
2 do we need a motion?

3 CHAIRMAN CLARK: Sure.

4 COMMISSIONER JOHNSON: I wanted to hear from Rob
5 and Cindy, because I understand Martha saying where we
6 are in terms of a legal position, but given that fact
7 that I have concerns with the unbundle and rebundling
8 portion of the interconnection order, how else could
9 that be addressed? Are you saying, Cindy, when you
10 were talking about -- or maybe it was Ms. Barone --
11 talked about filing with the FCC of -- I still don't
12 have comfort in how we could get more attention on this
13 issue. And to the extent I could find some comfort,
14 that would help me a lot. And then, Rob, one other
15 thing. Did you say that it was -- I'm sure it was
16 raised by at least GTE, wasn't it? It had to be raised
17 at least by one of the parties in the Eighth Circuit
18 decision, was it not?

19 MR. VANDIVER: Which?

20 COMMISSIONER JOHNSON: The unbundle and rebundle.

21 MR. VANDIVER: Yes, that's in there.

22 COMMISSIONER JOHNSON: Yes, this has been raised.

23 MR. VANDIVER: So it is now before the court.

24 COMMISSIONER JOHNSON: But it has not been stayed.

25 MR. VANDIVER: Right. But it is before the court

1 to make a decision on. And I guess we all need to go
2 up and get our 700-page orders. And, again, my
3 remembrance of that order is that we are making these
4 decisions and we don't really know how they are going
5 to work. And as the state commissions get into this
6 and find that perhaps this is unworkable, you all need
7 to come back and tell us that. And I assume that's
8 based on an evidentiary record here, and you would go
9 to the FCC and you would say this doesn't make sense to
10 us. You have decided this this way, you need to change
11 this decision. And I believe that process is within
12 the order. I don't have the order in front of me and I
13 haven't looked at it in some time, but I think that is
14 how you do it, and put that either in your order or
15 perhaps in a petition to the FCC to change it. Six of
16 one, half a dozen of the other, but if you really
17 believe that something that the FCC has done is wrong
18 based on your evidentiary record, I believe you have a
19 responsibility to bring that to their attention.

20 Now, how that precisely is done, whether it's
21 through this waiver process I'm remembering or whether
22 it's through a formal petition to modify the rules
23 because we tried the rules, they didn't work in this
24 respect, here is why and here is what we recommend to
25 fix this problem or to address it. And I believe it

1 then falls back in their court to say, "Okay. Florida
2 is wrong or Florida is right."

3 COMMISSIONER JOHNSON: Yes. Because here is where
4 I am. I probably -- and I'm moving, actually. In
5 reading the briefs and hearing the arguments on the
6 unbundled/rebundled issues, and even I remember Mr.
7 Gillan's testimony when I think one of the Bell
8 attorneys or someone asked him what was truly the
9 difference. And if you just bundled and rebundled an
10 R-1, isn't it just an R-1 that should have been resold.
11 I wasn't very comfortable with his answer. It looked
12 like the same thing to me. Even after he testified it
13 sounded like the same thing. And I started having some
14 concerns with that particular issue. But, as an
15 agency, we have an act out there, the FCC has
16 interpreted it, or interpreted these provisions, the
17 law seems to give them the authority to do so. This
18 has been challenged, but it has not been stayed. I'm
19 wondering from our perspective, even our authority to
20 for lack of a better word to just say we disagree or
21 blow them off and say we are going to do something
22 else. I mean, if you tell me you can do that, I might find
23 a little more comfort with it. But it just appears on
24 its face, I'm listening to Commissioner Kiesling and
25 some of the rationale that she laid out with respect to

1 how we should follow the law and what is out there.
2 Let me hear your thoughts on that.

3 MR. VANDIVER: I'm not comfortable blowing off
4 anything that hasn't been stayed.

5 COMMISSIONER JOHNSON: That's where I'm kind of --

6 MR. VANDIVER: And the federal agency has come out
7 with this 700-page deal on August the 6th, we ran to
8 the Eleventh and eventually the Eighth Circuit, and
9 said we have got problems with this. We have problems
10 in the following respects, bip, bip, bip, bip. Other
11 parties came in, and said, "Yes, Florida is complaining
12 about that, but we have these other problems," bip,
13 bip, bip. So you have a bunch of issues before the
14 court, but only certain things have been stayed. And
15 as an attorney, I am very loathe to recommend to you
16 that you blow off, for want of a better term, that
17 direction duly given and unchallenged by this agency in
18 that formal court proceeding. That is not to say that
19 you are totally without remedies, because I believe
20 that waiver process exists for you all to jawbone a
21 little bit with the FCC, and say you all came out and
22 did this, we tried to implement it, and lo and behold,
23 it didn't work. Here is why. And then it's back to
24 them to say, yea or nay. Hey, maybe we made a mistake.
25 It looks like Florida has uncovered this flaw, and

1 we'll fix it. Or pound sand, Florida. And bear in
2 mind that this is not just between us and the FCC. As
3 you make this decision, this decision is appealable to
4 the federal district court in Tallahassee. And
5 similarly in Des Moines and wherever it is. These
6 decisions are going to go to federal district judges
7 and that individual will make a call on whether or not
8 you did the proper thing here. Because the agreed
9 parties, as you well know, can and do appeal you
10 invariably.

11 CHAIRMAN CLARK: Our decision in this case, when
12 it gets appealed, will be to the federal district
13 court, right?

14 MR. VANDIVER: As I understand this is under 251,
15 yes, ma'am.

16 CHAIRMAN CLARK: We have told them it's coming,
17 right?

18 MR. VANDIVER: Yes, ma'am, we have. We have
19 visited with the Clerk's Office and told them that this
20 was out there and looming. Of course, one of our
21 decisions has not yet gone over there. And I am,
22 frankly, not aware of anywhere in the country where it
23 has gone to federal district court. Not to say that it
24 a hasn't, but that process needs to unfold.

25 CHAIRMAN CLARK: Well, the time hasn't run. Has

1 it one for anyone to have taken it to court? You don't
2 know?

3 MR. VANDIVER: I don't know.

4 COMMISSIONER JOHNSON: Well, Diane, you can make
5 your motion, again, I think. And I'm going to tell you
6 why. I think it's a procedural issue that's bother me,
7 and some of the arguments or some of the statements you
8 have made, Rob, are persuasive in that if we were to
9 decide that the FCC was incorrect in their
10 interpretation of the law, and then we decide that the
11 law really does allow for this unbundling, AT&T appeals
12 that to a district court, they have got great
13 arguments. Look, this issue has been raised, it is in
14 another circuit court, the FCC, the agency of primary
15 jurisdiction has determined this, someone else is going
16 to decide it. That kind of -- I'm a little concerned
17 about what we would be doing in the regard perhaps.
18 So, although I would like to at a minimum see the
19 issues raised in the order as to why -- in dicta or if
20 I have to do a concurring or something like that as to
21 why I believe that their interpretation is not
22 consistent with the Act.

23 CHAIRMAN CLARK: I think we are between a rock and
24 a hard place here, and I think to some extent we have
25 to follow the interpretation. But I think that we

1 should direct our staff --

2 COMMISSIONER JOHNSON: At a minimum.

3 CHAIRMAN CLARK: -- to look at who has raised this
4 on appeal, and if we can do an addendum or something
5 like that, indicating our concerns about this
6 particular issue, and then indicate in the order to the
7 extent that it is modified subsequently, we would
8 revisit this portion of our order.

9 MR. VANDIVER: We do have another opportunity in
10 the reply brief stage to comment on the various
11 positions, and we will endeavor to do that.

12 COMMISSIONER GARCIA: Let me ask staff, though,
13 because that's a problem I have with this. If Congress
14 gave us the power over resale, what power is that when
15 you consider that we have no control over rebundling
16 the elements within the state? In other words, we are
17 actively not given anything. If we follow this
18 interpretation, we really have no control.

19 CHAIRMAN CLARK: Are you suggesting that this act
20 was a model of clarity?

21 COMMISSIONER GARCIA: No, no, I'm not. But I see
22 the inevitability of where the staff recommendation
23 takes us, and obviously our attorneys are making it
24 clear that that's the way they fee. But on the other
25 side, I'm stuck with where Commissioner Deason began

1 the argument, and I think we worked our way towards
2 marketing issues.

3 CHAIRMAN CLARK: Commissioner Garcia, do you have
4 a motion you want to make? Do you see a way out of
5 this?

6 COMMISSIONER GARCIA: No, I don't. I'm hoping
7 that maybe Commissioner Deason sees it, although I
8 think by the statements of Commissioner Johnson, I
9 think that that may no longer be necessary.

10 CHAIRMAN CLARK: No, I think all of us are open to
11 some way to address this that we can all agree to and
12 comply with where we are procedurally.

13 COMMISSIONER DEASON: Let me tell you, I
14 understand -- or I believe I understand the legalities
15 of this, and the desirability of following the FCC, if
16 not the mandate to follow the FCC, but on the other
17 hand, I think we have a broader responsibility. And it
18 is clear that the states do have jurisdiction, some
19 jurisdiction is this area. Obviously there is a
20 conflict as to exactly what that jurisdiction is and
21 there is not a clear bright line that separates that.
22 We have a responsibility to arbitrate these cases and
23 to make decisions that, in my opinion, is going to
24 promote fair competition, which is going to benefit the
25 consumer. In a nutshell, that is what our

1 responsibility is.

2 The concern that I have is that when you look at
3 the Act as a whole, and with the joint marketing
4 restriction as it exists, that strictly following the
5 FCC decision and our staff's recommendation may not
6 result in fair competition. The concern that I have is
7 that if we follow staff's recommendation and pursue the
8 other avenues that we have, at the time a decision is
9 made the three years are going to be run. The damage
10 is already going to be done. The problem is that we
11 are telling the competitors that you can't compete
12 fairly, in my opinion, for this -- it may be less than
13 three years as Martha points out, so maybe it will be.
14 That is the problem that I have, that if we go forward
15 with the recommendation, and it may be the only
16 alternative we have unless we are willing to buck the
17 system, so to speak, and go against conventional wisdom
18 and go adverse to the FCC decision. If we choose that
19 course of action, which is the easier course of action,
20 and maybe the legally correct course of action, but my
21 concern is that during the interim period of time we
22 are going to -- there is going to be a situation where
23 one of the main competitors, in this case BellSouth, is
24 not going to be able to compete for certain types of
25 customers and certain services while the joint

1 marketing restriction, which I think was put in there
2 to try to even that out during the interim period,
3 there is not going to be a joint marketing restriction
4 for the other competitors. And I'm not so sure that
5 while that is competition, I'm not so sure that is fair
6 competition. That's the concern that I have. And I
7 don't have a simple solution, other than going against
8 conventional wisdom, and saying we are going to
9 interpret the Act, looking at it as a whole, and saying
10 it is inconsistent to adopt the FCC's decision and have
11 one type of service subject to a -- I'm sorry, a joint
12 marketing restriction, and another way of provisioning
13 the same service, not subject to that same joint
14 marketing restriction. That to me is inconsistent.
15 And the only avenue I know is to say that we are going
16 to interpret this as it pertains to BellSouth, is that
17 we are not going to allow the unbundling and rebundling
18 to provide a service that could be provided on a resold
19 basis. And clearly that is in direct -- I don't want
20 to say violation -- it is diametrically opposed to the
21 position and the interpretation of the FCC.

22 CHAIRMAN CLARK: Is that a motion?

23 COMMISSIONER DEASON: That is a motion, yes.

24 CHAIRMAN CLARK: Is there a second?

25 COMMISSIONER GARCIA: Why don't you ask your

1 question one more time.

2 COMMISSIONER JOHNSON: Did you all have a chance
3 to look up that order on the unbundling? Not that it
4 is directly relevant, but I just want to know if we
5 were to determine that the federal law does allow or
6 does not allow for the unbundling/rebundling stuff, how
7 would that impact that order that you're referring to,
8 Stan?

9 MR. GREER: Commissioners, the order in the '94
10 proceeding essentially says that ALECs shall be allowed
11 to combine unbundled loops and unbundled ports for GTE
12 and United. Well, that's got the GTE/United, but it's
13 the same language in the BellSouth one, too.

14 COMMISSIONER JOHNSON: It says what?

15 MR. GREER: It essentially says that we find that
16 the ALECs shall be allowed to combine unbundled loops
17 and unbundled ports, and that is the entire language.

18 COMMISSIONER JOHNSON: So what does that mean?

19 MR. GREER: But if I remember the recommendation
20 right, Bell had argued that they should not be allowed
21 to bundle those services, and the Commission
22 essentially said yes, they can.

23 COMMISSIONER DEASON: But that was before we ever
24 even had an act to interpret.

25 MR. GREER: I agree. She just asked me about the

1 order.

2 COMMISSIONER DEASON: I'm sorry.

3 CHAIRMAN CLARK: That was before the federal act.
4 What we were dealing with, and your concern,
5 Commissioner Deason, is the implication of the joint
6 marketing.

7 COMMISSIONER DEASON: As it exists in the federal
8 act. And the reason why I think it was put in there,
9 and the inherent inconsistency, as I interpret it.

10 MR. GREER: And I believe you indicated that was
11 for BellSouth only, and the issue is in GTE.

12 COMMISSIONER DEASON: There is no -- GTE can
13 provide interLATA service today, and I guess perhaps
14 they are. And United, Sprint/United. I think this is
15 a BellSouth-specific issue.

16 MS. BROWN: And also it is specific to the ALECs
17 who have 5 percent of the access lines or whatever it
18 is, so we are talking big companies.

19 COMMISSIONER DEASON: Yes, that's in the Act.

20 MS. BROWN: We're not talking little ones, who
21 will then be allowed to purchase whatever they wanted
22 to and rebundle it.

23 COMMISSIONER DEASON: But I think that would apply
24 to MCI and AT&T, would it not?

25 MS. BROWN: Yes, it would. I just wanted to make

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1 that clear, because what you had said earlier seemed to
2 me to be sort of a blanket statement, and I was
3 concerned about that.

