



1 **APPEARANCES:**

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3 Monroe Street, #200, Tallahassee, Florida, appearing  
4 telephonically on behalf of BellSouth Mobility.

5 **MARK LOGAN**, Bryant, Miller & Olive, P. A.,  
6 201 South Monroe Street, Tallahassee, Florida 32301,  
7 appearing telephonically on behalf of AT&T  
8 Communications of the Southern States, Inc.

9 **NANCY B. WHITE**, c/o Nancy H. Sims,  
10 BellSouth Telecommunications, Inc., 150 South Monroe  
11 Street, Suite 400, Tallahassee, Florida 32301-1556,  
12 appearing telephonically on behalf of Bell South  
13 Telecommunications.

14 **J. JEFFRY WARLEN**, Ausley & McMullen, Post  
15 Office Box 391, Tallahassee, Florida 32302, appearing  
16 on behalf of ALLTEL Florida, Inc., Northeast Florida  
17 Telephone Company and Sprint-Florida, Inc.

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1 **APPEARANCES CONTINUED:**

2           **DAVID B. ERWIN**, Young, van Assenderp and  
3 **Varnadoe, P. A., P. O. Box 1833, Tallahassee, Florida**  
4 **32302-1833, appearing on behalf of St. Joseph**  
5 **Telecommunications, Gulf Telecommunications, Frontier**  
6 **Telecommunications, Quincy Telephone Company, and Florida**  
7 **Telephone Company.**

8           **STEPHEN S. MATHEWS**, Department of Management  
9 **Services, Office of General Counsel, Suite 200, 4050**  
10 **Esplanade Way, Tallahassee, Florida 32399-0950,**  
11 **appearing on behalf of the Department of Management**  
12 **Services.**

13           **JOHN R. MARKS, III**, Katz, Kutter, Haigler,  
14 **Alderman, Marks, Bryant & Yon, P.A., 106 East College**  
15 **Avenue, Tallahassee, Florida 32301, appearing on**  
16 **behalf of the City of Jacksonville.**

17           **MARTHA BROWN, CHARLIE PELLEGRINI** and  
18 **WILL COX**, Florida Public Service Commission, Division  
19 **of Legal Services, 2540 Shumard Oak Boulevard**  
20 **Tallahassee, Florida 32399-0870, appearing on**  
21 **behalf of the Commission Staff.**

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## I N D E X

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**P R O C E E D I N G S**

(Hearing convened at 1:05 p.m.)

**CHAIRMAN JOHNSON:** I'm going to call the hearing to order. Counsel, could you read the notice, please.

**MR. PELLEGRINI:** Pursuant to notice dated April 7, 1997, this time and place have been set for a limited hearing in Docket No. 961153-TL.

**CHAIRMAN JOHNSON:** Take appearances.

**MR. ERWIN:** My name is David B. Erwin with the firm of Young, van Assenderp & Varnadoe, and I'm appearing here today on behalf of St. Joseph Telecommunications, Gulf Telecommunications, Florida Telecommunications, and Quincy Telephone Company.

**MR. MATHUES:** Stephen S. Mathues, 4050 Esplanade Way, Suite 260, Tallahassee, 32399-0950, on behalf of the Department of Management Services.

**MS. WHITE:** Nancy White on behalf of BellSouth Telecommunications.

**MR. EARLY:** Gary Early with the firm of Akerman, Senterfitt & Edison on behalf of BellSouth Mobility Inc.

**MR. WAHLEN:** I'm Jeff Wahlen of the Ausley & McMullen law firm, P.O. Box 391, Tallahassee, Florida, appearing on behalf of ALLTEL Florida, Inc. and

1 Northeast Florida Telephone Company.

2 MR. LOGAN: Mark Logan of the firm Bryant,  
3 Miller & Olive on behalf of AT&T Communications of the  
4 Southern States.

5 MR. PELLEGRINI: Charles Pellegrini, Will  
6 Cox and Martha Carter Brown appearing for Staff, 2540  
7 Shumard Oak Boulevard, Tallahassee, Florida.

8 CHAIRMAN JOHNSON: Counsel, are there any  
9 preliminary matters?

10 MR. PELLEGRINI: Yes, Chairman Johnson. As  
11 a first matter, Stan Greer made an appearance  
12 yesterday before the NANC in Washington, and at this  
13 moment he wishes to address the Commission to advise  
14 them of that proceeding.

15 MR. GREER: Commissioner, basically what I'd  
16 like to do is put on record of what took place at the  
17 NANC meeting yesterday. The Florida Staff was asked  
18 to do a presentation on 904, the status of 904.

19 What I would like to do is essentially give  
20 you broad areas of what was talked about at the NANC  
21 meeting. Essentially what I presented --

22 CHAIRMAN JOHNSON: Excuse me. There are no  
23 objections to the broad overview, is there? (No  
24 response.) Seeing none, go ahead.

25 MR. GREER: What I presented in the

1 presentation was a general overview of area codes in  
2 Florida which essentially, you know, said we went from  
3 four area codes in '95 to eight area codes in '97.

4 In addition, I presented the plans that were  
5 considered by the Commission and discussed in the  
6 industry meetings, which were attached to the petition  
7 in this proceeding.

8 I also provided the specifics for the  
9 individual plans that were presented to the  
10 Commission, and that was a table that was in the  
11 recommendation that was filed with the initial  
12 proceeding.

13 The other areas were the -- identified the  
14 top 10 largest, fastest growing counties in the 904,  
15 area, the code usage by LATA, and the competition  
16 impact, which was the number of certificated  
17 competitors, the number of negotiated agreements, and  
18 the number of arbitration proceedings that have been  
19 before the Commission.

20 There was typically four categories of  
21 questions were asked. The first was, "What's the  
22 status of the Commission's proceeding?" They were  
23 informed that we have a hearing today.

24 The second was, "What plans did the  
25 Commission consider?" That was in one of the slides

1 that listed the individual plans that were considered.

2 And the other was -- I think those are the  
3 main areas.

4 **CHAIRMAN JOHNSON:** Okay. Anything else?

5 **MR. GREER:** If parties want copies of the  
6 handout that was given out, I have those available, if  
7 they want them.

8 **CHAIRMAN JOHNSON:** Okay. And also for the  
9 record, I attended the NANC meeting yesterday. I'm a  
10 member of the North American Numbering Council. Stan  
11 serves as my staff representative. But for purposes  
12 of his presentation, I excused myself and met with the  
13 FCC commissioners on some universal service matters.

14 There have been several NANC meetings where  
15 this issue was addressed. The first one I did not  
16 attend. The second one I did attend, but I informed  
17 them that I could not testify or comment on the case  
18 because it was a pending matter before the Florida  
19 Commission. And I think that would be, and that has  
20 been the extent of our involvement on these issues.

21 Any other preliminary matters?

22 **MR. PELLEGRINI:** Yes, Chairman Johnson.  
23 Staff suggests that this proceeding should be  
24 conducted in the following manner: After procedural  
25 and preliminary matters, of which there are several,



1 after those have been addressed, Staff would move the  
2 letters written by Mr. Connors and Mr. Hasselvander  
3 and Ms. Keeney into the record along with the related  
4 discovery on the stipulation of the parties.

5 Then the parties would be permitted an  
6 opportunity for argument, the scope and length of  
7 which we suggest the Commission determine as a  
8 preliminary matter, and at the conclusion of argument  
9 and questions from the bench, if the Commission  
10 wishes, Staff will be prepared to reconsider its  
11 May 21st recommendation concerning the  
12 ALLTEL-Northeast Florida motion for reconsideration on  
13 the basis of the newly introduced evidence.

14 For that purpose, Staff would request that  
15 the Chairman recess the hearing for a short while,  
16 perhaps 30 minutes, giving Staff the opportunity to  
17 prepare the reconsidered recommendation, then  
18 reassembling and having heard Staff's reconsidered  
19 recommendation under agenda rules, the Commission  
20 should then proceed to a bench decision on the motion  
21 for reconsideration.

22 CHAIRMAN JOHNSON: Okay. Any questions  
23 about the procedure?

24 COMMISSIONER KIESLING: Yes. I'm confused.  
25 If my reading of the agenda conference where we

1 decided to reopen the record in this case is accurate,  
2 what we decided was to reopen this record to determine  
3 the effect of these letters -- and there's now eight  
4 of them -- on our final order, which I don't have the  
5 number in front of me, but it's set forth in my  
6 procedural order. And we have not ever voted to  
7 reconsider our order, and we were very specific that  
8 that was not what we were doing at agenda.

9           So to me it seems like we're going at it  
10 backwards, that we ought to decide whether we, as a  
11 Commission, think that these letters have any effect  
12 on our order and decide what effect we think they may  
13 have, and then deal with the reconsideration under the  
14 reconsideration standard.

15           **CHAIRMAN JOHNSON:** And, Mr. Pellegrini, is  
16 that what you intended, that we -- as I understood --  
17 well, tell me what you intended.

18           **MR. PELLEGRINI:** Well, the intention, I  
19 think, is consistent with what Commissioner Kiesling  
20 has just said; that we would -- in the first phase of  
21 today's proceeding we would hear the evidence related  
22 to the letters, the argument of parties, and then with  
23 this evidence in the record, the Commission would  
24 determine whether or not to reconsider its decision.

25           **COMMISSIONER DEASON:** Well, let me ask a

1 clarifying question. I heard you earlier to say then  
2 at the conclusion of the new evidence that Staff may  
3 be in a position to change its recommendation on  
4 Northeast and ALLTEL's reconsideration, and it's my  
5 understanding that that reconsideration is subject to  
6 the reconsideration standards based upon the evidence  
7 that was in the record at the time and the decision at  
8 the time, and what we do today has no bearing at all  
9 on their reconsideration because it couldn't have been  
10 written contemplating the evidence we're going to  
11 receive today.

12           **MR. PELLEGRINI:** Well, I think the decision  
13 that you would need to make relative to the newly  
14 introduced evidence is a decision that would go to its  
15 materiality. It would be late discovered evidence.  
16 The legal standard for consideration of that evidence  
17 is whether or not it is material enough to cause the  
18 Commission to arrive at a different decision had that  
19 information been available to it at the time that it  
20 made its original decision. So that would be the  
21 deliberation you would make on the newly introduced  
22 evidence.

23           **COMMISSIONER DEASON:** The Commission could  
24 move to reconsider on its own motion, but would not  
25 have as a basis a petition for reconsideration that

1 was filed before this evidence was even heard.

2 MR. PELLEGRINI: I believe that's true, yes.

3 COMMISSIONER DEASON: Well, I was trying to  
4 get that clarification because I thought you said that  
5 Staff may be in a position to change its  
6 recommendation concerning ALLTEL and Northeast's  
7 reconsideration petition.

8 MR. PELLEGRINI: Well, I used the word  
9 "reconsider" without meaning to imply that Staff would  
10 change its recommendation or it would affirm its  
11 decision. That would be premature at this point.

12 CHAIRMAN JOHNSON: Any other clarifications  
13 needed?

14 COMMISSIONER GARCIA: Charlie, explain why  
15 we'd be taking a half-hour break? Is that for Staff  
16 to formulate an opinion for --

17 MR. PELLEGRINI: Yes. That would give Staff  
18 the opportunity to consider the evidence that has been  
19 newly introduced and determine whether that should  
20 affect its recommendation on the reconsideration  
21 motion.

22 COMMISSIONER CLARK: And one of those  
23 options might be that you would suggest the Commission  
24 on its own motion reconsider it.

25 MR. PELLEGRINI: That's a possibility,

1 Commissioner Clark.

2 CHAIRMAN JOHNSON: Very well. Other  
3 preliminary matters?

4 MR. PELLEGRINI: Yes. As I said, there are  
5 a number of preliminary matters. I think the first of  
6 these would be Jacksonville's petition for limited  
7 intervention and its motion for leave to participate  
8 in the motion of reconsideration. I understand we  
9 have two separate pleadings here.

10 Since the Commission has reopened the  
11 record, Jacksonville has argued in its petition for  
12 leave for limited intervention that it should be  
13 granted an opportunity to participate in this  
14 proceeding in the manner of an amicus curiae as it  
15 first argued in its motion for leave to participate.

16 Staff continues to recommend that the  
17 Commission deny Jacksonville an opportunity to enter  
18 this proceeding at this stage for all the reasons set  
19 forth in the May 21st recommendation.

20 Staff recognizes that the Commission's  
21 decision indeed affects the substantial interests of  
22 Jacksonville. However, Staff is concerned with the  
23 integrity of the process by which orderly  
24 participation in Commission proceedings has been  
25 established. That process provides a fair opportunity

1 for every person.

2           It would be seriously compromised, Staff  
3 believes, if Jacksonville were granted leave to  
4 participate in the motion for reconsideration.  
5 However, Jacksonville's petition for leave for limited  
6 intervention is somewhat more of a problem than its  
7 motion for leave to participate in the motion for  
8 reconsideration.

9           Rule 25-22.039 permits intervention up to  
10 five days before the hearing. One can argue quite  
11 literally that this is a new hearing and that  
12 Jacksonville should be permitted to intervene under  
13 this rule. However, I think the critical question is  
14 whether this hearing, which is being held for the  
15 limited purpose of introducing late discovered  
16 evidence, is at the same time for the purpose of  
17 addressing new issues.

18           In the Groveland EAS docket, 941281-TL,  
19 FIXCA was permitted to intervene following hearing in  
20 order to address new issues raised by the enactment of  
21 the Telecommunications Act of 1996. On the other  
22 hand, in the 305954 proceeding, 941271-TL, a number of  
23 would-be intervenors were denied the opportunity to  
24 address issues that had been previously addressed at  
25 hearing.

1           In this case new issues have not been raised  
2 for hearing. I think the rule simply does not  
3 contemplate the set of facts before you. Therefore,  
4 because the issues are the same as those addressed at  
5 the first hearing, it seems logical to consider this  
6 hearing merely a continuation of the first; and if you  
7 can arrive at that conclusion, the proper decision is  
8 to deny Jacksonville's petition.

9           On the other hand, if you favor a literal  
10 application of the intervention rule, then it would be  
11 a proper decision to grant Jacksonville's petition.  
12 You have the discretion to decide this question either  
13 way.

14           We have not found any case law to guide your  
15 decision. If you permit Jacksonville to intervene,  
16 however, I strongly urge that you strictly limit its  
17 participation to the letters that are the subject of  
18 this limited purpose hearing; have in mind that in its  
19 petition Jacksonville has requested the right to  
20 support or oppose evidence already in the record.  
21 That, Staff believes, should not be permitted.

22           In Issue 3 of the May 21 recommendation  
23 which concerns Jacksonville's motion for leave to  
24 participate, we could find nothing justifying  
25 Jacksonville's contention that it should be permitted

1 to participate by supporting or opposing evidence  
2 already in the record.

3 Finally, I would note that Jacksonville has  
4 requested oral argument on the petition for leave for  
5 limited intervention. Staff would not oppose that  
6 request.

7 **CHAIRMAN JOHNSON:** Any questions,  
8 Commissioners?

9 **COMMISSIONER KIESLING:** I guess I just had  
10 one. I'm trying to understand when you said in  
11 reference to the rule it says that they can intervene,  
12 that anyone can intervene five days before the hearing  
13 and that this is a new hearing. And I'm afraid I may  
14 have misunderstood you.

15 Are you saying that this is a new hearing,  
16 or that it is a continuation of the hearing that has  
17 already occurred in the sense that all we've done is  
18 reopen the record for a limited purpose?

19 **MR. PELLEGRINI:** I'm saying, Commissioner  
20 Kiesling, that one can make both arguments. One can  
21 have the view that this is a continuation of the  
22 earlier hearing. One could have the viewpoint that  
23 this is a separate hearing that would permit  
24 intervention under the rules cited.

25 **COMMISSIONER KIESLING:** And I'm trying to



1 understand in what way it could be a separate hearing.  
2 I mean, there is no separate pleading, there's nothing  
3 else that creates this case. There are no new issues,  
4 there is no --

5 MR. PELLEGRINI: That's the viewpoint that I  
6 think is most supportable. There are no new issues  
7 raised for hearing. It just seems to me, as I stated,  
8 much more logical to consider this a continuation of  
9 the initial hearing.

10 COMMISSIONER KIESLING: Okay.

11 MR. PELLEGRINI: But again, the Commission  
12 has discretion to come down on either side of this  
13 question, I think.

14 CHAIRMAN JOHNSON: Let me ask you a  
15 question. As it relates to the initial motion for  
16 leave to participate, you're saying that we have no  
17 discretion with respect to that and that that should  
18 be denied?

19 MR. PELLEGRINI: Yes. Staff would reaffirm  
20 its original recommendation exactly to that point,  
21 yes.

22 CHAIRMAN JOHNSON: And as it relates to the  
23 petition for leave for limited intervention, you cited  
24 to the Groveland -- it was either EAS or ECS --

25 MR. PELLEGRINI: EAS.

1           **CHAIRMAN JOHNSON:** -- where we determined  
2 after the fact. It wasn't that it was a new case, but  
3 it was that new issues were raised.

4           **MR. PELLEGRINI:** Exactly.

5           **CHAIRMAN JOHNSON:** And in this instance we  
6 don't have new issues, but we have different facts,  
7 additional facts?

8           **MR. PELLEGRINI:** We have new evidence  
9 raised, but on the same issues.

10           **CHAIRMAN JOHNSON:** So are you suggesting  
11 that because there is new evidence, that provides a  
12 window of opportunities for parties to perhaps  
13 participate even though it is the same proceeding?

14           **MR. PELLEGRINI:** Well, what I'm suggesting  
15 is that in order to be consistent with past Commission  
16 actions, what the consistent action today would be to  
17 do as the Commission did in the Groveland case; that  
18 is -- well, no; not to do what it did in the Groveland  
19 case, because in the Groveland case new issues were  
20 raised. Here new issues have not been raised.

21           **CHAIRMAN JOHNSON:** And this here, you're  
22 saying there are additional facts, whereas in  
23 Groveland there were additional issues or new issues?

24           **MR. PELLEGRINI:** That's the difference.

25           **CHAIRMAN JOHNSON:** Is that the difference

1 that you --

2 MR. PELLEGRINI: That's the difference, yes.

3 CHAIRMAN JOHNSON: And are you suggesting  
4 that the cases are distinguishable and, therefore, we  
5 should not allow them in, or the cases are similar  
6 and, therefore, we should? I'm getting a little  
7 confused.

8 MR. PELLEGRINI: Okay. Staff's  
9 recommendation would be that, I think, considering the  
10 policy of the Commission to be open to the public,  
11 that it would be appropriate for the Commission to  
12 make a literal application of the intervention rule  
13 and permit Jacksonville to participate on a limited  
14 basis.