4 COMMISSIONER DEASON: Yes. But to me it is this
5 particular arbitration that is in front of us, these
6 parties only as to how it would apply.

7 MS. BROWN: Right.

8 COMMISSIONER GARCIA: Let's say that -- I've got
9 another question. Let's say I second Commissioner
10 Deason's vote and we miraculously receive a third,
11 where does that put us, Rob, just so I understand where
12 we are. I know Commissioner Kiesling has tried to
13 explain it, but let's try to get it from you.

14 MR. VANDIVER: I think, and it is very difficult
15 to sit here as someone who must defend this in the
16 future and try to postulate --

17 COMMISSIONER GARCIA: Rob, I simply remind you
18 that you were wrong before when you said that we
19 shouldn't argue this case and we had a wonderful
20 victory, so who knows. But let's just --

21 MR. VANDIVER: And that's why I always look to you
22 all for guidance.

23 CHAIRMAN CLARK: I would point out that
24 Commissioner Kiesling was of the ones that said we
25 should appeal it.

1 COMMISSIONER GARCIA: Right. But that was a 5/0,
2 who knows.

3 MR. VANDIVER: I think where that would leave you
4 is that arguably you have departed from the FCC
5 interpretation that you failed to challenge, but that
6 is on appeal and has not been stayed. Therefore, as
7 the attorney for whomever, for AT&T, I would arguably
8 argue that you all had exceeded that authority by not
9 following the federal guidelines. I would defend with
10 several other provisions of the Act, and I would claim
11 that this is consistent with the overall intent of the
12 Act. In 251 or in various places it says if what you
13 do is not inconsistent with this act, it is okay. But
14 that is where I basically see it going is that someone,
15 some entity would appeal that on the basis that you
16 were required by where we are procedurally to follow
17 the FCC at this time.

18 CHAIRMAN CLARK: We will be over on Park Avenue
19 and we had better make all of their attorneys have
20 their licenses in the northern district up to date,
21 right?

22 MR. VANDIVER: We have got some with licenses in
23 the northern district, and we are working on others.

24 COMMISSIONER GARCIA: Well, at the risk of making
25 us look -- I will second Commissioner Deason's motion.

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1 CHAIRMAN CLARK: There has been a motion and a
2 second. All those in favor say aye.

3 COMMISSIONER DEASON: Aye.

4 COMMISSIONER GARCIA: Aye.

5 CHAIRMAN CLARK: Opposed, nay.

6 COMMISSIONER KIESLING: Nay.

7 COMMISSIONER JOHNSON: Nay.

8 CHAIRMAN CLARK: Nay. Is there another motion?

9 COMMISSIONER KIESLING: Yes, I'm going to try it
10 again. And rather than arguing against Commissioner
11 Deason's motion, I just wanted it to get voted on, but
12 I feel like I need to point out a couple of things in
13 support of the motion I'm going to make. And those are
14 that while I agree that in spirit my responsibilities
15 are to go so far as to try to ensure the benefits of
16 fair competition to the consumers, I feel that in this
17 instance, because this is an arbitration and it's a new
18 process that was not created by our state legislature,
19 but was, in fact, created by the federal act, and that
20 the federal act in creating the arbitration process
21 made it very clear what the standard was for the state
22 commissions in going forward with these arbitrations,
23 and that that standard was to implement the Act and the
24 FCC rules. That, therefore, in my view what we have
25 traditionally viewed as the range of our

1 responsibilities has narrowed here. I think that we
2 have to follow the FCC order to the extent that it has
3 not been appealed and is not stayed, and that our only
4 avenue in instances such as this where we find that
5 there may be facts that would suggest the FCC order
6 needs to be relooked at again, that we would have to
7 take one of the other avenues to do that. Whether it's
8 the waiver, whether it's a proposal for a new rule,
9 there are several avenues. But, I don't think going
10 against the FCC order and the Act is one of those
11 possible avenues, or appropriate avenues, let me put it
12 that way.

13 CHAIRMAN CLARK: So you are moving staff --

14 COMMISSIONER KIESLING: I am moving staff.

15 CHAIRMAN CLARK: -- with that explanation?

16 COMMISSIONER KIESLING: Yes, I am.

17 CHAIRMAN CLARK: Is there a second?

18 COMMISSIONER JOHNSON: I can second that. I agree
19 with all of the statements that Commissioner Kiesling
20 stated with respect to why we should approve the staff
21 recommendation. I think I share the same concerns that
22 Commissioner Deason raised, but I just don't think that
23 the procedural mechanism would be to do something that
24 was contrary to what the FCC in its order stated should
25 be done, and something that was not stayed, though

1 argued on the Eighth Circuit, and something that is
2 still pending judicial review. Oftentimes when we are
3 in situations like this, I am probably the first lawyer
4 to take off my legal hat and put it to the side,
5 because Commissioner Deason always raises issues and
6 questions that make you step back and think twice. But
7 on this particular issue, it appears pretty clear the
8 procedural way that we should -- or the procedural
9 mechanisms that we should follow, and I think doing
10 that would be to approve the staff recommendation. But
11 I would like to see in the order language that
12 addresses the concerns that have been stated by
13 Commissioner Deason, by myself, by Commissioner Garcia,
14 and all of the Commissioners regarding our concern as
15 to whether or not their interpretation of the Act was
16 indeed the right one. And if we can address it still
17 at that Eighth Circuit level using that avenue that
18 would be wonderful, or if we could address it by asking
19 them to reconsider some of those issues.

20 COMMISSIONER KIESLING: Is that a friendly
21 amendment?

22 COMMISSIONER GARCIA: I would hope it is, because
23 --

24 COMMISSIONER KIESLING: If it is, I accept it
25 wholeheartedly.

1 COMMISSIONER JOHNSON: Thank you.

2 CHAIRMAN CLARK: There is a motion and a second.

3 All those in favor say aye.

4 COMMISSIONER KIESLING: Aye.

5 COMMISSIONER JOHNSON: Aye.

6 COMMISSIONER GARCIA: Aye.

7 CHAIRMAN CLARK: Aye. Opposed, nay.

8 COMMISSIONER DEASON: I'm going to vote nay, but I
9 want to make it clear that I am in full support of the
10 amendment, and I think it is perhaps a wise course of
11 action to take. It is not my preference, of course.
12 So that is the reason I'm voting nay, but I don't want
13 to take that as it being a negative nay.

14 COMMISSIONER GARCIA: Let me just say for the
15 record, I am going to follow the majority on this
16 because of the friendly amendment, and I think it is --
17 I can say that I concur with the majority, I don't
18 necessarily agree with the majority, but I think it is
19 the only course that is left with us.

20 CHAIRMAN CLARK: Well, I think suffice it to say
21 we all don't like it, it's not our first choice, but
22 it's what we feel --

23 COMMISSIONER GARCIA: But if we can address this,
24 and I point this out to staff, I guess this is as good
25 an opportunity as any, that the effect of the -- and I

1 guess it's a compliment of all of our staff. The
2 effect of everything we do here has tremendous
3 repercussions across this nation, and I know that most
4 of the southern states, I am always complimented on the
5 exceptional work that our staff does. In fact, some of
6 them say they don't read their own recommendations,
7 they read our staff's recommendations and vote
8 according to those and what they interpret there. So
9 in terms of the substance and your analysis of it, it
10 is fantastic, and while I don't necessarily agree with
11 all of it, I think that it was a good job, and I thank
12 you for it.

13 CHAIRMAN CLARK: All right. We have disposed of
14 that issue. I would like to request one other thing.
15 I would like staff to monitor and give me some
16 information about when those rebundled rates will
17 result in prices that are less than what the service is
18 sold at resale. I think we need to be aware of that
19 and any repercussions that may cause. We are going to
20 go ahead and take a lunch break until 1:30. We will
21 come back on Issue 3.

22 (Lunch recess.)

23 CHAIRMAN CLARK: Call the agenda conference back
24 to order. We are on Issue 3 of Item 7A.

25 MS. SHELFER: Issue 3 has to deal with what

1 services BellSouth should resell, if any. BellSouth
2 should be required to offer for resale any service that
3 it provides at retail to end user customers who are not
4 telecommunications carriers. These services include
5 all grandfathered services, both current and future,
6 promotions that exceed 90 days, volume discounts,
7 contract service arrangements, both current and future,
8 Lifeline and LinkUp services, 911, E911, and N11.

9 CHAIRMAN CLARK: Questions, Commissioners?

10 COMMISSIONER KIESLING: I move it.

11 COMMISSIONER DEASON: I have a question. The
12 reselling of grandfathered services that are
13 grandfathered now, what is the rationale for requiring
14 those services to be resold, when previously the
15 Commission made a decision that those services for
16 whatever reason should be grandfathered. And when
17 there is a change of subscribership, that service
18 should no longer be provided to a customer.

19 MS. SHELFER: Based on the order, the order
20 requires that, in my opinion, but my personal opinion
21 on that is that a customer could be locked in for three
22 years for a particular service, and that customer would
23 not be eligible to be -- this service be resold to him,
24 and based on the order and the Act, I believe that
25 future and past should be resold.

1 COMMISSIONER DEASON: But it's the customer's
2 choice, if they are grandfathered, it is their choice
3 to be grandfathered, and they can continue that service
4 if they stay with the provider that they currently
5 have. But if they choose to change, what right do they
6 have to continue that service if that's their choice?

7 MR. SCHIEFELBEIN: Well, to me they lose their
8 choice. If they stay with BellSouth and they are
9 entitled to the grandfathered service, but if they
10 change then that lose that grandfathered service. And
11 it could be in the case where it was BellSouth's choice
12 to grandfather service and offer another one and those
13 customers would be locked in. And it would not be in
14 their best interest to move so they would stay with
15 BellSouth. So if the service was eligible for resale
16 then the customer would have an option of selecting
17 another local carrier.

18 COMMISSIONER DEASON: The concern I have is that
19 many of these services that we are talking about, I'm
20 not talking about services that may be grandfathered in
21 the future, because I think there would be incentives
22 then to grandfather services so you can keep your
23 customers and not have to resell it to your
24 competitor's customers. But when the decision was made
25 to grandfather service before we ever contemplated

1 there was going to be local service competition, and
2 apparently the decisions by the Commission to
3 grandfather those services were made for good and
4 legitimate reasons thinking it was in the best interest
5 of the company and its customers, why then should we
6 perpetuate what we would like to see totally eliminated
7 by giving this added benefit to customers to keep their
8 grandfathered service when they do, in fact, make a
9 change in their subscribership status?

10 MS. SHELFER: I understand your point, but I would
11 argue that the order does not make a distinguishment
12 between whether it was an existing or a future.

13 COMMISSIONER DEASON: Is this one of those things
14 we don't have a choice on, again?

15 MR. GREER: Commissioner, I also think one of the
16 reasons is that an ALEC should have the opportunity to
17 sell the services that are being provided by the local
18 exchange company in order to get that customer if they
19 so desire. If you don't allow a resale of
20 grandfathered services then ALEC doesn't have that
21 ability to provide that service and may inhibit that
22 customer from changing to an ALEC.

23 COMMISSIONER DEASON: But they the opportunity to
24 structure whatever services they want to provide to
25 their customers, does they not? Especially since they

1 can acquire unbundled services and reconstitute it
2 anyway they want.

3 MR. GREER: Depending on what the grandfathered
4 service is, there may not be a tariffed service for
5 resale. They may or may not be able to structure --

6 COMMISSIONER DEASON: They can compete by getting
7 unbundled services and providing and structuring
8 whatever service they want to to compete with what
9 BellSouth is providing under a grandfathered basis, if
10 they think that that is a competitive advantage to
11 them, can they not do that?

12 MR. GREER: And it could be a possibility that
13 that service could be above what a retail service would
14 be, or the resale type service would be. I mean, the
15 same types of arguments that we saw before when we were
16 dealing with unbundled elements except in reverse. The
17 unbundled pieces will probably be higher than the
18 grandfathered service, because most of these things are
19 obsolete type services, if I remember right. My tariff
20 folks will have to tell me. But I think that the whole
21 intent behind the FCC's order is essentially allow the
22 ALECs to have the same services that are available to
23 the incumbent local exchange company to provide to the
24 service of the customer. And you are right, they could
25 take the unbundled services and make a service exactly

1 the same as the grandfathered service, but the prices
2 may be so that it wouldn't allow -- that the customer
3 wouldn't take that service from the ALEC without some
4 --

5 COMMISSIONER DEASON: Well, I think that already
6 applies to any service regardless of whether it's
7 grandfathered or not.

8 MR. GREER: Sure.

9 COMMISSIONER DEASON: The other question I have
10 has to do with Lifeline and LinkUp, whose
11 responsibility it is to make an assessment as to
12 whether a particular customer qualifies for any
13 particular program. Is that going to be an
14 administrative burden on the incumbent LEC to make all
15 of that determination, but then they are going to --
16 then they resell that, and they are going to have to
17 continue the administrative burden of collecting the
18 subsidy, if you will, from the correct source? And is
19 that fair competition? Why is it that the ALEC
20 shouldn't have to go through all of the administrative
21 checks and to collect the revenue subsidies from the
22 correct source just like the incumbent LEC has to do?

23 MS. SHELFER: I agree. You have a valid point
24 based on the order.

25 CHAIRMAN CLARK: Anne, would you put that

1 microphone closer.

2 MS. SHELFER: I agree with your concerns, and
3 apparently that's what will happen or continue to
4 happen based on the order. You know, BellSouth has to
5 resell these services to the customers who are eligible
6 for them based on their qualifications.

7 COMMISSIONER DEASON: So here, again, we have got
8 an issue in front of us, we have taken evidence on it,
9 we have got extensive discussion, but what it boils
10 down to is FCC's rule and we don't have a choice.

11 MS. SHELFER: Yes, sir.

12 CHAIRMAN CLARK: Well, Commissioners, I do think
13 that Rob has pointed out that the FCC has left open the
14 opportunity that after we have gone through these
15 arbitrations to make further comments regarding the
16 implementation of them. And I had a question on
17 LinkUp, too. Why is it that -- it seems to me what
18 should be resold is residential service. If you are
19 eligible for some sort of assistance or the LinkUp
20 services, then why doesn't the ALEC apply for in just
21 the same way the LEC does? I don't see why -- it seems
22 to me what you're reselling is the residential service,
23 not the LinkUp. But you say the FCC has determined
24 that LinkUp should be resold.

25 MS. SHELFER: Well, they didn't specifically

1 identify LinkUp. What the order says is it makes
2 similar prohibitions on the resale of Lifeline or any
3 other means tested service offered end users not
4 eligible to subscribers to such service offerings. And
5 so we included the Lifeline. I mean, the LinkUp as a
6 means to means tested service offering.

7 The order also states that you cannot resell
8 residential services to non-residential end users. And
9 it a prohibits the cross-class selling of residential
10 services.

11 CHAIRMAN CLARK: You disagree with BellSouth's
12 contention that the FCC order recognizes this issue and
13 allows resale restrictions to be placed upon services
14 for which other subscribers would be ineligible?

15 MS. SHELFER: Yes, I do. I believe that in order
16 to qualify for these services, whether you receive them
17 from Bell or as a resold service, you have to be
18 eligible.

19 CHAIRMAN CLARK: And it's up to Bell to continue
20 to make sure that those people continue to be eligible
21 for it?

22 MS. SHELFER: I don't believe the order specified
23 who would do the qualifying for it, but if it is a
24 resold service, I would assume that BellSouth would be
25 the keeper of the records in this case.

1 COMMISSIONER DEASON: And when they resell it,
2 it's going to be the discount applied to the subsidized
3 rate.

4 MS. SHELFER: Yes, sir.

5 COMMISSIONER DEASON: So the ALEC gets the benefit
6 of serving that customer without having any of the
7 administrative burden of tracking their status and
8 collecting the subsidy revenue to make them whole.
9 They just get a discount on the subsidized rate.

10 MS. SHELFER: That's the way it looks, yes, sir.

11 COMMISSIONER DEASON: That doesn't quite strike me
12 as being fair. That's all the questions I have,
13 Commissioner.

14 CHAIRMAN CLARK: Let me ask you about contract
15 services. What does the FCC order say on contract
16 services?

17 MS. SHELFER: Contract service arrangements were
18 tied to special promotions, and basically what the
19 order says is that this language makes no exception for
20 promotional or discounted offerings, including
21 contracts and other customer-specific offerings.

22 CHAIRMAN CLARK: I thought staff made a good
23 point, though, that once -- it is customer-specific,
24 and once that customer goes away it is no longer a
25 service to be resold.

1 MS. SHELFER: I agree. And I agreed with
2 everything that Commissioner Deason has said, also.
3 But, you know, based on the order, and it's not stayed,
4 it is pretty specific on which items will be resold.

5 CHAIRMAN CLARK: And the other point you all
6 brought up, in effect that how will BellSouth enter
7 into contract service arrangements? They will never be
8 able to -- it seems like they would enter into the
9 arrangement and that customer can immediately go to
10 some other ALEC, they would be required to discount it,
11 so they automatically get a discount from the service
12 they contracted to with BellSouth. How does the FCC
13 envision that working?

14 MS. SHELFER: That is the only language in the
15 order that applies to contract service arrangements,
16 and the staff has the same concerns. If BellSouth or
17 an ILEC is required to resell a contract service
18 arrangement that it only has with one customer, and
19 then that customer is taken away by resold services,
20 then what is it reselling? You know, does it actually
21 still have the CSA.

22 COMMISSIONER DEASON: What if there is some type
23 of a time requirement for there to be a CSA, that it is
24 an offering made to a customer and the customer
25 accepts, but there is a minimum time to sign up for the

1 service, and if that time has not expired, how does the
2 customer get out of that contract? Aren't they
3 contractually bound to abide by that?

4 MS. SHELFER: I know that most customer contracts
5 arrangements are time restraints. I'm not sure. I
6 believe that if the customer were to break the contract
7 -- I don't know, I would have to get a legal
8 interpretation -- that if it is a resold service then
9 perhaps it's not a broken contract.

10 MS. SIMMONS: Commissioners, we do have an open
11 docket on fresh look, which is basically what you're
12 inquiring about, should a customer want to terminate a
13 contract early, is there any opportunity for that
14 customer to somehow reduce the termination liability
15 that would otherwise apply. We are investigating that.
16 I anticipate that, you know, at some point we will
17 bring a recommendation before you, but we are not to
18 that point yet. We anticipate trying to put together
19 some sort of viewpoints from the staff perspective, and
20 then we will circulate them to the parties.

21 CHAIRMAN CLARK: Sal, you're talking about
22 existing contract service arrangements, them having an
23 opportunity for fresh look when they have competition.

24 MS. SIMMONS: Right. We are trying to take a look
25 at under what circumstances might a fresh look make

1 sense, and under what circumstances might it not make
2 sense. And it all is a function of kind of the
3 competitive situation at the time the customer signed
4 the contract in the first place. It's kind of
5 philosophically how we are looking at it, but we are
6 very early in this docket at this point.

7 COMMISSIONER DEASON: And so even though we don't
8 have a resolution to that issue, the recommendation is
9 to require reselling of grandfathered services because
10 that's what the FCC said?

11 MS. SIMMONS: Yes, I believe that's what Ms.
12 Shelfer's argument is that she doesn't really feel we
13 have any other option available to us.

14 MS. SHELFER: There is the caveat with the
15 grandfathered services.

16 COMMISSIONER DEASON: I'm sorry, I meant to say
17 contract service arrangements instead of grandfathered.
18 I'm sorry, I didn't mean to interrupt.

19 MS. SHELFER: I was just going to tell you that
20 with grandfathered services it does have the caveat
21 where you can only resell it to grandfathered services,
22 you can't cross-class or sell it or market it to
23 customers who didn't already have the service.

24 CHAIRMAN CLARK: So you can go to a specific
25 customer that has been grandfathered in, and if he has

1 a year to go on his contract or whatever, that he is
2 entitled to get that service from the ALEC at a resale,
3 the ALEC has to buy it at a resale.

4 MS. SHELFER: Yes, ma'am.

5 CHAIRMAN CLARK: You know, the contract services
6 to me are a real dilemma, because I can see where if
7 you don't require contract services to be resold then
8 there is an incentive to use that as a marketing tool
9 and lock people in. And it may result in unfair
10 practices by BellSouth. But by the same token it seems
11 to me it opens up -- as soon as they make the contract
12 it can be, it has to be resold to an ALEC at some
13 discount and --

14 COMMISSIONER DEASON: So then where is the
15 incentive to enter into a CSA?

16 CHAIRMAN CLARK: Well, the incentive would be if
17 you don't require it.

18 COMMISSIONER DEASON: That's what I'm saying, what
19 we are trying to do is foster competition. CSAs, that
20 is the result of competition. And customers who avail
21 themselves of that are availing themselves of the
22 benefits of competition. And I guess my question is
23 what incentive does BellSouth have to address specific
24 customers needs by entering into a CSA if they know the
25 moment they do then that customer can choose to have

1 that same best deal cut to be offered by somebody else
2 under a resold basis.

3 CHAIRMAN CLARK: I agree with you, but I was
4 talking about if you don't require the reselling of the
5 contract services, there will be an incentive for
6 BellSouth to move everyone to a contract service.

7 COMMISSIONER DEASON: And the competitors can do
8 the same thing. They can go ahead and sign up
9 customers under some type of special tariff and say we
10 are going to give you this alternative, but you are
11 going to have to sign up for two years, five years,
12 whatever. That is competition it seems to me. If I'm
13 wrong, somebody tell me.

14 MS. SHELFER: I agree. But I would just have to
15 say that based on the order, I don't see any other
16 choice.

17 COMMISSIONER DEASON: Well, Commissioners, I'm the
18 one that started the discussion. I have problems with
19 grandfathered services, that is services that are
20 currently grandfathered, because I think they were
21 grandfathered for true and legitimate reasons that have
22 nothing to do with competition. I would have a problem
23 with -- I think that services that are grandfathered
24 from this point on out should be allowed to be resold,
25 because I would not want grandfathering to be used as a

1 means of preventing competition. But as far as
2 existing grandfathered services, I have a problem with
3 having those mandated to being provided under a resale
4 basis. I have a problem with Lifeline and LinkUp being
5 provided on a resold basis. And, Commissioner Clark, I
6 think you have raised some very legitimate concerns
7 about CSAs, and it may be that those should not be
8 mandated to be provided under a resale basis.

9 CHAIRMAN CLARK: Commissioner, I would suggest
10 that unless there is further conversation on it, that
11 we would -- well, I guess --

12 COMMISSIONER DEASON: All this is complicated by
13 the discussion we had on Issue 2 and the same advice we
14 are getting now is that we really don't have a choice.

15 MS. BROWN: Commissioner, can I just read this.
16 I'm sorry.

17 CHAIRMAN CLARK: Go ahead.

18 MS. BROWN: All right. I don't know, I'm just
19 reading it from a different perspective because of our
20 conversation. That section that Anne cited to you is
21 Section 948 in the order, and it says that LECs have to
22 offer for resale at wholesale any telecommunications
23 service that the carrier provides at retail, and there
24 is no exception for promotions or discounted offerings,
25 including contract and other customer specific

1 offerings. Then it goes on to say this, "We,
2 therefore, can conclude that no basis exists for
3 creating a general exemption from the wholesale
4 requirements for all promotional or discount service
5 offerings made by incumbent LECs." A contrary result
6 would permit them to avoid the statutory obligation by
7 shifting everybody to that. What I wanted to point out
8 to you was the word general exemption. I guess what
9 I'm suggesting to you is that perhaps under limited
10 circumstances for good justification, a specific
11 exemption might be contemplated under the order.
12 That's all I'm saying. So I'm not sure --

13 CHAIRMAN CLARK: But didn't it say promotional and
14 discount, and I'm not sure grandfather falls under
15 that.

16 MS. SHELFER: Grandfather is in a different
17 section. It's under 968. It says we conclude that
18 when an incumbent LEC grandfathers its own customers
19 that the withdrawn service, such grandfathering should
20 also extend to reseller end users.

21 CHAIRMAN CLARK: Well, I agree with Commissioner
22 Deason, I think we ought to suggest to them that there
23 is a reason for making a distinction between currently
24 grandfathered services, because the grandfathering had
25 nothing to do with competition. I mean, it may have

1 had something to do with it, but our reasons for doing
2 it were not involved in opening up the local market to
3 resale.

4 COMMISSIONER DEASON: Those decisions were not
5 based on a basis of impeding competition.

6 CHAIRMAN CLARK: Right. And with respect to
7 contract services, I think we ought to bring to their
8 attention our concerns with respect to in effect it
9 will provide the incentive for people to enter into
10 contract services and then go someplace else where they
11 can be resold.

12 COMMISSIONER DEASON: And I think that would
13 impede the incumbent LEC from ever even bothering,
14 because it is an administrative burden and expense to
15 go out and negotiate customer-specific contracts if as
16 soon as you do you are subject to reselling that same
17 service to your competitor and lose the customer. It
18 doesn't make sense.

19 CHAIRMAN CLARK: And I'm inclined to agree that
20 prohibiting the resale of contract services might not
21 be troubling but, as Commissioner Deason pointed out,
22 the ALEC can bundle similar network services to provide
23 a CSA.

24 MR. GREER: But, Commissioners, there could be a
25 situation where the contract rates are below cost or

1 the incumbent or the ALEC can't get those rates. I
2 mean, I can see that as a situation. You know, there
3 could be some service that they cut the tariffed rates
4 on that they can't get them on resale, and that they
5 can't get them through the contract if you don't allow
6 resale of the contract. And that if they came in here
7 with a cost study, the cost for that may be higher for
8 that than is in the contract. I mean, that is a
9 possibility the Commission has addressed before.

10 COMMISSIONER DEASON: Now situations can change,
11 but have we ever approved a CSA to your knowledge that
12 is being provided below cost?

13 MR. GREER: We did have a complaint, and the
14 Commission did have some concern with one of the CSAs
15 in Monroe County.

16 COMMISSIONER DEASON: One CSA in one county. How
17 many CSAs are there?

18 MR. GREER: I'll have to let Ms. Norton answer.

19 MS. NORTON: Commissioners, excuse me. The tariff
20 does require that incremental costs be covered, that is
21 a tariff requirement. The Monroe County situation was
22 determined a violation.

23 CHAIRMAN CLARK: Was or wasn't?

24 MS. NORTON: It was.

25 COMMISSIONER DEASON: So it seems like to me like

1 the system worked; we had a complaint, it was looked
2 into. But it is our requirement that it cover
3 incremental cost.

4 MS. NORTON: That is correct.

5 MS. SIMMONS: Just a small addition on that, I
6 wanted to point out that we don't actually approve the
7 contract service arrangements. We basically give the
8 companies the authority to offer contract service
9 arrangements. We would normally only investigate these
10 if a complaint is filed with us.

11 COMMISSIONER DEASON: But the company is fully
12 aware that they can be subject to a complaint where
13 they are going to have to justify that the CSA is being
14 provided above incremental cost.

15 MS. SIMMONS: Certainly.

16 CHAIRMAN CLARK: And I have concerns about the
17 LinkUp and the Lifeline services. It seems to me that
18 what is being resold is residential service, and that
19 BellSouth should be required to resale that, and to the
20 extent that competitors want to offer LinkUp and
21 Lifeline, they should have to apply on behalf of that
22 customer and make sure that they are eligible in the
23 same way BellSouth does. To me the service is
24 residential service.