15 COMMISSIONER CLARK: Would you read the rule  
16 again? Does it say "final hearing" or does it say  
17 "hearing"?

18 MR. PELLEGRINI: Petition for leave to  
19 intervene must be filed at least five days before the  
20 final hearing.

21 COMMISSIONER CLARK: See, in my mind -- I  
22 guess, Commissioner Kiesling, you construe hearing to  
23 be sort of one event that may last a couple days.

24 COMMISSIONER KIESLING: Or that the final  
25 hearing has occurred and that we are simply reopening

1 that for the taking of specific new evidence.

2 COMMISSIONER CLARK: And it's your view that  
3 reopening it and having another final hearing does not  
4 provide the opportunity to intervene?

5 COMMISSIONER KIESLING: Well, I don't see  
6 this as another final hearing. I see this as a  
7 continuation of the final hearing which began and  
8 which we have now reopened the record for a limited  
9 purpose.

10 COMMISSIONER CLARK: Charlie, let me ask you  
11 another question. If you distinguish new facts as  
12 opposed to new issues, what was it precisely in  
13 Groveland? It was the passage of --

14 MR. PELLEGRINI: The Telecommunications Act  
15 of 1996 --

16 COMMISSIONER CLARK: -- the federal act.

17 MR. PELLEGRINI: -- was enacted subsequent  
18 to the Commission's decision.

19 COMMISSIONER CLARK: And the impact that  
20 federal act may have.

21 MR. PELLEGRINI: That's exactly the case.

22 COMMISSIONER CLARK: Isn't that similar to  
23 what we're looking at here? We've gotten letters  
24 indicating that while it's not a federal act, it's to  
25 take new evidence on the implications on the overall

1 plan, national plan. I see it as similar, and I see  
2 the Groveland telling us that we probably should allow  
3 the intervention.

4 MR. PELLEGRINI: Yes, I can understand that  
5 point of view.

6 COMMISSIONER CLARK: It's a tough decision.  
7 You're willing to argue either point on this, aren't  
8 you?

9 MR. PELLEGRINI: Have you noticed that?

10 COMMISSIONER CLARK: I agree with you. I  
11 think it's not clearly black and white, and I don't  
12 think one side or the other is necessarily easier to  
13 defend; and I guess my inclination would be -- has  
14 this been opposed? I'm sure I have it in my  
15 pleadings.

16 COMMISSIONER KIESLING: Yes.

17 MR. PELLEGRINI: Yes.

18 COMMISSIONER KIESLING: It was opposed by  
19 Mr. Erwin's clients.

20 COMMISSIONER CLARK: I guess, Madam Chair, I  
21 would move that we have a brief oral argument on it  
22 and allow Jacksonville and Mr. Erwin to address --

23 CHAIRMAN JOHNSON: On the motion?

24 COMMISSIONER CLARK: Yes. I would move that  
25 we allow the oral argument briefly.

1           **CHAIRMAN JOHNSON:** There's a motion that we  
2 allow five-minute oral argument. Is there a second?

3           **COMMISSIONER GARCIA:** Second.

4           **COMMISSIONER CLARK:** That would be five  
5 minutes each side, not each person.

6           **CHAIRMAN JOHNSON:** All those in favor  
7 signify by saying aye.

8           **COMMISSIONER CLARK:** Aye.

9           **COMMISSIONER KIESLING:** Aye.

10          **COMMISSIONER DEASON:** Aye.

11          **COMMISSIONER GARCIA:** Aye.

12          **CHAIRMAN JOHNSON:** Aye. Show it approved  
13 unanimously. Mr. Marks, if you could --

14          **COMMISSIONER GARCIA:** Before you begin,  
15 Mr. Marks, he's addressing us on the limited matter of  
16 the additional information that we have before us?

17          **COMMISSIONER KIESLING:** No. No; the  
18 petition for leave for limited intervention.

19          **MR. MARKS:** That's correct. My name is John  
20 Marks, and I'm with the law firm of Katz, Kutter,  
21 Haigler, Alderman, Marks, Bryant & Yon at 106 East  
22 College Avenue here in Tallahassee Florida, and I'm  
23 here on behalf of the City of Jacksonville.

24                 Commissioners, let me first say that we did  
25 file a petition for leave to participate earlier, but

1 I believe now it would be appropriate to indicate that  
2 we would withdraw that and rely on our last petition  
3 for leave for limited intervention at this point in  
4 time. Although they are very similar in nature, we  
5 believe there's a distinction between both of them.

6 Let me say this at the outset: That none of  
7 the current parties to this docket disagree, I don't  
8 believe, that Jacksonville's substantial interest will  
9 be affected by the decision from the Commission.

10 In fact, in the Staff's recommendation of  
11 March 21, it is replete with references to  
12 Jacksonville and how it would be affected by this  
13 decision, and there are several references to that  
14 effect.

15 Now, based on the Commission's Rule  
16 25-22.039, Jacksonville -- it appears that  
17 Jacksonville's only fault under these circumstances  
18 was its failure to intervene five days prior to your  
19 December 9th, 1996, hearing.

20 Jacksonville believes that reopening the  
21 record and conducting an additional hearing as you are  
22 now affords it the opportunity now to intervene in  
23 this process, because we do believe that this new  
24 evidence will be considered, and as a result of  
25 considering that new evidence, this Commission could

1 reach a totally different decision.

2           The City's petition was filed at least five  
3 days in advance of today's hearing, so we did at least  
4 do that.

5           The City understands the Commission's rules  
6 and acknowledges that, as an intervenor, Jacksonville  
7 must take this case as it finds it. The City has no  
8 desire to hold up the process or prolong the  
9 Commission's decision, but the City does firmly  
10 believe it has a right to intervene at this juncture  
11 and to be heard.

12           In light of the foregoing, and in the spirit  
13 of expediting the implementation of the new area code  
14 plan, the City has suggested and agreed in its  
15 petition to limit its participation. Jacksonville  
16 does not intend to present any witnesses or evidence,  
17 but the City does request the ability to support or  
18 oppose evidence already in the record or to be  
19 presented at this hearing.

20           Those who may oppose the City's intervention  
21 at this stage have not provided any statutory  
22 reference, any Commission rule, any case law to  
23 support the position that the City of Jacksonville  
24 should not be allowed to intervene. All that has been  
25 indicated is a reference to certain ex parte



1 communications.

2 I believe that reference is to certain  
3 letters sent by various -- sent to various  
4 Commissioners, by the way, from the business community  
5 in Jacksonville and certain other officials. Let me  
6 point out that none of these documents were filed by  
7 the City as an entity, and most of them were filed by  
8 citizens in their individual capacities.

9 The Commission has a procedure for  
10 recognizing such documents, if you want to, by placing  
11 them on the correspondence side of the file. Each of  
12 those documents were recognized as ex parte and made  
13 part of the record. All parties were given an  
14 opportunity to respond. If they chose not to, they  
15 cannot complain now. But more important than that,  
16 those letters are not the basis for the request for  
17 consideration or the reason for the Commission to  
18 reopen this record.

19 The Commission's basic practice and this  
20 Commission's basic policy on participation by parties  
21 and the receipt of evidence has always been one of  
22 inclusion. Based on that, Jacksonville respectfully  
23 requests the Commission to allow the City to  
24 participate in the limited manner outlined in its  
25 petition for leave for limited intervention. Thank

1 you.

2           **CHAIRMAN JOHNSON:** Commissioners, would you  
3 like to ask questions of Jacksonville, or go on to the  
4 other party?

5           **COMMISSIONER CLARK:** I have no questions.

6           **CHAIRMAN JOHNSON:** Mr. Erwin?

7           **MR. ERWIN:** Having heard what Mr. Marks has  
8 said then, I believe I would like to change my  
9 position and allow Jacksonville to participate for the  
10 limited purpose that they've said that they want to  
11 participate in this proceeding.

12           And I think you had excellent advice from  
13 your Staff counsel. It may be unclear in every  
14 respect as to just what you should do, but I note that  
15 in his remarks Mr. Marks indicated that he had  
16 withdrawn his earlier petition to intervene, and  
17 consequently I don't expect to hear anything from him  
18 about anything having to do with the petition filed by  
19 ALLTEL or Northeast in this case, and I would expect  
20 to hear from him only about matters pertaining to the  
21 depositions that we have taken in this proceeding of  
22 Mr. Hasselwander and Mr. Connors; and that's the  
23 limit. And if that's what Mr. Marks had in mind  
24 doing, then I will withdraw my objection to his taking  
25 part to that limited degree.

1           **MR. MARKS:** Let me make sure first what  
2 Mr. Erwin is saying. I did not withdraw a petition to  
3 intervene. That was not the basis of our first  
4 petition. We recognized at that stage of the game  
5 that we may not have been able to intervene, but I did  
6 withdraw our motion to participate, which I believe  
7 there is a distinction there.

8           I'm not quite sure what Mr. Erwin is  
9 implying about ALLTEL, about the other parties'  
10 matters that they may have on the record at this point  
11 in time, but the City of Jacksonville recognizes, as I  
12 indicated earlier, that we take this matter right now  
13 as it is, and that we can only participate from this  
14 place forward.

15           Now, if certain matters are on the record,  
16 we believe that we ought to be allowed to comment on  
17 those matters that are currently in the record as an  
18 intervenor, and we would request the permission to do  
19 so.

20           **MR. ERWIN:** Well, if that's the case, then I  
21 did misunderstand, because it seems to me that what  
22 he's asked to do and what Staff has commented on is  
23 his participation in this particular aspect of the  
24 hearing, which is the continued hearing or whatever  
25 you want to call it, which involves really only the

1 letters that were ex parte communications to the  
2 Commission, letters which we have now had an  
3 opportunity to look into through the taking of  
4 depositions.

5           **COMMISSIONER CLARK:** Mr. Erwin, I take that  
6 as being what Mr. Marks is saying for this reason: He  
7 takes the case as he finds it, and that's all we're  
8 doing today. Does that make you comfortable?

9           **MR. MARKS:** Exactly.

10           **MR. ERWIN:** Not if I'm going to hear a lot  
11 of argument about the petition that was filed by  
12 ALLTEL and Northeast.

13           **COMMISSIONER CLARK:** The petition for  
14 reconsideration.

15           **MR. ERWIN:** That's correct, because that's  
16 not what I think he's doing in this case. He's filed  
17 his petition five days before this hearing. This  
18 hearing involves only the letters. It doesn't involve  
19 anything that happened before that, at least not at  
20 this stage.

21           **COMMISSIONER KIESLING:** Well, that's what  
22 I'm a little confused about, Mr. Marks, because during  
23 your argument you stated that you have requested --  
24 you have stated that you do not intend to present any  
25 witnesses or evidence of your own, but that you

1 request the right to support or oppose evidence  
2 already in the record, which means other than these  
3 letters. And doesn't that, then, end up giving you  
4 the ability to go back and participate?

5 MR. MARKS: Commissioner, I can understand  
6 how that can create some confusion, and to expedite  
7 this process, because I know we want to expedite this  
8 process, I will limit my participation based on what  
9 will be presented in this record today.

10 MR. ERWIN: In that event then, I have no  
11 objection to his participation.

12 COMMISSIONER CLARK: Madam Chairman, I would  
13 move we allow the intervention of the City of  
14 Jacksonville and it would be -- the City would take  
15 the case as they find it in and it's limited to the  
16 evidence that will be considered as part of this  
17 hearing.

18 CHAIRMAN JOHNSON: Is there a second?

19 COMMISSIONER DEASON: When you say "this  
20 hearing," you're talking about the hearing today?

21 COMMISSIONER CLARK: Yes.

22 COMMISSIONER DEASON: Second.

23 CHAIRMAN JOHNSON: There's a motion and  
24 second. All those in favor signify by saying aye.

25 Aye.

1           **COMMISSIONER CLARK:** Aye.

2           **COMMISSIONER DEASON:** Aye.

3           **COMMISSIONER GARCIA:** Aye.

4           **CHAIRMAN JOHNSON:** Those opposed.

5           **COMMISSIONER KIESLING:** Nay.

6           **CHAIRMAN JOHNSON:** Show it approved on a  
7 four-to-one vote.

8           **MR. MARKS:** Thank you, Commissioners.

9           **CHAIRMAN JOHNSON:** And, Mr. Marks, is it my  
10 understanding that you're withdrawing the motion for  
11 leave to participate?

12           **MR. MARKS:** That's correct, Commissioner.  
13 That's no longer a matter which we need to address.

14           **CHAIRMAN JOHNSON:** Very good. Staff?

15           **MR. PELLEGRINI:** There are a couple more  
16 matters, Chairman Johnson. Staff recommends that each  
17 counsel, whether representing a single client or  
18 multiple clients, be granted 10 minutes for oral  
19 argument with the right to reserve a portion of that  
20 time for rebuttal if they so choose.

21           **CHAIRMAN JOHNSON:** And all of the parties  
22 were made aware of the 10-minute -- very good.

23           **MR. PELLEGRINI:** And I think one more item.  
24 Staff would recommend, also, that the Commission  
25 decide the scope of argument it wishes to hear at the

1 outset. Staff proposes that argument be strictly  
2 limited to the letters and the related testimonies,  
3 and that all parties of record, and now including  
4 Jacksonville, be afforded that opportunity; but Staff  
5 also proposes that the Commission rule at this time on  
6 the ALLTEL-Northeast Florida request for oral argument  
7 on the motion for reconsideration so that everyone  
8 knows exactly what is available to them as this  
9 proceeding unfolds.

10 It is, however, Staff's same recommendation  
11 that such argument is unnecessary to the Commission's  
12 understanding of the issues raised on reconsideration  
13 and that, accordingly, the Commission should deny the  
14 request.

15 **CHAIRMAN JOHNSON:** Let me make sure I  
16 understand you, Mr. Pellegrini. You are asking that  
17 we rule on the pending motions for reconsideration  
18 before we address and hear the arguments on reopening  
19 the record?

20 **MR. PELLEGRINI:** Yes. I'm suggesting that  
21 you make that ruling now so that ALLTEL and Northeast  
22 Florida understand what is available to them as this  
23 proceeding goes on.

24 **MR. ERWIN:** I'm not certain I understand  
25 that. That could obviate the entire necessity for our

1 being here today. I don't understand that  
2 recommendation at all.

3 **CHAIRMAN JOHNSON:** I think I need a little  
4 clarification on that one, too.

5 **MR. PELLEGRINI:** No, no. I'm talking about  
6 the request for oral argument at this point. That's  
7 all.

8 **CHAIRMAN JOHNSON:** Oh, the oral argument.

9 **MR. PELLEGRINI:** On the motion for  
10 reconsideration.

11 **CHAIRMAN JOHNSON:** I see.

12 **COMMISSIONER KIESLING:** So that it's all  
13 rolled into one at the end. Is that what you're  
14 asking for?

15 **MR. PELLEGRINI:** I'm sorry, Commissioner. I  
16 didn't understand your question.

17 **COMMISSIONER KIESLING:** Are you saying that  
18 that argument should be rolled into the ten minutes  
19 each at the end or -- I'm sorry --

20 **MR. PELLEGRINI:** No, no.

21 **COMMISSIONER KIESLING:** I'm just not  
22 following this.

23 **MR. PELLEGRINI:** Okay. In the first place  
24 ALTEL and Northeast Florida, just to be clear, have  
25 filed a request for oral argument on the motion for



1 reconsideration. Although there were respondents to  
2 that motion, none of the respondents requested oral  
3 argument.

4           **COMMISSIONER CLARK:** Can I make a  
5 suggestion? I think we should go ahead and bifurcate  
6 it and hear from all the parties, oral argument on the  
7 new letters and the impact of those letters, because  
8 then I think Staff may want to go out and discuss it  
9 and maybe come back and recommend to us that  
10 regardless of what the motions for reconsideration ask  
11 for, there should be some change to what we did. Now,  
12 in that case, the motions for reconsideration go away,  
13 or may go away.

14           If we decide that we're comfortable with  
15 what we did, then it may be appropriate to decide to  
16 go to reconsideration in that order.

17           **MR. PELLEGRINI:** That certainly makes sense.  
18 Sure.

19           **COMMISSIONER CLARK:** Would that be all  
20 right?

21           **COMMISSIONER KIESLING:** That's what I had  
22 contemplated.

23           **CHAIRMAN JOHNSON:** That's what I was  
24 contemplating, too.

25           **COMMISSIONER KIESLING:** That we take the new

1 evidence, that we decide what effect, if any, it's  
2 going to have on our previous order, and only after we  
3 finish that would there be any reason to approach the  
4 reconsideration.

5           **COMMISSIONER GARCIA:** Nonetheless, we thank  
6 you, Charlie, for the abundance of caution you're  
7 trying to take.

8           **MR. PELLEGRINI:** You're more than welcome,  
9 Commissioner Garcia. I believe that concludes the  
10 preliminary matters which Staff has. I'm not sure  
11 whether the parties have matters to raise at this  
12 point.

13           **CHAIRMAN JOHNSON:** Any other preliminary  
14 matters? Seeing none --

15           **MR. PELLEGRINI:** Then I think at this time  
16 it would be appropriate for Staff to introduce -- to  
17 proffer the deposition testimony.

18           **CHAIRMAN JOHNSON:** Very well.

19           **MR. PELLEGRINI:** Staff would proffer the  
20 exhibit identified as Stip 1, which is the letter  
21 written by Regina Keeney to Alan Hasselwander. And I  
22 should mention at the outset that the parties have  
23 stipulated to the introduction of this deposition  
24 testimony.

25           The second would be -- and these would be

1 separate --

2           **CHAIRMAN JOHNSON:** Well, let me identify  
3 then.

4           **COMMISSIONER KIESLING:** Let me ask you a  
5 question on that first one. Is the reason that we're  
6 doing just this one letter is because all the others  
7 are attached to the two depositions?

8           **MR. PELLEGRINI:** That's correct.

9           **COMMISSIONER KIESLING:** Okay. For some  
10 reason, I had thought we were just going to stipulate  
11 the packet of eight letters.

12           **MR. PELLEGRINI:** No, no. They've been  
13 attached to the individual depositions, Commissioner  
14 Kiesling.

15           **COMMISSIONER KIESLING:** Okay.

16           **CHAIRMAN JOHNSON:** I'm going to mark as  
17 Exhibit 1 Regina Keeney, March 14th, 1997, letter to  
18 Alan Hasselwander. I can never get his name right.

19           Do you have any record of the last exhibit  
20 that we were on in this particular case, the exhibit  
21 number?

22           (Discussion off the record.)

23           **MR. PELLEGRINI:** We may have it. It appears  
24 to be 16, but maybe Commissioner Kiesling's suggestion  
25 is the more prudent one.

1           **CHAIRMAN JOHNSON:** In an abundance of  
2 caution, just in case, we'll mark this as Exhibit A,  
3 Regina Keeney, March 14th, 1997, letter to Alan  
4 Hasselvander.

5           **MR. PELLEGRINI:** The second is the  
6 deposition testimony of Alan Hasselvander, April 7,  
7 1997, together with Deposition Exhibits 1 and 2.  
8 Staff would move that this be marked as Exhibit No. B.