25 COMMISSIONER DEASON: It's just a special pricing.

1 CHAIRMAN CLARK: Right. And what I'm suggesting
2 is those are the areas that we should comment back to
3 the FCC. You know, I think we do have to follow what
4 staff has recommended, but we should comment back to
5 them based on our record we think they should rethink
6 their requirements in these areas.

7 COMMISSIONER KIESLING: Yes. I think that
8 certainly with Lifeline and LinkUp, it's not even a
9 reduced cost that is being offered, it is the carrier's
10 ability to collect the subsidy from someone else to
11 make up the difference. So, it's not a service that is
12 being -- I don't see that as being the same as the
13 service that's being offered for resale. Or offered at
14 retail, I mean. So to that extent, I agree with you,
15 and I think that it's one of the points that we should
16 make very clear in our communications with the FCC,
17 because I think they were wrong on that point. But,
18 you know, I had to make the motion that I made for the
19 same reasons that I did earlier, and recognize that our
20 avenues for bringing this to the attention of the FCC
21 are not completely cut off, that there are avenues and
22 we should follow them,.

23 CHAIRMAN CLARK: Okay. Do you want to make a
24 motion?

25 COMMISSIONER KIESLING: Yes, I did. I moved staff

1 on Issue 3.

2 CHAIRMAN CLARK: Well, is that with the
3 understanding that we would bring to the FCC's
4 attention -- I think Rob passed out a section of their
5 order that encouraged us to get back in touch with them
6 in areas we have problems with, and I think those areas
7 should include the contract services, the point
8 Commissioner Deason made about grandfathered services,
9 and the LinkUp and Lifeline. Is that your motion?

10 COMMISSIONER KIESLING: I will accept that as a
11 friendly amendment to my motion.

12 CHAIRMAN CLARK: There is a motion, is there a
13 second?

14 COMMISSIONER JOHNSON: Second.

15 CHAIRMAN CLARK: There has been a motion and a
16 second. All those in favor say aye.

17 COMMISSIONER KIESLING: Aye.

18 COMMISSIONER GARCIA: Aye.

19 COMMISSIONER JOHNSON: Aye.

20 CHAIRMAN CLARK: Aye. Opposed, nay.

21 COMMISSIONER DEASON: Nay, and for the same
22 reasons I expressed in Issue 2.

23 CHAIRMAN CLARK: Issue Number 4.

24 MS. SHELFER: Commissioners, under Issue 4, staff
25 recommends that BellSouth should offer retail services

1 at a wholesale discount rate of 21.83 percent for
2 residential services and 16.81 percent for business
3 customers.

4 COMMISSIONER KIESLING: And I'm willing to move
5 that.

6 CHAIRMAN CLARK: Questions, Commissioners? I just
7 want to be sure on this item. I want you to give me a
8 definitive statement of what you believe, what you
9 believe avoided costs -- what is the appropriate
10 interpretation of avoided cost. Those that are
11 actually avoided or those that can reasonably be
12 avoided.

13 MS. SHELFER: Well, since the pricing portion of
14 the order has been stayed and the Act says that it is
15 cost that will be avoided, then it is staff's belief
16 that it is those that actually will be avoided.

17 CHAIRMAN CLARK: If it was up to you and you
18 didn't have to look at the order and you didn't have to
19 look at the Act, what makes sense to you?

20 MS. SHELFER: I agree with the Act, because --

21 CHAIRMAN CLARK: Actually avoided?

22 MS. SHELFER: Yes.

23 CHAIRMAN CLARK: And that recognizes that they are
24 still in the business of providing retail services.

25 MS. SHELFER: Yes, retail services. And I believe

1 when you look at it as AT&T and MCI has, and you can't
2 look at BellSouth as purely a wholesale entity.

3 CHAIRMAN CLARK: I have another question. Would
4 you please look at the third full paragraph on Page 79.
5 The first sentence, is that sentence correctly worded,
6 or should the not be taken out?

7 MS. SHELFER: It's correct; staff does not believe
8 that operator and directory assistance services should
9 be 100 percent avoided.

10 CHAIRMAN CLARK: So the not should be taken out?
11 See, you have disagrees and then you have not, and I
12 guess I just didn't -- state it a different way.

13 MS. SHELFER: Yes.

14 CHAIRMAN CLARK: In other words, 100 percent of
15 the cost of the operated and directory assistance
16 services will not be avoided just because resalers may
17 be providing their own services.

18 MS. SHELFER: Correct.

19 CHAIRMAN CLARK: I think the not needs to come
20 out, but at any rate I think I understand what you're
21 saying.

22 COMMISSIONER KIESLING: I agree. If you had said
23 earlier that staff agrees that the costs should not be
24 100 percent, but you are saying you disagree.

25 MS. SHELFER: Staff agrees that they should not be

1 100 percent avoided.

2 CHAIRMAN CLARK: Yes. They are not going to avoid
3 those costs in total.

4 MS. SHELFER: Right.

5 COMMISSIONER KIESLING: So you're changing
6 disagrees to agrees as proposed to taking out the not?

7 MS. SHELFER: Yes, ma'am,.

8 COMMISSIONER KIESLING: Okay. Thank you.

9 CHAIRMAN CLARK: I would have you know that took
10 me five minutes last night to figure out that something
11 was wrong. Anything else? Is there a motion?

12 COMMISSIONER KIESLING: I moved it.

13 CHAIRMAN CLARK: Is there a second?

14 COMMISSIONER JOHNSON: Second.

15 CHAIRMAN CLARK: All those in favor say aye.

16 (Unanimous affirmative vote.)

17 CHAIRMAN CLARK: Opposed, nay.

18 MS. SHELFER: Commissioner, Issue 5 deals with
19 restrictions applied to resold services. Staff does
20 not believe that any restrictions should be allowed
21 except for the resale of grandfathered service,
22 residential service, Lifeline, LinkUp services to end
23 users who are eligible to purchase such services
24 directly from BellSouth.

25 COMMISSIONER KIESLING: And I'm willing to move

1 that with the understanding that we are bringing up
2 some matters in relationship to that via another
3 avenue.

4 COMMISSIONER JOHNSON: Second.

5 COMMISSIONER DEASON: Let me ask a question. I
6 believe that BellSouth raised the issue as to the
7 concept that a tariffed service is a service, and all
8 of the requirements and requirements associated with
9 what is in the tariff should apply to that service,
10 because that is what is being provided. And that that
11 should not be able to be resold without it being that
12 total package with all the restrictions and
13 requirements. Why did staff reject that argument?

14 MS. SHELFER: In the order on Paragraph 939, it
15 states that we conclude that resale restrictions are
16 presumptively unreasonable. Incumbent LECs can rebut
17 this presumption, but only if the restrictions are
18 narrowly tailored. And staff does not believe that
19 BellSouth has presented enough evidence to state that
20 these tariff restrictions that apply should also apply
21 in resale.

22 COMMISSIONER DEASON: The restrictions contained
23 in the tariff were not narrowly tailored to that
24 particular tariff offering?

25 MS. SHELFER: I think that the question would be

1 are they unreasonable. Some of the restrictions that
2 are within a tariff service may restrict the resale to
3 a hotel or it may have limitations that are Bell
4 imposed on a tariff servicing, which would force the
5 customer to purchase from another section of the
6 tariff. And based on the order, they would have to
7 have made an argument that these restrictions were
8 narrowly tailored and were valid.

9 COMMISSIONER DEASON: Well, isn't that unfair to
10 Bell, because then they can't compete for that customer
11 to be consistent with their own tariff?

12 MS. SHELFER: Sir?

13 COMMISSIONER DEASON: Isn't that unfair to
14 BellSouth, because they cannot compete for that
15 customer and still be consistent with the restrictions
16 and requirements within their own tariff?

17 MS. SHELFER: If BellSouth chooses to revise its
18 tariff, they can do so.

19 COMMISSIONER DEASON: But that is their only
20 alternative is to revise the tariff. Isn't there an
21 alternative to the competing LEC to buy unbundled
22 elements and structure the service to whomever and to
23 whatever prices they want in competition with Bell's
24 tariffed rates?

25 MS. SHELFER: Yes, they could.

1 CHAIRMAN CLARK: These resale restrictions, I take
2 it, are within 251?

3 MS. BROWN: Yes, Chairman Clark.

4 COMMISSIONER DEASON: So, for example, if there is
5 a restriction in Bell's tariff that a certain -- the
6 example you gave, a certain tariff offering is limited
7 to customers other than -- did you say other than
8 hotels and motels?

9 MS. SHELFER: Yes. They could have many
10 restrictions, but that is just an example.

11 COMMISSIONER DEASON: Just as an example. Say a
12 particular service offering does not apply to hotels
13 and motels. A competitor could come in and resell that
14 service to a hotel and motel and receive the discount.

15 MS. SHELFER: Yes.

16 COMMISSIONER DEASON: And Bell couldn't do it,
17 because if they did provide that service they would be
18 in violation of their own tariff.

19 MS. SHELFER: Or they could come in and change
20 their tariff to allow the resale to hotels.

21 CHAIRMAN CLARK: Any other questions on Issue 5?
22 Is there a motion?

23 COMMISSIONER KIESLING: I made one.

24 CHAIRMAN CLARK: Second?

25 COMMISSIONER JOHNSON: Uh-huh.

1 CHAIRMAN CLARK: All those in favor say aye.

2 COMMISSIONER GARCIA: Aye.

3 COMMISSIONER KIESLING: Aye.

4 COMMISSIONER JOHNSON: Aye.

5 CHAIRMAN CLARK: Aye. Opposed, nay.

6 COMMISSIONER DEASON: Nay.

7 CHAIRMAN CLARK: Issue 6.

8 MS. SHELFER: Issue 6 has to do with the notice
9 requirement for wholesale customers. Staff believes
10 that if BellSouth provides internal notice 45 days or
11 more in advance of the Bell change BellSouth should
12 provide 45 days notice to its wholesale customers. If
13 BellSouth provides notice less than 45 days in advance
14 of the change, wholesale customers should be noticed
15 concurrently with BellSouth's internal notification
16 process.

17 COMMISSIONER DEASON: Move staff.

18 COMMISSIONER KIESLING: Second.

19 CHAIRMAN CLARK: I just had a question on Page 93.
20 I was just concerned as to the language that is going
21 to be put in regarding the liability. Is that
22 something that we have suggested precise language that
23 they should use? Because I think there was an issue
24 raised about the instance where there may be an act of
25 bad faith in the sense that there was a concern about

1 changing the information -- let me see if I can find
2 it.

3 COMMISSION STAFF: In this recommendation,
4 Commissioner Clark, the exact language is left for the
5 parties to develop.

6 CHAIRMAN CLARK: Oh, all right. That answers my
7 question. Okay.

8 CHAIRMAN CLARK: I didn't see where it was clear
9 that they would develop the language. All right.
10 Without objection, Issue 6 is approved.

11 MR. GREER: Commissioners, Issue 7 deals with the
12 provision standards of unbundled and resold services.
13 Staff is recommending the Commission adopt the
14 provisions in the AT&T and MCI proposed agreements, and
15 whether or not specific requirements in those
16 agreements that the BellSouth standard should apply.

17 CHAIRMAN CLARK: Questions, Commissioners?

18 COMMISSIONER KIESLING: Move it.

19 COMMISSIONER DEASON: A question. You gave
20 examples of specific requirements contained within MCI
21 and AT&T's proposed agreements. It seems that those
22 examples you gave, and if they are representative of
23 these type requirements, they seem to be very specific
24 and very limiting on BellSouth. And it could be that
25 what is being expected from BellSouth is even more than

1 what BellSouth is going to be able to provide to their
2 own customers. Have you thought about that situation?

3 MR. GREER: Yes, Commissioner. I mean, personally
4 I don't think this issue ought to be here. But the
5 parties have been unable to negotiate the provision
6 standards in this proceeding. AT&T and MCI proposed
7 certain standards and BellSouth proposed to use their
8 existing standards that are with the Commission now.
9 We don't think those standards are correct, because
10 they are based on retail service to the end user, not
11 services to carriers. I do have a little concern with
12 having such detailed requirements ordered by the
13 Commission, but I don't see where we have any other
14 alternative.

15 COMMISSIONER DEASON: For example, on Page 96,
16 under 2.5.1.1, it says MCI may at its discretion modify
17 such measurements from time to time. Is that a blanket
18 authority to do whatever they want? And such things
19 like MCI's service order within hour of receipt of
20 ILEC, within 4 hours of the local service request from
21 MCI. It seems to me that these are very specific
22 requirements, and I know that it is also your
23 recommendation that there not be any type of liquidated
24 damages, which I agree with, that's not part of our
25 function as I see it. But what happens when BellSouth

1 doesn't live up to the letter of what is contained in
2 these very restrictive agreements from MCI and AT&T?
3 Are we going to have complaints coming in here all the
4 time from them, are we going to have to deal with those
5 because it done in five hours and not four hours?

6 MR. GREER: I would expect that we would have to
7 deal with those complaints, yes, Commissioner. I
8 understand your concern with the specificity of these
9 requirements, but unfortunately the only thing we had
10 in the record was these requirements or the current
11 service standards that are before the Commission. And
12 those are the two things that we had to choose from.
13 Now, if the parties could work out some kind of
14 agreement as far as what these should be when they file
15 their arbitration requests, I don't have a problem with
16 that. And maybe we should try to do some kind of
17 industry standard as far as what these requirements
18 should be.

19 COMMISSIONER DEASON: It seems to me that this is
20 the degree of specificity that should not be before
21 this Commission. Which is something we tried to tell
22 the parties from the very beginning as this process
23 began, and as we have gone through it. It seems to me
24 that we need to set policy and give guidance such that
25 the provision of service is going to be equal between

1 resold services and the services that are provided
2 directly by BellSouth to its customers. That should be
3 the policy. And it should be up to the parties to sit
4 down as reasonable people and negotiate whether it is
5 four hours, five hours, three hours, or whatever it is,
6 because I don't have the expertise to determine what is
7 reasonable in that regard. And I don't think we have
8 evidence in the record that says what is reasonable,
9 three hours, four hours, or five hours. If that is the
10 type of things that we are going to be asked to approve
11 in an arbitration, that is the problem that I have.
12 And I think that is an unreasonable burden to put on
13 our staff, as well.