9           **CHAIRMAN JOHNSON:** We'll identify Alan  
10 Hasselvander as Exhibit B.

11           **MR. PELLEGRINI:** And the third is the  
12 deposition transcript of Ron Connors, April 11, 1997,  
13 together with composite Deposition Exhibit RC-1.  
14 Staff would move that this be identified as Exhibit  
15 No. C.

16           **CHAIRMAN JOHNSON:** Ron Connors will be  
17 identified as Exhibit C. Are there any other  
18 exhibits?

19           **MR. PELLEGRINI:** No further exhibits.

20           **COMMISSIONER KIESLING:** Are they going to be  
21 admitted?

22           **MR. PELLEGRINI:** Staff would at this time  
23 move that Exhibits A, B and C be admitted to the  
24 evidentiary record in this proceeding.

25           **CHAIRMAN JOHNSON:** And there's one question.

1           **MR. WAHLEN:** I just wanted to clarify that  
2 the depositions are being admitted into the record as  
3 though the witnesses were present here testifying,  
4 just like this was prefiled testimony. I think that's  
5 the stipulation of the parties, but I thought the  
6 record ought to reflect that.

7           **MR. PELLEGRINI:** Yes, I certainly have no  
8 quarrel with that.

9           **CHAIRMAN JOHNSON:** Very good. Then show  
10 them all admitted without objection. Staff?

11           **MR. PELLEGRINI:** I think we've arrived at  
12 the moment when the Commission would hear argument  
13 from the parties.

14                   (Exhibits A, B and C marked for  
15 identification and received in evidence.)

16           **CHAIRMAN JOHNSON:** Very good. Mr. Wahlen?

17           **MR. WAHLEN:** Thank you, Commissioners. Good  
18 afternoon on behalf of ALLTEL and Northeast. I'd like  
19 to thank you for the opportunity to be here and talk  
20 about these letters. We think this is an important  
21 issue for Florida and an important issue for the  
22 United States, and I understand that this is kind of a  
23 unique situation and appreciate your patience with us.

24                   As a result of this exercise, we now know a  
25 lot more about the industry guidelines, the status of

1 the nation's number supply, and how the actions of the  
2 state Commission fit into the whole system of number  
3 administration.

4 I'd like to reserve about half of my time  
5 for rebuttal, please.

6 The evidence that has been presented to you  
7 is testimony about the effect of the guidelines, what  
8 they mean, the purpose behind the guidelines, what  
9 they were intended to accomplish, and information  
10 about how the nationwide system of number  
11 administration works.

12 I think there's also some important evidence  
13 before you about the nation's number supply. What  
14 does the new evidence show? We think it shows that  
15 the decision that the Commission made to adopt  
16 Option 4 has had an effect already on the nationwide  
17 system of numbering administration. We think it shows  
18 that there's great concern nationwide about how Option  
19 4 has resulted in an inefficient use of numbering  
20 resources.

21 We think it shows that the nationwide supply  
22 of NPAs available to be assigned in the future is  
23 decreasing at an increasing rate, and that the  
24 Commission's decision to adopt Option 4 could  
25 exacerbate that situation.

1           The record shows that in 1995 the expected  
2 life of the North American Numbering Plan was to the  
3 year 2035. In 1996 that estimate was reduced to the  
4 year 2025, and the testimony in this record indicates  
5 that it's likely to get worse, not better. That being  
6 the case, we think the evidence shows that the  
7 Commission should take every reasonable step it can to  
8 conserve numbers when possible.

9           In short, we think that the evidence does  
10 show that the Commission should reconsider its  
11 decision, but I will not get into a discussion of my  
12 motion.

13           I would like to address one thing up front,  
14 however, and that is one of the arguments that I think  
15 you're surely going to hear today, and that is that  
16 the NANC and Bellcore have not withheld the code and  
17 will not withhold the code; therefore, the Commission  
18 should just stay the course.

19           Our response to that is simple, and I'd like  
20 to outline it for you at this time. First, if you  
21 read the FCC North American Number Plan order, you'll  
22 see that the FCC has established a system of number  
23 administration in the United States that's based on  
24 consensus and people cooperating and following  
25 guidelines. It was not built on strict rules and

1 regulations. The FCC specifically considered whether  
2 to do that, and it decided to adopt a system that  
3 works on consensus.

4           As part of this system, NANC and Bellcore  
5 have questioned your decision to adopt Option 4. They  
6 did that as part of their job to seek consensus in the  
7 industry about numbering plan issues. The fact that  
8 none of those players have withheld the code or said  
9 that what you did is illegal is irrelevant, because  
10 they don't have the power to tell you you can't do it.

11           The second point is that the FCC has not  
12 ruled on this, and we don't know what they're going to  
13 do. The record in this case is silent on what they'll  
14 do, if anything. However, the testimony and the North  
15 American Numbering plan order and the Ameritech order  
16 that are available make it clear that the FCC is the  
17 final arbiter of numbering plan disputes, and that  
18 while they have given you some authority in this area,  
19 they are the final decision maker on these things.

20           And, third, we think that that is important  
21 because if you look at the FCC's guidelines, the ones  
22 that are binding on people as law, there is a good  
23 argument that Option 4 violates one of those  
24 guidelines. The first guideline in the Ameritech  
25 order which was discussed in the depositions is that



1 numbering administrations should make numbering  
2 resources available on an efficient and timely basis.

3           The letters and testimony that have been  
4 presented to you in this hearing raise a serious  
5 question about whether Option 4 is an efficient use of  
6 numbering resources.

7           I don't know what the FCC is going to do. I  
8 don't know if anybody can tell what the FCC is going  
9 to do, but we think that there is an issue about  
10 whether this is an efficient use of resources, and  
11 that that can best be avoided by reconsidering and  
12 adopting a plan that more closely meets the guideline.

13           I think it's important to note here that the  
14 NANC, Bellcore and it appears to me that the FCC chief  
15 of the Common Carrier Bureau have all expressed a  
16 concern about what the Commission has done. The NANC  
17 has expressed concerns that decisions like this are  
18 going to exacerbate the already diminishing supply of  
19 numbering resources.

20           As a result of the decision the Florida  
21 Commission has made, and similar decisions in Utah and  
22 California, it looks like NANC is recommending some  
23 changes to the way the numbering plan system works in  
24 the United States, and we don't think that is what you  
25 intended.

1           Commissioners, Florida is a large and  
2 important state and people watch what Florida does.  
3 People take their lead from what Florida does. Utah  
4 has, according to the record, reconsidered its  
5 decision and come up with a different solution to its  
6 numbering plan problems. California didn't. We think  
7 Florida is important in the national debate and that  
8 Florida has an interest in making sure that the  
9 numbering plan system works nationwide.

10           The best way that the Commission can serve  
11 the state of Florida long-term in our opinion is for  
12 the Commission to follow the guidelines as closely as  
13 possible. If you had known the reaction that your  
14 decision would cause nationwide, we don't think you  
15 would have made it.

16           If you had known the status of the nation's  
17 NPA supply and the shrinking number of NPAs available,  
18 we don't think you would have made it. If you had  
19 known the precedential effect of your decision and how  
20 other states might follow it, we don't think you would  
21 have made it.

22           If you had known that the NANC would  
23 undertake to make some changes in the way the national  
24 numbering plan system works as a result of your  
25 decision, we don't think you would have made it. If

1 you had had the evidence about the nature of the  
2 guidelines and the importance of following them, we  
3 don't think you would have made your decision.

4 We think that the evidence that's presented  
5 provides a substantial material basis for you to  
6 reconsider your decision and would ask that you do  
7 that in favor of Option 1. Thank you.

8 **CHAIRMAN JOHNSON:** Thank you.

9 **MR. HARRIS:** Commission, it may be more  
10 appropriate at this time for Jacksonville to speak  
11 since it supports ALLTEL's and Northeast's position.

12 **CHAIRMAN JOHNSON:** Certainly.

13 **MR. HARRIS:** And I will repeat that. We  
14 agree with Mr. Wahlen in the position outlined by  
15 ALLTEL and Northeast Telephone at this point, and on  
16 behalf of the City of Jacksonville, we'll make only  
17 three basic points, and I will be brief.

18 We agree with the Staff's recommendation and  
19 your decision to reopen the record based on the  
20 receipt of additional information and evidence. You  
21 have afforded all of the parties the opportunity to  
22 respond and be heard. Your actions to reopen the  
23 record and receive and consider the additional  
24 information is, in fact, consistent with Commission  
25 practice of obtaining as much evidence, as much data,

1 as much information prior to reaching a final  
2 decision.

3           In the years that I've been associated with  
4 the regulatory process, this Commission has  
5 consistently had a policy and practice of inclusion.  
6 This includes parties as well as evidence, data, and  
7 additional information. This includes, in fact, the  
8 various letters from Bellcore, NANC and the Federal  
9 Communications Commission.

10           Without adding any more, but merely  
11 commenting on what is currently in the record, as  
12 directed by you today, the City of Jacksonville  
13 believes that the correspondence, the data and  
14 information received from Bellcore, NANC and the FCC  
15 indicates the adoption of a plan consistent with the  
16 industry guidelines. That is the North American --  
17 the NPA relief plan guidelines.

18           The plan that you recently adopted,  
19 Option 4, is not consistent with those guidelines.  
20 Jacksonville believes that over time its interests are  
21 better served and better protected by adherence to  
22 those guidelines. As Jacksonville currently  
23 understands the record, Option 1 is consistent with  
24 NPA relief plan guidelines and is the only alternative  
25 that is consistent with the established Commission

1 policy.

2           Based on this, the City of Jacksonville  
3 would urge the Commission to reconsider its prior  
4 decision and approve a plan consistent with the NPA  
5 relief plan guidelines which would provide relief from  
6 the expected exhaustion of numbers available for  
7 assignment in the 904 numbering plan area code. And  
8 I'll reserve any additional time for rebuttal. Thank  
9 you very much.

10           **CHAIRMAN JOHNSON:** Are there any other  
11 parties that are aligned with ALLTEL and Jacksonville?

12           **MR. EARLY:** Yes, madam Chairman. Gary Early  
13 on behalf of BellSouth Mobility, Inc. I don't know  
14 that I can articulate the position of BellSouth any  
15 better than Mr. Wahlen has already, but as it relates  
16 to the standards for reconsideration, BellSouth  
17 Mobility believes that the Commission overlooked or  
18 failed to consider the effect of its order --

19           **COMMISSIONER CLARK:** Madam Chairman, I think  
20 he is ranging into an argument on reconsideration.  
21 And we're not here on your motions yet, we're here on  
22 the new evidence.

23           **MR. EARLY:** Then aside from the issue of the  
24 standard for reconsideration, it appears that the --  
25 at the time of the Commission's action on

1 January 21st, that the Commission understood that the  
2 action at that time was contrary to the numbering  
3 guidelines established by the Industry Numbering  
4 Committee.

5           However, the evidence available at that time  
6 was not clear as to the nationwide importance that was  
7 to be attached to those guidelines, and that has been  
8 attached to those guidelines as reflected by the  
9 letters and testimony that are before the Commission  
10 today.

11           The general effort to conserve area codes is  
12 driven by more than a conservation ethic. The  
13 guidelines were developed in order to limit the  
14 long-term area code relief based on impending  
15 nationwide area code exhaustion currently projected,  
16 as Mr. Wahlen indicated, for the year 2025, but  
17 expected to occur prior to that time.

18           Mr. Connors in his testimony has indicated  
19 his belief that the Florida action was contrary to the  
20 general goal and spirit of code conservation.

21           It's clear that the entities that are  
22 engaged in area code assignment are very concerned  
23 about the actions of the State of Florida. However,  
24 based upon the evidence as reflected in the  
25 transcript, it appears that the NANPA will likely,

1 however reluctantly, accede to the order of the Public  
2 Service Commission authorizing the three-way split.  
3 Therefore, I think that the issue before the  
4 Commission is not whether it has the authority to  
5 authorize this three-way split, but whether it should,  
6 in light of the nationwide goals of code conservation,  
7 make such an authorization.

8           Mr. Hasselvander testified that the Florida  
9 order established a precedent that other states are  
10 expected to follow, and in fact he characterized the  
11 Florida order as an invitation. Several of the  
12 deponents in their testimony mentioned the fact that  
13 the guidelines are voluntary in nature and that they  
14 have value only to the extent that people choose to  
15 comply with them.

16           If the Commission in this case can adopt a  
17 plan that's consistent with the guidelines, BellSouth  
18 Mobility believes that it should take that course if  
19 such a plan exists. Therefore, BellSouth Mobility  
20 requests that the Commission adopt the area code  
21 relief that has previously been presented as Option 1.  
22 Thank you.

23           **CHAIRMAN JOHNSON:** Thank you, Mr. Early?  
24 Ms. White?

25           **MS. WHITE:** Nancy White for BellSouth

1 Telecommunications. I'll be very brief. BellSouth is  
2 the local administrator of the south Florida-north  
3 Florida NPA codes. We're responsible for assigning  
4 the central office codes within the NPA.

5 We did not advocate -- because of that, we  
6 did not advocate any particular option at the hearing  
7 on this matter. However, we would note that Option 4,  
8 the one the Commission selected, does not meet the  
9 industry guidelines, and that the new evidence merely  
10 reinforces the importance and necessity of the  
11 guidelines in the conservation of area codes. Thank  
12 you.

13 CHAIRMAN JOHNSON: Mr. Logan?

14 MR. LOGAN: Thank you, Chairman. AT&T will  
15 be very brief in its comments. We took a very limited  
16 role and position in the initial hearing, and would  
17 simply respectfully suggest that there is nothing in  
18 the eight letters and depositions that have been  
19 introduced today which would warrant any change in the  
20 Commission's determination, and that the letters  
21 simply represent a reaction to the Commission's  
22 decision.

23 CHAIRMAN JOHNSON: Mr. Ervin?

24 MR. ERWIN: Chairman, Commissioners, you had  
25 a difficult decision to make at the conclusion of the



1 proceeding in this matter. It was difficult because  
2 there wasn't anything you could do that precisely  
3 followed the guidelines. You had to make a decision  
4 based on the facts at hand and make it the best way  
5 you could considering all the facts that you had  
6 before you. Now, I personally think you made a very  
7 excellent decision, but that's what we're all here to  
8 argue about today, and that I think you probably think  
9 you made a fairly decent decision in that case, too,  
10 but then here come these letters.

11           When I first saw the letters I said to  
12 myself, well, this looks like a lot of icebergs that  
13 have formed in the channel and there's no further  
14 smooth sailing for the Commission in this matter. And  
15 then rather than just accept the letters, we insisted  
16 on having some depositions taken so that we could  
17 cross-examine and try to get to the bottom of these  
18 wild claims such as the precedential effect that this  
19 was going to have in the nation and various other  
20 things.

21           We had the depositions, and as a result, as  
22 you can see, I didn't object to anything that was  
23 taken in the depositions coming into evidence. It  
24 turns out, in my judgment, that after taking these  
25 depositions these icebergs turned into some ice cubes,

1 and that after they were exposed to the heat of a  
2 little bit of questioning in the depositions, the ice  
3 cubes melted and there's nothing more there to trouble  
4 us.

5           These are nothing more than expressions of  
6 interest on the part of the people who wrote them.  
7 There's nothing in any of the letters or in any of the  
8 depositions that indicates that there is any  
9 jurisdictional impediment to your proceeding with the  
10 order as you initially decided it based on the facts  
11 that were before you.

12           For example, in the deposition of  
13 Mr. Hasselvander, he says, and I quote: "Now, in this  
14 letter, I mean, at no time were we, was the NANC,  
15 trying to tell Florida how it should behave or any  
16 other state how it should behave."

17           And, again, Mr. Hasselvander, question: "Was  
18 there discussion that you recall at that meeting, that  
19 is the meeting of the 26th, Mr. Hasselvander, that the  
20 council ought to take a position, or rather that the  
21 council ought to take some steps to turn back Florida,  
22 California and Utah?"

23           Answer: "No. In fact, there was -- I mean,  
24 it's been very clear through this whole discussion  
25 that we realized that we are not in power to do

1 anything like that and that we have no intention of  
2 doing anything like that, to try to do anything like  
3 that. As an advisory committee, in the final analysis  
4 we can't make policy. We can recommend policy, and  
5 certainly we have no jurisdiction with respect to  
6 anybody, and certainly not with respect to a state  
7 Commission."

8           And then finally Mr. Hasselvander says on  
9 Page 41: "No, no. No, and I would say we shouldn't.  
10 We certainly don't have the expertise to try to design  
11 something for Florida or any other place."

12           And then there's Mr. Connors insofar as  
13 we're talking about jurisdictional impediments, if  
14 there were to be any. Mr. Connors says -- here's the  
15 question: "Would you agree with this statement, that  
16 the FCC has delegated to the states the authority to  
17 determine which area codes should be implemented,  
18 since the states are in the best position to determine  
19 the circumstances associated with a specific relief  
20 need at the regional level?"

21           Answer: "I think that's true as long as  
22 that's subject to the oversight of the Federal  
23 Communications Commission."

24           Again, Mr. Connors says on Page 24 of his  
25 deposition, question: "Okay. From what you recall,

1 do you have an idea of what plan you might recommend  
2 for implementation?" Answer: "Let me say there that  
3 I would not want to do that. As I said earlier in the  
4 conversation, I feel those kind of choices is a local  
5 prerogative."

6 Question: "Has the NANC or the FCC directed  
7 you to not issue the codes?" Answer: "No, they have  
8 not." Question: "And do you expect at any time in  
9 the future that either NANC or the FCC would direct  
10 you not to issue Florida area codes it's requested?"  
11 Answer: "No, I don't."

12 And, finally, question: "Well, in a real  
13 life case, would it be up to a public service  
14 commission to make that judgment?" Answer: "I would  
15 say that certainly the public service commission has  
16 the jurisdiction. They are subject, of course, to the  
17 FCC."

18 Has the FCC said anything? No. Regina  
19 Keeney's letter doesn't say anything other than, go  
20 forth and do good, NANC. That's basically all that it  
21 says. There's a recognition with all of the people  
22 involved in this that this is your call and your job  
23 and you must look at the facts and try to determine  
24 what's appropriate; and that you have already done.

25 Again, is there anything new, anything

1 overlooked in the previous case that is present in  
2 these depositions that you need to consider?

3           Again, if we look at Mr. Hasselvander's  
4 deposition, the question is: "Mr. Hasselvander,  
5 you've indicated that you have the impression that the  
6 Commission here ignored that particular guideline."

7 Answer: "Well, no, no, no. No; they certainly didn't  
8 ignore it because, I mean, they were conversant with  
9 it. I guess ignore was not a very good choice of  
10 words. Choose not to follow it."