14 MR. GREER: And I agree with you, Commissioner.
15 And maybe what we can do -- maybe what we should do in
16 this issue is give the parties until they file their
17 arbitration to come up with the standards. I mean,
18 Bell wanted to have essentially 180 days to see what
19 the industry is going to do and develop these
20 standards. You know, the parties have already been
21 through the process of arbitration and trying to
22 negotiate these types of things. They have not been
23 able to do it. I mean, that's an option. And I agree
24 with you, I do have some concern with us having to set
25 these standards when the parties themselves should be

1 the people that establish these requirements.

2 COMMISSIONER DEASON: Well, I think -- I'm
3 uncomfortable as one Commissioner specifying at this
4 stage of the arbitration that this is what is going to
5 be required. Now, when we get to the very last issues
6 that we deal with, we deal with the question of how do
7 we approve the final agreement that comes before us.
8 And when we get to that stage, if they still have not
9 been able to agree to this type of specificity and
10 expect this Commission to do it, I will feel very
11 comfortable then looking at the two alternatives they
12 file with us and pick one or the other. But until we
13 get to that point, I'm uncomfortable making that
14 decision here at this early stage of the arbitration.

15 COMMISSIONER GARCIA: If that is a motion, I'll
16 second it.

17 CHAIRMAN CLARK: Well, if it is, I don't
18 understand it. But I think it's some modification of
19 what BellSouth has proposed. And, Commissioner Deason,
20 if you will --

21 COMMISSIONER DEASON: Well, I agree that we should
22 not take 180 days to do it. I think it can be done
23 within the 30-day time frames that are contemplated
24 within the last issues that are in this arbitration,
25 and I know there is some question about exactly how we

1 should follow that and we can discuss that, but I think
2 a 30-day time frame is more reasonable. But at this
3 point I would make a broad policy statement as to what
4 the Commission expects, and that is that BellSouth is
5 obligated to provide the same quality of service on a
6 resale basis as it provides to its customers directly.
7 That should be the policy. And I think it's very fair
8 and evenhanded, and leave it up to them to negotiate
9 the specifics.

10 CHAIRMAN CLARK: But as part of the agreement they
11 filed with us for approval, they will set out the
12 standards, is that what you're saying?

13 COMMISSIONER DEASON: Yes. And hopefully they can
14 come when we go through all of these issues and they
15 file their -- and hopefully they will file a joint
16 agreement, and then we will know what they both think
17 are reasonable. And if they can't do that, well, then
18 if we have to we will pick between the two, when it
19 gets to that point 30 days after we make the decision
20 in this case.

21 MR. GREER: You stated on a resale basis, should
22 we also include the network elements, too?

23 COMMISSIONER DEASON: Oh, I'm sorry. Yes, you are
24 absolutely correct. It would apply to both.

25 CHAIRMAN CLARK: Okay. Then your motion is to

1 deny staff, but move that BellSouth be required to
2 provide the same quality for services provided to AT&T
3 and MCI that BellSouth provides to its own customers
4 for comparable services, and that at the time the
5 agreement is submitted for approval, they will have
6 developed mutually agreeable specific quality
7 measurements concerning the service standards?

8 MR. GREER: For resale and unbundled elements.

9 CHAIRMAN CLARK: And network elements. Is that
10 your motion?

11 COMMISSIONER DEASON: That is precisely my motion.
12 Thank you for articulating it.

13 CHAIRMAN CLARK: You're welcome. Is there a
14 second?

15 COMMISSIONER DEASON: Well, I make the motion.

16 COMMISSIONER GARCIA: I second it.

17 CHAIRMAN CLARK: All those in favor say aye.

18 (Unanimous affirmative vote.)

19 CHAIRMAN CLARK: Opposed, nay. Issue 8(a).

20 MR. GREER: Commissioner, Issue 8(a) deals with
21 branding of operator services and directory services.
22 I would like to point out that in the recommendation
23 statement staff states that BellSouth should provide
24 branding and unbranding, it should be branding or
25 unbranding.

1 CHAIRMAN CLARK: I guess -- and it's an or
2 proposition because if they can't identify whose
3 customer it is, they won't brand at all.

4 MR. GREER: I think it gets more deeper than --
5 what we are recommending is that they can brand through
6 customized routing. In Issue 9 we go ahead and say it
7 is technically feasible to customize route it, but
8 there is going to be a price for branding, and a cost,
9 and that hasn't been addressed here. So it kind of
10 gets back to the other -- what we had a discussion
11 earlier on, technical feasibility versus economic
12 feasibility.

13 CHAIRMAN CLARK: And so is it left up to them to
14 decide which to do at this point?

15 COMMISSIONER GARCIA: It's left up to the Bell
16 company, correct? Or the company if they want to pay
17 for that service?

18 MR. GREER: Yes.

19 COMMISSIONER GARCIA: With that understanding, I
20 move staff.

21 CHAIRMAN CLARK: Any other questions?

22 COMMISSIONER JOHNSON: Second.

23 CHAIRMAN CLARK: All those in favor say aye.

24 (Unanimous affirmative vote.)

25 CHAIRMAN CLARK: Opposed, nay. Issue 8(b).

1 MR. GREER: Commissioners, Issue 8(b) deals with
2 branding again on how BellSouth's employees will
3 interact with the customers of the ALECs, or AT&T and
4 MCI. AT&T and MCI have agreed on two of the three
5 issues with branding, and one that they didn't agree on
6 was the leave behind cards. AT&T and MCI were
7 proposing specific leave behind cards with their logos
8 on it. BellSouth has proposed a generic card.

9 COMMISSIONER GARCIA: I would move 8(b) with the
10 exception that generic cards just seem more sensible to
11 me. You know, it seemed an absurdity, in all honesty,
12 to even be dealing with this issue in such minutia.
13 You know, I almost expected to see a requirement that
14 the Southern Bell guy put on an AT&T jumpsuit before
15 he knocks on the door. So I just thought that a
16 generic would make more sense and it would be more
17 effective. But I don't know if we could not address
18 it, but if we did I would just make that amendment that
19 we go with a generic.

20 CHAIRMAN CLARK: Is that motion?

21 COMMISSIONER GARCIA: Yes.

22 CHAIRMAN CLARK: Is there a second?

23 COMMISSIONER KIESLING: I'm sorry, I didn't
24 understand the exception.

25 COMMISSIONER GARCIA: The exception is on Issue 2

1 in 8(b), or part two of 8(b), provide customers with
2 AT&T or MCI supplied leave behind cards or Southern
3 Bell's proposal was just a generic card that didn't
4 necessarily refer to any company.

5 CHAIRMAN CLARK: No, they were going to fill in
6 the company, as I understood it.

7 COMMISSIONER GARCIA: Right. But it was a generic
8 card, it wasn't a separate marketing piece.

9 COMMISSIONER DEASON: Well, let me say that it
10 seems to me that what we need is the most
11 administratively simplest way to handle this. And it
12 seems to me that if the competitors are going to
13 provide the cards to BellSouth, it's probably going to
14 be easier for a technician to sort through than it is
15 to actually have to write down MCI or AT&T. And if
16 that is the preferred method that the competitors want,
17 and they are going to be the one providing the cards,
18 it seems to me that is going to be the easiest way to
19 do it.

20 COMMISSIONER GARCIA: Commissioner, the only
21 distinction I thought that I would make in your comment
22 is that we are not on -- you know, that this is bigger
23 than this specific instance, and this is an example
24 that will be taken out. So I just thought that it
25 would be simpler when you are dealing with -- if you

1 have already stated to the person that they are
2 speaking on behalf of someone, that they are there for
3 someone, I think something generic would probably be
4 more effective and administratively simple to just --

5 COMMISSIONER DEASON: But I agree with you, that
6 this is probably something that we shouldn't having to
7 be dealing with.

8 COMMISSIONER GARCIA: I think it is absurd and
9 ludicrous. Nonetheless, here it is.

10 CHAIRMAN CLARK: We can just deal with it as a
11 complaint later on. There has been a motion to move
12 staff with an amendment, is there a second?

13 COMMISSIONER KIESLING: Second.

14 CHAIRMAN CLARK: All those in favor say aye.

15 COMMISSIONER GARCIA: Aye.

16 COMMISSIONER KIESLING: Aye.

17 COMMISSIONER JOHNSON: Aye.

18 CHAIRMAN CLARK: Opposed, nay. Nay.

19 COMMISSIONER DEASON: Nay.

20 CHAIRMAN CLARK: I personally felt leaving behind
21 the cards that they provide is the appropriate way to
22 go.

23 COMMISSIONER DEASON: That is the basis for my
24 objection, as well.

25 COMMISSIONER KIESLING: Well, then maybe I didn't

1 understand what I seconded. I thought that it was in
2 the event that they did not provide them, then there
3 would be a generic card that would be used.

4 COMMISSIONER GARCIA: No.

5 COMMISSIONER KIESLING: Then I am terribly sorry.

6 CHAIRMAN CLARK: Well, you need to move to
7 reconsider.

8 COMMISSIONER KIESLING: I move to reconsider.

9 CHAIRMAN CLARK: Is there a second?

10 COMMISSIONER JOHNSON: Second.

11 CHAIRMAN CLARK: All those in favor of
12 reconsideration, aye. Aye.

13 COMMISSIONER DEASON: Aye.

14 COMMISSIONER JOHNSON: Aye.

15 COMMISSIONER KIESLING: Aye.

16 CHAIRMAN CLARK: Opposed, nay.

17 COMMISSIONER GARCIA: Nay.

18 CHAIRMAN CLARK: Go ahead, Commissioner Garcia.

19 You have a motion?

20 COMMISSIONER GARCIA: Right.

21 COMMISSIONER GARCIA: I just --

22 CHAIRMAN CLARK: And the motion, as I understand
23 it, being that the recommendation would be modified
24 that the customers will be provided generic cards that
25 the BellSouth personnel would then fill in the name of

1 the appropriate carrier.

2 COMMISSIONER GARCIA: Just out of curiosity, let
3 me just ask staff. This rule applies beyond these
4 companies that we are dealing with here, so -- or no?

5 MS. BROWN: Well, we don't think so. I mean, I
6 don't think so. I suggest to you that you make the
7 decisions for each of these arbitrations between the
8 specific parties before you based on the issues that
9 they have presented. And if the record is different in
10 another arbitration and leads you to another decision,
11 theoretically you could take it.

12 COMMISSIONER GARCIA: Now, we are talking about a
13 technician, a guy -- when we are speaking about these
14 leave behind cards, just to make sure I know what I am
15 talking about, we are talking about a guy who is
16 wearing blue shorts and a Southern Bell outfit that
17 goes and visits people, am I mistaken?

18 COMMISSIONER KIESLING: Well, I don't think you
19 can assume that it is a guy.

20 CHAIRMAN CLARK: Or that they are wearing a blue
21 outfit.

22 COMMISSIONER GARCIA: Well, there was one at my
23 house the other day and I was able to take advantage of
24 that little fee I pay every month. What I'm saying is
25 that what we are talking about -- someone answer me

1 from that side -- is that we are talking about a
2 technician who goes to visit a person and this is the
3 leave behind card, I was here, or I'm here representing
4 this company?

5 MR. GREER: Yes, sir.

6 COMMISSIONER GARCIA: And we are assuming when we
7 are looking at these agreements that the company is
8 going to have a separate policy for each one of these
9 arbitration agreements, if we end up with ten ALECs, 32
10 ALECs, 623 ALECs, there is going to be a separate
11 policy if they come before us for arbitration or if
12 they deal individually with these companies?

13 COMMISSION STAFF: Commissioner, I was just going
14 to point out that this is a point of inconsistency in
15 the GTE arbitration. It was a different record, there
16 is a different recommendation.

17 COMMISSIONER GARCIA: Okay. But let's just talk
18 about this one.

19 CHAIRMAN CLARK: Wait a minute. I didn't notice
20 they were different recommendations.

21 COMMISSION STAFF: I'm not sure how comfortable it
22 is to be talking about the next rec, but, yes, it is.

23 CHAIRMAN CLARK: Well, I want to know if they are
24 different.

25 COMMISSION STAFF: It is different.

1 CHAIRMAN CLARK: And what is the GTE
2 recommendation?

3 COMMISSION STAFF: GTE's recommendation is a
4 generic card, but there was no presentation as far as
5 the record for MCI's proposal.

6 CHAIRMAN CLARK: Okay.

7 COMMISSION STAFF: That's why it's different.

8 COMMISSIONER GARCIA: I worry about this, and I go
9 back to what Commissioner Deason said, in the broader
10 perspective of what we are doing here. These are
11 companies which -- I mean, we have basically created
12 standards in other proceedings before us that basically
13 force this company to be a competitor and then we tie
14 their hands and say let's go at it.

15 CHAIRMAN CLARK: Commissioner Garcia, I came it at
16 it from a different angle. From a personal basis, I
17 would rather be able to grab a card that says AT&T as
18 opposed to write it out. I'm a terrible speller; I can
19 spell AT&T, but I might not be able to spell some of
20 the other ones.

21 COMMISSIONER GARCIA: Madam Chairman, when you
22 consider what is involved with -- and this is a guy who
23 can barely get a light bulb in, but when you consider
24 what these guys do --

25 COMMISSIONER KIESLING: Boy, you're making some

1 assumptions here about the service personnel.

2 COMMISSIONER GARCIA: No, I'm talking about
3 myself. I'm speaking about myself. No, I think
4 Southern Bell provides great service. I had my phone
5 down a few weeks ago and they provided excellent
6 service. The technician was absolutely wonderful.
7 And, in fact, I wrote a letter to the company stating
8 specifically that. But what I'm speaking about is when
9 you start looking at the minutia that we are involved
10 in, and forgive me for going back to you, Commissioner
11 Deason, because you may not want it to be included in
12 the argument here, but we are regulating again. We are
13 regulating what these guys are going to do. And now I
14 understand, Commissioner Clark, that you think it's
15 easier to put a card, but then we start talking about
16 the size of the card, the color coding of the card, if
17 we can have holograms on the card, and if there can be
18 a statement on the card that says, "Southern Bell
19 sucks, use AT&T." I mean, these or the absurdities
20 that we have gotten into this. And, forgive me, but it
21 almost seems like we are reregulating this deregulation
22 process. And it is absurd that I have to even suggest
23 that it would be better to write AT&T -- if they can
24 all agree to a generic card, all you're basically
25 putting on it is whoever that employee is being paid

1 through another company to show up and place on the
2 door. And once we open this to this discussion of this
3 type, be it MCI or whoever it is in this specific
4 instance, we keep opening it up to further minutia and
5 further regulation. And what I'm trying to do is avoid
6 that. That's why I thought that a generic card
7 addresses it much more directly. And what I was trying
8 to ask from staff is if we are not addressing a generic
9 card, then what you're saying to me is that the
10 companies have a right to provide whatever card it is
11 for Southern Bell to place when they visit, correct, or
12 for the technician to leave a leave behind card, right,
13 is staff's recommendation?

14 COMMISSION STAFF: Right.

15 COMMISSIONER GARCIA: That, of course, only
16 applies in your thinking when you came up with this
17 recommendation with MCI and AT&T?

18 COMMISSION STAFF: And it was requested by those
19 two, yes, sir, in the record in this proceeding.

20 COMMISSIONER GARCIA: So everyone else would go
21 with whatever relationship Southern Bell has
22 established and negotiated with the other parties?

23 COMMISSION STAFF: Whatever they can negotiate.

24 COMMISSIONER JOHNSON: They would do their own
25 negotiation.

1 MR. GREER: Yes.

2 COMMISSIONER JOHNSON: But I can second your
3 motion, Joe, because I agree with you. But it seems
4 like a silly issue to be discussing, but I agreed with
5 BellSouth, the gentleman that testified on BellSouth's
6 behalf, and I think it would be an administrative
7 nightmare. If I was a technician carrying around all
8 of these cards, you don't know how many companies you
9 are going to end up with, how many cards you might
10 have. It would be easier to have a generic card as
11 opposed to each company's individual card, in my mind.
12 But, you know, I could see how others would feel
13 differently.

14 CHAIRMAN CLARK: Okay. There is a motion and a
15 second on 8(b) to modify it with respect to the second
16 point on the leave behind cards. All those in favor
17 say aye.

18 COMMISSIONER JOHNSON: Aye.

19 COMMISSIONER GARCIA: Aye.

20 CHAIRMAN CLARK: Opposed, nay.

21 COMMISSIONER DEASON: Nay.

22 COMMISSIONER KIESLING: Nay.

23 CHAIRMAN CLARK: Nay. Is there another motion?

24 COMMISSIONER KIESLING: Yes. I'm willing to make
25 a motion, but I also would like to add something to

1 Issue 2, and that would be something along the lines
2 that if the technician does not have the appropriate
3 card, that the technician shall then use a generic
4 card.

5 CHAIRMAN CLARK: Okay. Is there a second to that
6 motion?

7 COMMISSIONER DEASON: I second that motion.

8 CHAIRMAN CLARK: All those in favor say aye.

9 COMMISSIONER KIESLING: Aye.

10 COMMISSIONER DEASON: Aye.

11 CHAIRMAN CLARK: Aye. Opposed, nay.

12 COMMISSIONER JOHNSON: Nay.

13 COMMISSIONER GARCIA: Nay.

14 CHAIRMAN CLARK: Issue 9.

15 MS. SIMMONS: Commissioners, I wonder could we go
16 back to Issue 7 just for one small moment. I think in
17 the process of modification we may have lost something.
18 There was a sentence at the end of the recommendation
19 statement in Issue 7, staff also recommends that the
20 Commission should not arbitrate provisions for
21 liquidated damages in the AT&T and MCI interconnection
22 agreements.

23 CHAIRMAN CLARK: I think we agree with that part
24 of the staff recommendation.

25 COMMISSIONER DEASON: That is correct.

1 MS. SIMMONS: Okay. I just wanted it clear that
2 you did, indeed, vote that.

3 CHAIRMAN CLARK: Issue 9. Questions?

4 COMMISSIONER DEASON: I move staff.

5 MR. REITH: Commissioners, I would just like to
6 point something out that staff does believe that
7 BellSouth should be able to reserve some capacity as
8 far as line class goes. We didn't address a number
9 because there is not enough record to address a number.

10 CHAIRMAN CLARK: Okay. Without objection, Issue 9
11 is approved. Issue 10.

12 COMMISSIONER DEASON: Move staff.

13 CHAIRMAN CLARK: Let me ask a question on 10. Is
14 this different from GTE?

15 MR. REITH: The result that dark fiber is not a
16 network element is the exact same recommendation in
17 GTE. In GTE, we take it a little bit further, and we
18 are recommending that for interconnection only, if AT&T
19 and MCI would like to lease dark fiber then what we are
20 saying is based on the past agreements that they have
21 made with MFS, that that same part should be available.

22 CHAIRMAN CLARK: All right. Without objection, 10
23 is approved. Issue 11.

24 MR. REITH: Commissioner, Issue 11 has to do with
25 copies of engineering records for poles, ducts, and

1 conduits, and also how much capacity BellSouth should
2 be able to reserve for itself. Staff is recommending
3 that to the extent that BellSouth reserves any capacity
4 for itself, it should allow AT&T and MCI to reserve the
5 same amount of capacity over the same time frame. And
6 I have got to point out to you that this is a direct
7 result of the FCC order and the interpretation it had
8 of the Act. At the last very paragraph in my staff
9 analysis, I said we do have some concerns about not
10 allowing BellSouth to reserve more capacity than the
11 ALEC, because they are being put in a position of a
12 wholesaler or retailer, we have got carrier of last
13 resort obligations.

14 CHAIRMAN CLARK: I had a question as to what your
15 point was in the last paragraph, and is this one item
16 we should bring to their attention about our concern
17 about their ability to provide these services if they
18 are not allowed to reserve capacity and some allowance
19 has to be made for that. So we should bring that to
20 their attention.

21 MR. REITH: I think from a policy standpoint, yes.

22 CHAIRMAN CLARK: Was there a motion on Issue 11?

23 COMMISSIONER JOHNSON: I can move Issue 11 with
24 the understanding that we will provide the information
25 regarding our concern. And, Mike, I think you clearly

1 articulated what the concerns are.

2 MR. REITH: Yes, ma'am.

3 COMMISSIONER KIESLING: Second.

4 CHAIRMAN CLARK: Without objection, Issue 11 is
5 approved. Issue 12.

6 MR. GREER: Commissioner, Issue 12 deals with
7 whether BST should process PIC change requests of
8 carriers other than AT&T and MCI for their local
9 customers. Staff believes that BellSouth should not
10 process these requests.

11 CHAIRMAN CLARK: Questions, Commissioners?

12 COMMISSIONER DEASON: I move staff.

13 COMMISSIONER GARCIA: Are we dealing with them
14 differently? Well, obviously we are, but distinguish
15 for me how we deal with when BellSouth gets its
16 requests as opposed to an ALEC gets this request.

17 MR. GREER: To me there is no difference. Any
18 request for a PIC change for a local customer should
19 come through the provider of local service for that
20 customer. So there is to me no difference.

21 COMMISSIONER GARCIA: So they would be held to the
22 same standard, you are just simply specifying Southern
23 Bell.

24 MR. GREER: Yes.

25 CHAIRMAN CLARK: Without objection, Issue 12 is

1 approved. Issue 13.

2 MR. GREER: Commissioner, Issue 13 deals with the
3 electronic interfaces for operations support systems.
4 Staff believes for the most part the companies are
5 working toward resolving this issue, but we think we
6 should order BellSouth to provide these services.
7 There is a requirement date of January 1, '97 in the
8 FCC's order. We to some extent believe that is a
9 little unrealistic for the electronic interfaces, so we
10 have kind of developed a process to where they would
11 let us know when they will provide them for the
12 carriers.

13 CHAIRMAN CLARK: Questions, Commissioners?

14 COMMISSIONER GARCIA: I move it.

15 CHAIRMAN CLARK: Without objection, Issue 13 is
16 approved. Issue 14A.

17 MS. SIMMONS: Issue 14(a) addresses the
18 application of Bell's centralized message distribution
19 system to intraLATA, collect, third party, and calling
20 card calls. It is currently used on an interLATA basis
21 and the parties have requested that it be applied
22 intraLATA. Staff has recommended that it should.

23 COMMISSIONER DEASON: Move staff.

24 CHAIRMAN CLARK: Without objection?

25 COMMISSIONER GARCIA: I'm sorry, Commissioner, as

1 part of 13 you have a requirement for customer records
2 that you don't require that they obtain a notice for
3 that information, am I mistaken in that?

4 MS. SIMMONS: I'm sorry, where?

5 COMMISSIONER GARCIA: I'm going back to 13.
6 Agree.

7 MR. GREER: What was your question again,
8 Commissioner?

9 COMMISSIONER GARCIA: If I'm not mistaken, staff
10 recommended that BellSouth should not require MCI or
11 AT&T to obtain prior written authorization from
12 customers before allowing access to customer service
13 records.

14 MR. GREER: They provide a blanket authorization
15 saying that they will get the authorization from the
16 customer prior to them accessing the records. There is
17 a requirement in Section -- I believe it's 222 of the
18 FCC's requirements that essentially says that all
19 telecommunications carriers will protect the
20 confidentiality nature of the information.

21 COMMISSIONER GARCIA: And this works to all
22 providers as a general rule, correct?

23 MR. GREER: Yes.

24 COMMISSIONER GARCIA: That's all. I just wanted
25 to make sure of that. We already passed that.

1 CHAIRMAN CLARK: 14(a). Is there a motion?

2 COMMISSIONER DEASON: Move staff.

3 CHAIRMAN CLARK: Without objection, 14(a) is
4 approved. 14(b).

5 COMMISSION STAFF: 14(b), Commissioners, is the
6 information services, the handling of that between LEC
7 and ALEC. AT&T has proposed that BellSouth handle both
8 rates and bills of AT&T's customers calls to
9 information service providers. We were recommending
10 that that be approved, with the exception that AT&T
11 should not be paid in connection with any call by its
12 customers until it has negotiated its own contracts
13 with ISPs, and it has stated that it expects to do that
14 within the first few months of 1997. We also stated
15 that to the extent BellSouth incurs any additional
16 costs as a result of handling this it traffic that they
17 should be allowed to recover those costs. MCI has not
18 proposed that Bell bill for them, but otherwise their
19 proposal Alabama is the same, and we have recommended
20 it be handled the same.

21 CHAIRMAN CLARK: I just had a question. Is this
22 how we dealt with the information service provider
23 issue before?

24 COMMISSION STAFF: Yes, except in this case AT&T
25 has taken --

1 COMMISSIONER DEASON: Including MFS, correct?

2 COMMISSION STAFF: Correct. -- has taken the
3 extra step and asked that Bell go ahead and do the
4 billing for them just for a finite period of time.

5 CHAIRMAN CLARK: Without objection --

6 COMMISSIONER DEASON: There is an objection. I do
7 not agree with staff's recommendation. I object to it.
8 I believe that the ALEC should have to negotiate their
9 own agreements with information service providers and
10 that would serve the best interests of the customer in
11 the long run.

12 CHAIRMAN CLARK: Let me ask you, what was the vote
13 on the MFS one? I had a concern that we were not being
14 consistent.

15 COMMISSION STAFF: The recommendation is the same
16 here. Your concern last time, what we added to address
17 it was the way staff had handled it, we said that ALECs
18 may not collect any revenue for this unless they have a
19 contract with the ISP. It was staff's position that
20 all of this should be made essentially invisible to an
21 end user, and that if they want to call an information
22 service provider, that call should not be blocked. And
23 this recommendation is the same.

24 CHAIRMAN CLARK: With respect to Issue 14(b), is
25 there a motion?

1 COMMISSIONER GARCIA: Commissioner Deason, could
2 you explain your position? I'm sorry, you sort of
3 abbreviated there, I believe.

4 COMMISSIONER DEASON: Well, we kind of had a much
5 more amplified discussion at a previous time, but I
6 know that was that record and this is this record. But
7 the best I can determine the records are very similar
8 to the development of the issue. I think that it is
9 the responsibility of the ALEC to negotiate their own
10 contractual relationships with the ISPs, and that they
11 would not have to rely on the ILEC to process those
12 calls. Also, there is the provision in the
13 recommendation to the extent that this arrangement
14 which staff is recommending imposes additional costs on
15 BellSouth, that AT&T may need to pay those costs. But
16 we don't have any information as to what those costs
17 are, and I think that the parties should be able to the
18 extent there is additional costs and they can come to
19 some mutual understanding of what those costs are and
20 what a reasonable compensation should be, AT&T and
21 BellSouth are free to do that. But if we impose it,
22 that this is something that BellSouth has to do, we are
23 basically taking it away from the negotiating process.
24 I think that if this is something that AT&T feels like
25 they need that badly, they can go to BellSouth and

1 negotiate it. And if BellSouth is unreasonable, then
2 they have the alternative to go straight to the ISP and
3 negotiate with them. That's what competition is. What
4 we are going here is not procompetition in my opinion.

5 COMMISSION STAFF: Commissioner, if I might
6 address that.

7 COMMISSIONER GARCIA: Yes, please.

8 COMMISSION STAFF: AT&T was very specific here and
9 uniquely so. They said we need this strictly as an
10 interim measure. We expect to have our own contracts
11 in place -- they said at one time in March and another
12 time by June. And it is strictly to tide them over
13 until those contracts are in place and they are on
14 record as saying that, and they are doing it for the
15 benefit of their customers. That's why staff had no
16 real objection to it.