11           And that's true. You perhaps chose not to  
12 follow it, but you had no choice. You did what you  
13 needed to do. There wasn't a guideline, that is if  
14 there are such things, that were really in effect at  
15 the time that you made this decision, and that may be  
16 questionable from the depositions.

17           But leaving that aside, there is one other  
18 thing I want to quote that came out of the  
19 depositions, and I realize that Mr. Washer's  
20 deposition was not admitted in evidence, but I would  
21 like to have a page from it admitted at the conclusion  
22 of my argument, and I would like to quote from it.

23 Mr. Washer --

24           MR. WARLEN: Before he quotes from this -- I  
25 hate to do it. I've tried not to get all procedural,

1 but I'm just not sure that we should hear it before we  
2 know what it is. Maybe if Mr. Erwin could tell us  
3 which page he's going to look at, the parties could  
4 have an opportunity to at least see if we object to  
5 it; and that would be my preference.

6           **COMMISSIONER KIESLING:** Could I also ask for  
7 clarification before you do that, and that is that all  
8 of the evidence that was going to be presented has  
9 been presented. We're done with the evidence. We're  
10 now hearing the argument. It seems like you're a  
11 little late to want to add something more to the  
12 record.

13           **MR. ERWIN:** All right. I'll withdraw from  
14 that. It's the same anyway. I think that that's the  
15 best argument. I don't agree with Mr. Wahlen, but  
16 your argument, Commissioner Kiesling, is true. I  
17 perhaps should have had this marked earlier as an  
18 exhibit in the same way that Mr. Marks should have  
19 probably taken some action earlier in this case, too;  
20 but I'll let it go and take my lumps just like he's  
21 taken his.

22           **CHAIRMAN JOHNSON:** You have about a minute.

23           **MR. ERWIN:** These letters are nothing more  
24 than an expression of these writers' wish that you had  
25 done something else, and that wish they made without

1 any kind of indication that they had any knowledge or  
2 clear understanding of the facts of the problems that  
3 you faced; and what's become of all of this is a  
4 political football. But there's nothing in these  
5 letters. The effect on the evidence in this case is  
6 zero. There's nothing in these letters that  
7 constitutes new evidence that should cause you to  
8 recede from anything that you've previously done.  
9 That concludes my argument.

10           **COMMISSIONER GARCIA:** Don't you think that  
11 they're just giving deference since they do realize  
12 that we're the jurisdictional authority, that they are  
13 simply being deferential, the same way that this body  
14 may suggest to the House and Senate what we think  
15 might be a good idea, but we certainly would not tell  
16 the House or Senate what they must or must not do in  
17 terms of policy that this Commission puts forward?

18           **MR. ERWIN:** I would guess that they are  
19 being deferential if they even thought about it before  
20 this all came up, and I think that that's probably  
21 correct that they are being deferential; and they're  
22 being deferential for a good reason, because it's your  
23 call. It's not their call. At any rate, that  
24 concludes my argument. I didn't reserve any time for  
25 rebuttal so I'm concluded. Thank you.

1                   **CHAIRMAN JOHNSON:** Thank you, sir.

2                   **Mr. Mathues?**

3                   **MR. MATHUES:** Thank you, Madam Chairman,  
4                   **Commissioners.** I apologize for not bringing up a  
5                   **procedural issue at the time that the procedural**  
6                   **issues were called for. If I might, I'd address it**  
7                   **after my brief remarks and argument.**

8                   I echo what Mr. Erwin says, that to me the  
9                   process revealed that the guidelines -- and we all  
10                  know that they're guidelines -- really don't allow for  
11                  any discretion. They don't take into consideration  
12                  the fact that the Commission has to make some choices.  
13                  They don't take into consideration the fact that  
14                  people make these decisions. If there was a perfect  
15                  way to write guidelines or rules to assign these  
16                  codes, it probably would have been done. But yes, I  
17                  think they take into consideration that people make  
18                  these decisions, that commissions have to make tough  
19                  choices.

20                  I think we need to keep the perspective,  
21                  too, that the ultimate issue we're addressing, the NPA  
22                  exhaust date is 2025. There's evidence in the record  
23                  that the industry is even now working on plans to  
24                  address that situation when it happens, and I suggest  
25                  that there's no evidence to suggest that the one area



1 code assignment which does not meet the guidelines is  
2 going to bring that process to a crashing halt. I  
3 think it will proceed in an orderly manner and the  
4 industry will take care of it if and when it does  
5 exhaust.

6 I think the FCC direction in this instance  
7 is prospective to the industry regarding number  
8 assignments, and there was nothing at all directed  
9 specifically toward the Commission's decision. In  
10 fact, Mr. Hasselwander on Page 52 of his deposition  
11 opined that there was absolutely no violation of any  
12 federal guideline by the Commission's decision here;  
13 therefore, we think that the Commission should stick  
14 with that decision, especially given the fact that  
15 what we have here is letters, not new evidence under  
16 any sort of evidence code or standard.

17 The issue that I need to address is one that  
18 came up through inadvertence, and fortunately there  
19 was no prejudice to any party associated by it. As  
20 you know, there's been any number of ex parte  
21 communications and other letters circulated in this  
22 proceeding.

23 We came to agenda conference on April 1st  
24 and heard argument on a Staff recommendation in  
25 addition to the original motion for reconsideration

1 wherein in the Staff recommendation on March 21, they  
2 said there were letters in addition to the two letters  
3 that were attached to the original motion. They were  
4 letters from NANC, Bellcore and the FCC.

5           Well, I in my own mind thought, well, the  
6 FCC letter is probably like the NANC and Bellcore  
7 letters, ex parte communications, and it's on its way  
8 to me somewhere. It was not until after the  
9 Commission decided to reopen the hearing and consider  
10 the letters that most of the parties even knew what  
11 the letters were. They had not been circulated and,  
12 in fact, there was no requirement that they be  
13 circulated, but there was no way that a number of the  
14 parties would be privy to these letters had they not  
15 been circulated.

16           So in discussions with Staff and your  
17 general counsel, I would suggest that everyone would  
18 be amenable to a change in procedure so that when  
19 Staff chooses to rely on information that's outside  
20 the record and not circulated through ex parte, that  
21 those, whatever those documents that are proposed into  
22 evidence might be, be circulated and served on the  
23 parties.

24           **CHAIRMAN JOHNSON:** Let me make sure I  
25 understand the issue. I know you're bringing it up as

1 a procedural issue, and you acknowledged that none of  
2 the parties were prejudiced by this, but your concern  
3 is that Staff received some information and didn't  
4 share it with the parties or --

5 MR. MATHEWS: Not in that tone of voice.  
6 They receive an awful lot of information --

7 CHAIRMAN JOHNSON: Right.

8 MR. MATHEWS: -- and not -- there's no  
9 reason to share a lot of it with the parties.  
10 However, when they come to rely on information that  
11 only they are privy to, or could be expected to be  
12 privy to, i.e., some of the letters in this case, then  
13 the parties should be put on notice as to what the  
14 Staff is relying on.

15 COMMISSIONER DEASON: Well, it seems to me  
16 our Staff is under the same obligation this Commission  
17 is under, and that is they base their recommendations  
18 upon evidence in the record. We make our decision  
19 based upon evidence in the record. To the extent  
20 there's something out there that's not in the record,  
21 our Staff should not incorporate that in any way into  
22 the consideration of their recommendation to this  
23 Commission; and that's how my understanding is of the  
24 way they are directed to proceed.

25 Therefore, if there's information out there

1 in the form of a letter that's not in the record,  
2 that's not a basis for them to use to formulate their  
3 recommendation to this Commission.

4           **COMMISSIONER KIESLING:** I'm confused. Let  
5 me see if I just understand the point you're bringing  
6 up. Is the point you're bringing up that the Staff  
7 did a recommendation that went to the April 1st agenda  
8 recommending that we reopen the record for  
9 consideration of these letters when the letters were  
10 not ever circulated to all the parties?

11           **MR. MATHURS:** That's correct.

12           **COMMISSIONER KIESLING:** Okay. So it's just  
13 that they did that recommendation to reopen without  
14 you, for instance, even knowing what was in the  
15 letters because they didn't provide you copies --

16           **MR. MATHURS:** Precisely.

17           **COMMISSIONER KIESLING:** -- until after we  
18 had made our decision?

19           **MR. MATHURS:** Precisely.

20           **COMMISSIONER DEASON:** Well, my concern -- I  
21 thought that you were indicating that when we take our  
22 recess and Staff goes and formulates their  
23 recommendation, that they may all of a sudden start  
24 going through their files and looking at letters that  
25 no one else knows about at this point to make their

1 recommendation for today's decision.

2           **MR. MATHUES:** No, Commissioner. That's not  
3 the case at all. Commissioner Kiesling summed it  
4 nicely for me. The suggestion is that this situation  
5 could be avoided simply by having them serve whatever  
6 it is they rely on at the time they make a  
7 recommendation.

8           **CHAIRMAN JOHNSON:** Staff, any comments?

9           **MS. BROWN:** Chairman Johnson, to the extent  
10 that we can, we certainly will try to do that, and if  
11 we inconvenienced Mr. Mathues, we do apologize. We do  
12 note that he noted that he has had full opportunity to  
13 review those letters in the course of this reopened  
14 proceeding. But we'll certainly work with him and  
15 other parties to make sure in the future that we do  
16 that.

17           **CHAIRMAN JOHNSON:** Mr. Mathues, thank you  
18 for bringing that to the attention of the Commission  
19 and to the Staff, and we will, to the extent that we  
20 can and it's feasible and practical, we will endeavor  
21 to provide you with information that they will use to  
22 make a basis for a decision.