17 CHAIRMAN CLARK: There was a motion, is that
18 correct?

19 COMMISSIONER JOHNSON: Yes. If it wasn't a
20 motion, I move it.

21 CHAIRMAN CLARK: All right. And a second?

22 COMMISSIONER KIESLING: Yes.

23 CHAIRMAN CLARK: All those in favor say aye.

24 COMMISSIONER KIESLING: Aye.

25 COMMISSIONER JOHNSON: Aye.

1 COMMISSIONER GARCIA: Aye.

2 CHAIRMAN CLARK: Aye. Opposed, nay.

3 COMMISSIONER DEASON: Nay.

4 CHAIRMAN CLARK: Issue 15.

5 MR. GREER: Commissioners, Issue 15 deals with
6 what billing format should be used to render bills.

7 CHAIRMAN CLARK: Questions, Commissioners?

8 COMMISSIONER JOHNSON: Move it.

9 CHAIRMAN CLARK: Without objection, Issue 15 is
10 approved. Issue 16.

11 COMMISSIONER DEASON: Commissioners, Issue 16, in
12 my opinion, is very similar to a previous issue which I
13 forget the number of, but I think this is something
14 that contains the amount of detail and minutia which is
15 something that should not be in front of the
16 Commission. What is being recommended by staff, and I
17 understand the reason, because there is no other
18 alternative information in the record to base your
19 recommends upon, but if you will look at some of what
20 is being recommended, some of the specifics I'm not
21 comfortable with at this point, including in our
22 arbitration decision. I think this is something that
23 the parties, once we make a decision on all of these
24 other issues, given the 30-day period or whatever
25 period we decide on in the last issues concerning the

1 final processing of the agreement, that the parties can
2 use that time to negotiate these types of specifics.
3 And if they are not able to do it within 30 days, they
4 can provide us with what they think they should be and
5 we can choose between the two. But right now I'm not
6 comfortable doing it at this point in the arbitration
7 process.

8 CHAIRMAN CLARK: Do you make the same motion that
9 you made in the last --

10 MR. GREER: Issue 7, Commissioner.

11 CHAIRMAN CLARK: Issue 7.

12 COMMISSIONER DEASON: Whatever the number was.

13 CHAIRMAN CLARK: Is there a second?

14 COMMISSIONER KIESLING: I have just a question to
15 clarify. Does it also include, though, staff's
16 recommendation that liquidated damages don't belong in
17 these?

18 CHAIRMAN CLARK: Yes.

19 COMMISSIONER DEASON: Yes.

20 COMMISSIONER KIESLING: Second.

21 CHAIRMAN CLARK: Without objection, that motion is
22 approved. Issue 17.

23 MR. REITH: Commissioner, Issue 17 deals with AT&T
24 and MCI requesting an appearance on the cover of
25 BellSouth's directory. Staff is recommending no. AT&T

1 and MCI should directly contract with BAPCO for that.

2 COMMISSIONER DEASON: Move staff.

3 COMMISSIONER JOHNSON: Second.

4 CHAIRMAN CLARK: No, this is different from the
5 GTE, but that is because BAPCO is a separate company?

6 COMMISSION STAFF: In the GTE, we are also
7 recommending that an appearance should not be -- we
8 should not recommend an appearance on the cover. So
9 this part is consistent with GTE.

10 CHAIRMAN CLARK: Okay. Without objection, Issue
11 17 is approved. Issue 18.

12 MR. GREER: Commissioner, Issue 18 deals with the
13 four interim number portability solutions proposed by
14 AT&T. Staff believes that the interim solution should
15 be implemented and the cost recovery mechanism should
16 mirror the proceeding in --

17 CHAIRMAN CLARK: Questions, Commissioners?

18 COMMISSIONER DEASON: Move staff.

19 CHAIRMAN CLARK: Without objection, Issue 18 is
20 approved. Issue 19.

21 COMMISSION STAFF: Commissioner, Issue 19 asks
22 whether the provisions of the Act, Sections 251 and 252
23 apply to the pricing of switched access. And staff's
24 recommendation is no, that it does not.

25 CHAIRMAN CLARK: Questions?

1 COMMISSIONER DEASON: Move staff.

2 CHAIRMAN CLARK: Without objection, Issue 19 is
3 approved. Issue 20.

4 COMMISSIONER GARCIA: Move it.

5 COMMISSIONER DEASON: Second.

6 CHAIRMAN CLARK: Without objection, 20 is
7 approved. Or do we even have to do that? We need no
8 vote on 20. 21.

9 MS. SHELFER: Commissioners, I need to make a
10 modification. On Page 165, the next to the last
11 paragraph, which begins with, "Staff believes the
12 reciprocal rate of," and it is .001, it should be
13 .00125.

14 CHAIRMAN CLARK: Questions on Issue 21?

15 MS. SHELFER: Commissioners, I would just like to
16 point out that on the tandem switching included in that
17 rate is the transport rate. The transport rate is
18 included in the tandem switching rate.

19 COMMISSIONER DEASON: Well, let me ask a question.
20 Why is it that we are rejecting the notion of simple
21 bill and keep?

22 MS. SHELFER: Staff believes that there was enough
23 information provided to set permanent rates.

24 COMMISSIONER DEASON: And it is staff's opinion
25 that bill and keep is not a permanent option?

1 MS. SHELFER: I believe it's not a permanent
2 option because it is depending on the balance of the
3 traffic.

4 COMMISSIONER DEASON: Can it not be a permanent
5 option until the parties learn that the balance is not
6 there and they can come before the Commission and
7 request a specific rate?

8 MS. SHELFER: Yes, it could be an interim option.

9 COMMISSIONER DEASON: Isn't that consistent with
10 our previous decision?

11 MS. SHELFER: Yes, it is.

12 COMMISSIONER DEASON: You're saying that decision
13 we didn't have any type of cost information to even
14 determine a rate?

15 MS. SHELFER: I believe that the costing
16 information --

17 CHAIRMAN CLARK: You need to speak up. You need
18 to get close to the mike and speak up.

19 MS. SHELFER: I believe that the cost information
20 that we have in this recommendation is adequate to set
21 the rates.

22 COMMISSIONER DEASON: Did we have any cost
23 information when we decided this issue before?

24 MS. SHELFER: Yes, we did.

25 COMMISSIONER DEASON: Was that cost information

1 insufficient before?

2 MS. SHELFER: I did not work on the docket, so --
3 I believe that the --

4 MR. GREER: Commissioner, I do believe there was
5 some concern with the cost information prior to the --
6 so I believe there was some concern as far as the
7 validity of the cost information.

8 COMMISSIONER DEASON: As I recall, and I may be
9 confusing my records, and if I am let me know, because
10 I know we need to base this decision on the record in
11 this case, but it seems to me in one of these
12 proceedings we had record information about the cost of
13 tracking and measuring may not be -- may be more than
14 the benefits of having to assess these costs and that
15 bill and keep may be the more efficient and cheaper
16 alternative in the long-run. Was there any record in
17 this docket to that effect?

18 MR. GREER: I don't recall that being a major
19 concern in this record. They didn't raise that many
20 concerns associated with bill and keep type functions.

21 COMMISSIONER DEASON: So you're saying that this
22 is not basically, then, a change in policy because when
23 we approved bill and keep before it was because of
24 questionable cost information and that staff is more
25 comfortable with this cost information?

1 MR. GREER: And I think there was some concern
2 about the volume of the traffic, whether it was in
3 balance or out of balance, yes.

4 MS. SIMMONS: Commissioners, the cost information
5 that was provided in this docket was provided in the
6 state proceeding. However, in the state proceeding it
7 was provided at such a late date staff did not have the
8 time to evaluate it, and that was basically the reason.

9 CHAIRMAN CLARK: And as I understand the
10 recommendation, you had cost information and the
11 parties did not -- AT&T did suggest the bill and keep.

12 COMMISSION STAFF: Yes. In this proceeding?

13 CHAIRMAN CLARK: Yes. I got you.

14 COMMISSIONER DEASON: AT&T, as I understand it,
15 wanted bill and keep until there was adequate cost
16 information.

17 CHAIRMAN CLARK: That's correct.

18 COMMISSIONER DEASON: And does AT&T agree that the
19 information we are basing this upon is adequate?

20 MR. GREER: I think they were basing that on the
21 TELRIC, that they didn't have a TELRIC study. So I
22 don't know. I mean, this proceeding was kind of ended
23 right at the end of the stay of the TELRIC methodology,
24 I believe.

25 COMMISSIONER DEASON: Well, are the rates staff is

1 recommending, are they TELRIC based rates?

2 MS. SHELFER: No, they are not.

3 COMMISSIONER DEASON: What are these rates based
4 upon?

5 MS. SHELFER: These rates, some are TSLRIC and
6 some are LRIC. Staff believes that we have adequately
7 compensated on joint and common costs to make them
8 TSLRIC.

9 CHAIRMAN CLARK: Any other questions on 21?

10 COMMISSIONER JOHNSON: Move it.

11 CHAIRMAN CLARK: There is a motion, is there a
12 second?

13 COMMISSIONER DEASON: Second.

14 CHAIRMAN CLARK: All those in favor say aye.

15 (Unanimous affirmative vote.)

16 CHAIRMAN CLARK: Opposed, nay. Issue 22.

17 MR. GREER: Issue 22 deals with establishing
18 general contract terms and conditions. Staff is
19 recommending that we essentially deal with those when
20 the arbitration agreement comes in for approval.

21 COMMISSIONER GARCIA: Move it.

22 CHAIRMAN CLARK: Without objection, Issue 22 is
23 approved. Issue 23.

24 MR. GREER: Commissioner, Issue 23 deals with
25 interim number portability cost recovery. I think we

1 have dealt with that in Issue 18. We are recommending
2 the Commission handle the cost recovery in the 950737
3 proceeding.

4 COMMISSIONER GARCIA: Move it.

5 COMMISSIONER DEASON: Second.

6 CHAIRMAN CLARK: Without objection, Issue 23 is
7 approved. Issue 24.

8 COMMISSION STAFF: Commissioners, Issue 24
9 addresses the question of what intrastate access
10 charges, if any, should be applied to the unbundled
11 local switching element. Certain access charges were
12 imposed by the FCC order, however, that was stayed.
13 Staff's recommendation is that no additional charges
14 over those approved in Issue 1(b) should be applied to
15 the unbundled local switching element. However, we
16 would note that where switched access charges apply
17 those cannot be avoided per state law.

18 COMMISSIONER DEASON: Move staff.

19 CHAIRMAN CLARK: Without objection, Issue 24 is
20 approved. Issue 25.

21 MR. REITH: Commissioners, Issue 25 addresses the
22 appropriate rates, terms, and conditions for
23 collocation. Staff recommends that the Commission
24 approve BellSouth's Handbook for Collocation. The
25 rates for physical collocation are included in the

1 handbook, and staff recommends that those rates be used
2 in the interim until the Commission can set cost-based
3 rates.

4 CHAIRMAN CLARK: Questions, Commissioners?

5 COMMISSIONER GARCIA: Move staff.

6 CHAIRMAN CLARK: Without objection, Issue 25 is
7 approved. Issue 26.

8 MR. GREER: Commissioners, Issue 26 deals with the
9 implementation parity of local exchange service. Staff
10 believes that BellSouth should be required to provide
11 dialing parity to MCI on local calling.

12 CHAIRMAN CLARK: Questions, Commissioners?

13 COMMISSIONER DEASON: Move staff.

14 CHAIRMAN CLARK: Without objection, Issue 26 is
15 approved. Issue 27. We don't need to vote on that?

16 COMMISSION STAFF: It's informational.

17 CHAIRMAN CLARK: The same with Issue 28?

18 COMMISSION STAFF: Yes, ma'am.

19 CHAIRMAN CLARK: Issue 29.

20 MS. BROWN: Commissioners, Issue 29 and 30 in this
21 case are the same issues in Item 8 in the GTE case.
22 They are the sort of procedural clean up issues. In
23 the GTE case, the primary recommendation is the same as
24 it is here. There is also an alternate recommendation
25 that I would like to orally make for this case. The

1 primary recommendation in Issue 29 --

2 COMMISSIONER GARCIA: What are you on, 29?

3 MS. BROWN: Yes, Issue 29.

4 COMMISSIONER GARCIA: Thank you. Sorry.

5 MS. BROWN: Issue 29 is the same as Issue 30 in
6 the GTE case, where there is an alternate
7 recommendation that basically says when the arbitrated
8 agreement is filed with the Commission pursuant to the
9 next issue, Issue 30, the Commission should approve the
10 negotiated parts of that agreement that were settled
11 out of this arbitration proceeding under the broader
12 standard, more flexible standard for approval of
13 negotiated agreements. The arbitrated part needs to be
14 approved pursuant to the standards in 251 and the FCC's
15 rules, but the parts that the parties were able to
16 agree to you should approve unless they are
17 discriminatory or against the public interest.

18 CHAIRMAN CLARK: Questions, Commissioners?

19 COMMISSIONER DEASON: Don't we have another
20 recommendation? Could we hear that, please.

21 COMMISSION STAFF: Yes. Staff's primary
22 recommendation is that the arbitrated agreements should
23 be approved pursuant to the standards set forth in
24 Section 252(e)(2)(B), which sets forth the standards
25 for arbitrated agreements. Staff believes that

1 initially the Commission's role as an arbitrator dealt
2 with issues, but at this stage of the game, or the
3 proceeding the arbitrated agreement that will be
4 presented to you is an agreement, and pursuant to the
5 Act it is your responsibility to approve the agreement
6 pursuant to 252(e)(2)(B).

7 COMMISSIONER GARCIA: Distinguish them, please.

8 COMMISSION STAFF: Okay. 252(e)(2)(B) states that
9 the Commission may only reject an agreement, an
10 arbitrated agreement based on -- if the agreement does
11 not meet requirements of Section 251 and the FCC
12 regulations or standards in Subsection D. Also, in
13 terms of the negotiated standard, the negotiated
14 standard says that the Commission may only reject
15 agreements adopted by negotiation if it does not meet
16 the public interest standards and meets the
17 discrimination standard. The distinction here, too, is
18 that negotiated agreements the Commission has 90 days
19 to reject and an arbitrated agreement the Commission
20 has 30 days to reject. So the distinction here is in
21 staff's primary recommendation you are looking at the
22 agreement as a whole. The parties were to submit
23 resolved and unresolved issues. The Commission had
24 nine months after which they could -- to determine the
25 unresolved issues. Then the parties are to submit to

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1 you an agreement which incorporates both those resolved
2 and unresolved issues. At that point, the agreement is
3 then submitted to you, and staff believes that
4 according to 252, you are to approve that agreement
5 pursuant to the arbitration standards, because it is an
6 arbitrated agreement and not a negotiated agreement.

7 COMMISSIONER DEASON: In essence, the issue is do
8 we have one unified agreement that we apply arbitration
9 standards to for final approval or do we look at it
10 like two separate agreements, a negotiated agreement
11 where you apply one standard for approval and an
12 arbitrated agreement where you apply a different
13 standard for approval.

14 COMMISSION STAFF: Yes, sir.

15 CHAIRMAN CLARK: You made a comment on resolved
16 and unresolved issues, and that's what we arbitrated,
17 the unresolved issues?

18 COMMISSION STAFF: Yes, ma'am. You arbitrated the
19 unresolved issues and you applied the arbitrated
20 standard to this proceeding. Now, also under the Act
21 it states that once that agreement is solidified, it
22 comes to you to also be approved under the arbitrated
23 standard, the agreement itself. And staff would --

24 CHAIRMAN CLARK: So you think the standard of
25 public interest, the lesser standard is only applicable

1 when you have a total negotiated agreement?

2 COMMISSION STAFF: Yes, ma'am.

3 COMMISSIONER JOHNSON: And, Ms. Brown, your
4 position?

5 MS. BROWN: My position is that the Commission
6 should look at the two parts to the total agreement
7 that the parties submit under the two different
8 standards. That the parties should identify the issues
9 that they resolved themselves and the issues that the
10 Commission arbitrated, and the Commission should make
11 sure -- which it basically already has in this
12 proceeding -- that the unresolved issues that it had to
13 determine reflect the standards in 251 and the FCC
14 order, but the parts that the parties were able to
15 negotiate before the Commission had its hearing should
16 be viewed in the broader standard. I don't agree that
17 somehow because there is an agreement that incorporates
18 both, basically negotiated matters and unnegotiated
19 matters at the end, that that means that the
20 flexibility of the parties to work out their own
21 problems should be limited. The problem I have with it
22 is if they work out some issues and they come up with
23 something that works for both of them, if you use the
24 one standard for both, then you have to -- then their
25 flexibility is limited in what they can resolve

1 themselves when they come up with something that
2 doesn't fit with the 251 standards or the FCC's order.
3 And I think that discourages negotiation and settlement
4 and creativity among the parties. I also don't think
5 specifically that the language in 252 indicates that
6 the resolved issues need to be viewed in the same light
7 that the unresolved issues do.

8 CHAIRMAN CLARK: Questions, Commissioners?
9 Anymore questions? Is there a motion?

10 COMMISSIONER DEASON: I don't understand Martha's
11 position that staff's primary would somehow inhibit
12 negotiations.

13 MS. BROWN: Well, it's this. It's because of the
14 limitation on what they can negotiate. What they can
15 negotiate, if they can't settle everything before the
16 arbitration petition is filed, then they have got to
17 follow all of the requirements of 251, if they are
18 going to get us to approve it at all. That's the point
19 that I'm making. And I think that's an arbitrary
20 cut-off point. Just because they haven't -- we all
21 know that settlement negotiations go on past a hearing
22 time. I think you're going to limit that if you insist
23 that any negotiations that happen and any agreement
24 that is reached after the arbitration petition is filed
25 has to comply with all of the many requirements of the

1 FCC order. The point of the negotiation standard is to
2 avoid that. That provision in the Act specifically
3 says the parties may work things out themselves and
4 negotiate agreements that do not comply with 251 or the
5 FCC's decisions. And I don't see -- to me it just
6 seems sort of arbitrary to say, well, up to this date
7 you get that flexibility, past that date forget it.
8 What you agree to has to fit all of these little
9 compartments.

10 COMMISSIONER DEASON: Well, let me tell you what
11 my concern is. I know on at least two issues we voted
12 here today that what staff was recommending, which was
13 contained in the ALECs' proposed agreements, was too
14 specific for this stage of the arbitration, that we are
15 going to leave it to the parties to see if they can
16 reach that type of specificity on a negotiated basis
17 and hopefully be part of the arbitrated agreement that
18 comes back to us for final approval. That is the way I
19 want to treat it. But I want to be consistent with
20 your recommendation or Monica's recommendation to
21 whichever is consistent with that treatment. I want to
22 give them the flexibility and the opportunity to try to
23 develop that type of specificity that they want within
24 their agreement, and if they can agree on it, I will be
25 comfortable that it is fair to both parties. To the

1 extent they can't, and they file their versions of
2 their arbitrated agreement as a result of this
3 arbitration proceeding, I will be comfortable then to
4 have to pick between the two. That's the procedure I
5 want to follow, and I need to know which of your,
6 either your or Monica's recommendation is consistent
7 with that treatment, or if both are consistent with
8 that treatment.

9 COMMISSION STAFF: Commissioners, I would suggest
10 also that I don't think that the parties are limited
11 from negotiating at this point. If they want to go
12 back and negotiate the entire agreement and come back
13 with an entire negotiated agreement, you could approve
14 that under the negotiated standard. So my concern is
15 that we are looking at it as a whole. We have an
16 arbitrated agreement which entails resolved and
17 unresolved issues. If the parties had withdrawn those
18 issues and had developed a negotiated agreement, that
19 would have been great. On the other hand, too, I would
20 suggest that this might encourage negotiations. I can
21 see the other side of this. If the parties know it's
22 going to be under a more difficult standard, they might
23 want to go back and -- which I doubt -- but they could
24 negotiate the entire agreement. But, again, I would
25 submit that we are looking at your role as a Commission

1 to decide on agreements, not issues at that stage of
2 the proceeding.

3 COMMISSIONER DEASON: Well, what we are doing on
4 those two issues, which I just discussed, is that
5 inconsistent with your recommendation?

6 COMMISSION STAFF: I'm sorry.

7 COMMISSIONER DEASON: Is it inconsistent with your
8 recommendation? Remember there are two issues we told
9 the parties to come back, that we are not today as part
10 of this arbitration going to decide with that much
11 specificity, basically taking one party's, to this
12 arbitration, one party's position and saying that's
13 what we are going to approve at this point.

14 COMMISSION STAFF: Well, then you've got an
15 unresolved issue that would need to be -- that the
16 Commission would have to make a decision based, I
17 believe, on an arbitrated standard, because it wouldn't
18 have been negotiated at that point.

19 COMMISSIONER DEASON: So while they can negotiate
20 it, the standard we would apply to it would be the
21 arbitration standard for final approval.

22 COMMISSION STAFF: Yes, if it is part of the
23 overall arbitrated agreement, yes, sir.

24 MS. BROWN: Commissioner, I sort of view this
25 process a little bit differently than you do. I think

1 that the standard for approval address substantive
2 issues between the parties. Whether it be the
3 arbitration, or an approval of a negotiated agreement,
4 or negotiated issues. Those are the substantive
5 matters that are covered in 251, or are required in
6 some effective interconnection agreement. The
7 agreement, quote, unquote, or the memorialization of
8 the Commission's substantive decisions that the parties
9 are going to file later, is really a little bit
10 different than that. It is the written explanation of
11 the substantive decision that you have made. That is
12 the way I view it. So when you say agreement, the
13 standard then really may become something else. The
14 substantive approval of the different parts, especially
15 the parts that they have agreed to, because you haven't
16 had the opportunity to decide those like --

17 COMMISSIONER GARCIA: The alternative, or your
18 recommendation, Martha, is that --

19 MS. BROWN: I think they both, whichever way you
20 all choose to go on this issue, they both will address
21 and accommodate the change in your issues.

22 COMMISSIONER GARCIA: Right. However, you believe
23 that the alternative sort of encourages people to
24 negotiate things out, to get them out of the way and to
25 have the stricter standard on what is not negotiated?

1 MS. BROWN: That is exactly right.

2 COMMISSIONER GARCIA: And Monica's option is that
3 if they don't negotiate everything out, everything gets
4 strict, so that is what forces them to try to get it
5 out of the way or negotiate out.

6 MS. BROWN: And I think the Act encourages that.
7 I think the Act is designed to get the parties to work
8 things out themselves. And only last ditch after 4-1/2
9 months of negotiating it are they to come to the
10 Commission to get a state imposed solution. And I
11 think if you limit the time that they can negotiate,
12 you are not necessarily encouraging that part of the
13 Act that I think is important. You are within your
14 discretion to do it either way, I think, under the Act.

15 COMMISSIONER JOHNSON: Then let me be clear. On
16 Commissioner Deason's last question regarding the
17 issues that we left open, and how they might be
18 impacted by applying the primary or the alternative,
19 under the primary, if those issues are worked out, they
20 are still subject to the arbitrated agreement standard
21 or review, and under the alternative, they would be
22 subject to the negotiated --

23 MS. BROWN: No. No, I don't think so. I think
24 those are substantive decisions that you have
25 arbitrated. You have just decided not to choose

1 staff's recommendation. You have answered the issue
2 that was unresolved. You have said Bell has to provide
3 exactly what it would provide to its own. Now what you
4 have to do, parties, is work out the little
5 implementation details. But that is not the same as
6 approving the substantive resolution of the problem.
7 Do you see what I'm getting at? You have arbitrated
8 that issue. So either under the primary or the
9 alternative, the standard is and should be the stricter
10 standard. Now, how they implement it, that's for the
11 next issue.

12 MR. GREER: Commissioners, as bad as I hate to say
13 something, my only concern with either process,
14 whichever one you do, is that we are clear as far as
15 what is arbitrated, what should fall under the
16 arbitrated standard and what should be under a
17 negotiated standard. Because when we get an agreement
18 back in, being one of the people that will have to look
19 at it, I'm going to have a hard time, I've got a
20 feeling, of distinguishing what is arbitrated and what
21 is not.

22 MS. BROWN: Well, I don't think -- I don't know,
23 because we haven't seen one of these yet. But I'm
24 hoping or envisioning that the parties will say here
25 are the issues that we resolved, and here are the parts

1 of the agreement that reflect that. Here are the
2 issues that the Commission arbitrated, and here are the
3 parts of the agreement that do that. Now, when we get
4 into a lot of the little implementations of it, we
5 don't have an arbitrated decision on any of those,
6 really. Those are more the implementation things that
7 you didn't want to deal with. And now because the
8 parties want something in writing, what you're going to
9 do is probably some other arbitration, pick and choose
10 kind of. We like this agreement or we like that one,
11 if they can't do it themselves.

12 COMMISSIONER DEASON: Commissioners, I would move
13 of the primary recommendation. I think it's going to
14 be administratively simpler to have one arbitrated
15 agreement. We are in arbitration at this stage of the
16 proceeding, I think it is a more restrictive standard,
17 but to the extent it is a more restrictive standard I
18 think it's more likely it's going to withstand judicial
19 review. And I'm comfortable with applying that
20 stricter standard on it, and I'm told by both attorneys
21 that we can accomplish what we have voted on and the
22 issues in this case applying that standard to it. And
23 from listening from our own technical staff, I think
24 it's going to be administratively easier on them to
25 process it that way. So for those reasons I would move

1 primary.

2 CHAIRMAN CLARK: I think it will also have the
3 effect of incenting them to negotiate the whole ball of
4 wax.

5 COMMISSIONER KIESLING: Second.

6 CHAIRMAN CLARK: All those in favor of the primary
7 recommendation on Issue 29, say aye.

8 COMMISSIONER DEASON: Aye.

9 COMMISSIONER JOHNSON: Aye.

10 COMMISSIONER KIESLING: Aye.

11 CHAIRMAN CLARK: Aye.

12 COMMISSIONER GARCIA: Can I ask a question? I
13 know we have already voted on it, just for curiosity.
14 Under the standard, Monica, if we negotiate everything
15 out except one issue, the whole agreement goes into the
16 negotiated standard? I'm sorry the arbitration
17 standard.

18 MS. BARONE: The parties could withdraw that and
19 they could file a negotiated agreement on all of those
20 issues, that would be an alternative.

21 CHAIRMAN CLARK: Issue 30.

22 MS. BROWN: Commissioners, Issue 30, there is not
23 really any disagreement since you have decided, and
24 staff moves that the parties will submit a written
25 agreement and the Commission -- within 30 days -- and

1 the Commission will review it.

2 CHAIRMAN CLARK: Questions?

3 COMMISSIONER KIESLING: I move it.

4 CHAIRMAN CLARK: Without objection, Issue 30 is
5 approved. Issue 31.

6 COMMISSIONER KIESLING: Move it.

7 CHAIRMAN CLARK: Without objection, Issue 31 is
8 approved.

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CERTIFICATE OF REPORTER

STATE OF FLORIDA)
COUNTY OF LEON)

I, JANE FAUROT, Court Reporter, do hereby certify that the foregoing proceedings was transcribed from cassette tape, and the foregoing pages numbered 1 through 199 are a true and correct record of the proceedings.

I FURTHER CERTIFY that I am not a relative, employee, attorney or counsel of any of the parties, nor relative or employee of such attorney or counsel, or financially interested in the foregoing action.

DATED THIS 9th day of December, 1996.

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