23           **MR. MATHUES:** Thank you, Madam Chairman.

24           **CHAIRMAN JOHNSON:** Mr. Wahlen, I think you  
25 had about four and a half minutes left.

1           **MR. WAHLEN:** Okay. I'll try not to use all  
2 of that. Thank you, Commissioners. And I guess if  
3 I'm right on nothing else today, I was right on the  
4 argument that Mr. Ervin made, and I hope that I'm  
5 right on some other things before the day is over.  
6 But he did say no one has told you you can't do this,  
7 so go on ahead and do it; and we think that misses the  
8 mark.

9           The letters that you have received are not  
10 expressions of opinion from people who don't matter.  
11 They're expressions of concern about the North  
12 American Numbering Plan system and how it works from  
13 the parties that are integrally involved in making  
14 that system work, and I don't think you should confuse  
15 deference with lack of concern and lack of importance.

16           I think it's very significant for a federal  
17 advisory agency like NANC to write a letter to a  
18 commission and ask that the commission reconsider its  
19 decision. That is not something that happens very  
20 often, and I think when it happens it's something that  
21 we should take notice of.

22           Mr. Mathues suggested that we really don't  
23 need to worry about this, that the number supply is  
24 going to be around until 2025 and the industry is  
25 already planning for how to deal with that, and that I

1 think the implication is that maybe that we're crying  
2 wolf here.

3 Well, the testimony and evidence in this  
4 case is clear that while maybe the current estimate is  
5 2025, people think that the life span of the numbering  
6 plan is getting shorter faster, and that's because of  
7 competition, it's because of numbering plan decisions,  
8 and we think that's a problem.

9 It's interesting to note that the plan that  
10 the industry is considering to solve that problem is  
11 to go from 10-digit dialing to 12-digit dialing at a  
12 cost of \$50 billion. That's billion with a "B".  
13 That's a lot of money. That's a lot of customer  
14 concern.

15 COMMISSIONER CLARK: I'm sorry? If the  
16 nation has to go 10-digit dialing?

17 MR. WARLEN: To 12-digit dialing it will  
18 cost --

19 COMMISSIONER CLARK: Twelve?

20 MR. WARLEN: Yes. Right now we have  
21 10-digit; one NPA, NXX, and the last four numbers.  
22 Once all the NPAs exhaust, we'll go to 12 digits, and  
23 it will be blank, blank -- there will be 12. When  
24 that happens, it's a \$50 billion price tag. That's  
25 significant. That's why it's important wherever

1 possible to conserve numbers.

2           **COMMISSIONER DEASON:** Mr. Wahlen, would you  
3 agree that the question of the expiration of the  
4 present area code scenario in the year 2025, that  
5 that's going to expire at some point inevitably unless  
6 you assume that the United States just does not grow  
7 anymore; so it's a question of when that happens, and  
8 the current projection is 2025?

9           **MR. WAHLEN:** Sure. Absolutely.

10           **COMMISSIONER DEASON:** And the issue before  
11 us today is the decision of this Commission to  
12 implement a three-way split, what effect that has on  
13 that 2025 date?

14           **MR. WAHLEN:** I think it's relevant  
15 information.

16           **COMMISSIONER DEASON:** Well, let me ask you  
17 this: You're well aware of the different scenarios  
18 that this Commission considered. Are you saying that  
19 either Jacksonville or Daytona would not need a third  
20 area code before the year 2025?

21           **MR. WAHLEN:** No, I'm not.

22           **COMMISSIONER DEASON:** Well, if we agree that  
23 there's going to be a need for that third area code  
24 before the year 2025, how does our decision adversely  
25 impact the exhaustion of those area codes in the year



1 2025?

2           **MR. WANLEN:** Well, in several ways. First  
3 of all, your decision uses a code before it is  
4 required to be used, and because it's used early, that  
5 code wouldn't be available for use somewhere else. It  
6 may need to be used in Florida. There are some  
7 situations in Florida where there are going to be need  
8 for new area codes.

9           It also is a potential problem because we  
10 don't really know what the other options might be in  
11 Jacksonville and Daytona in the year 2000 and 2002.  
12 There is a possibility that it will not be that fast.  
13 It's a possibility that it could be sooner, but the  
14 fact remains that the decision you've made uses an  
15 area code before it's needed; and that's the concern  
16 that the people nationwide have, because if this  
17 continues, people all over the country are going to be  
18 snatching up NPAs before they're needed, and that's  
19 going to exacerbate the exhaust.

20           So that's the concern. We understand why  
21 what you did you did in Jacksonville. Our concern is  
22 that there is another option that better meets the  
23 guidelines that doesn't capture an NPA early, and that  
24 could provide for another solution in Jacksonville and  
25 Daytona when and if that presents itself.

1           We don't think the guidelines should be  
2 violated today at the expense of solving a potential  
3 problem in the future.

4           **COMMISSIONER DEASON:** Do you know of any  
5 conceivable solution that would result in a situation  
6 where there would not be the need for a third area  
7 code in northeast Florida before the year 2025?

8           **MR. WAHLEN:** I don't, personally. No, I  
9 don't, and I don't think the record in this case  
10 addresses that. I think the needs for Daytona and  
11 Jacksonville in the future can be addressed in a  
12 subsequent hearing, if that's needed in the future.

13           We think there's a good possibility that the  
14 industry can solve that problem. There's not a  
15 guarantee -- so don't hold me to this -- but this is  
16 only the second time the industry has dealt with -- or  
17 has not been able to solve these problems by itself;  
18 and we think that you can honor the guideline today  
19 with Option 1. Hopefully, the problem in Jacksonville  
20 will be solved by the industry without the  
21 Commission's assistance and everybody will go on about  
22 their business.

23           I do think it's interesting, though, that of  
24 the projected life span of the Daytona NPA under the  
25 plan that you adopted is now longer than the expected

1 life span of the entire numbering plan in the United  
2 States, and that seems very strange; and I'm not sure  
3 how that fits in, but it's very ironic.

4           **COMMISSIONER DEASON:** Mr. Wahlen, would you  
5 agree that the relevant question is whether there's  
6 going to be a need for another area code in northeast  
7 Florida before the year 2025? That is the only way  
8 that our decision is adversely going to impact the  
9 utilization of the area codes before the year 2025?

10           **MR. WAHLEN:** Well, I'll agree that that's  
11 the question. I think your decision can affect the  
12 availability of NPAs around the country and the speed  
13 with which NPAs are used around the country, because  
14 if Florida continues and stays the course, it's going  
15 to be more difficult for the FCC and other people  
16 involved in this to tell other states, no, you  
17 shouldn't do that, no, you can't do that; and that's  
18 our concern.

19           We think we need to have a long-term  
20 solution to this, and the best one is to adopt a plan  
21 that meets the guidelines as close as possible today.

22           **COMMISSIONER CLARK:** Mr. Wahlen, as I see  
23 it, your argument is that while this -- in this  
24 particular instance, it only involves one area code.  
25 It's the repetition over and over again across the

1 country that causes the problem. It's the same sort  
2 of argument that was made a long time ago when the  
3 Commission -- when the Supreme Court found we had  
4 authority to set territorial boundaries. While an  
5 individual customer probably doesn't matter that much,  
6 it's the repetition over and over again that affects  
7 the overall policy and that is the reason why the  
8 guidelines are the way they are; not individual  
9 situations which might be handled in other ways. It's  
10 the impact when it's repeated over and over again?

11 **MR. WAHLEN:** Yes, I think that's true.

12 **CHAIRMAN JOHNSON:** Mr. Wahlen, did you have  
13 any additional closing remarks? We interrupted you  
14 with the questioning.

15 **MR. WAHLEN:** I guess I'd just close by  
16 saying that there was some discussion at the agenda  
17 conference about would the code be issued, what would  
18 happen, what would the reaction be.

19 The procedural order in this case says that  
20 the Commission didn't know whether Bellcore would  
21 release the third code and wondered whether NANC would  
22 object. Those questions have now been answered, and  
23 you have evidence in front of you that addresses those  
24 questions.

25 We think if you had this evidence before you

1 at the time you made the decision, you would have gone  
2 with a different decision. We think you should have  
3 gone with Option 1, and we would suggest that there's  
4 plenty of evidence on this record before you today for  
5 you to reconsider your decision. Thank you very much.

6 **CHAIRMAN JOHNSON:** Thank you. Mr. Marks,  
7 you had a couple minutes left. I have about two  
8 minutes left.

9 **MR. MARKS:** I won't take that long at all,  
10 Commissioner. Thank you very much. And, as a matter  
11 of fact, all I will do is say that I believe  
12 Mr. Wahlen has very well indicated the position that  
13 the City of Jacksonville would support, and we would  
14 just, rather than comment any further, say that  
15 Mr. Wahlen has indicated and stated very well what we  
16 believe should be the appropriate decision in this  
17 matter.

18 **CHAIRMAN JOHNSON:** Thank you.

19 **MR. EARLY:** I, too, agree with Mr. Wahlen.  
20 I believe Commissioner Clark's observation regarding  
21 the potential precedential value of this activity  
22 nationwide is reflective of BellSouth Mobility's  
23 concerns. I believe Mr. Mathues indicated that this  
24 is but one area code, and what will one area code mean  
25 in the context of the large picture with the

1 implication that we can kind of snip this one off and  
2 nobody will notice.

3           But this is Florida, and I think the  
4 evidence in the record reflects that we're already  
5 being noticed by other states; and for that reason  
6 among others as reflected in the record of this  
7 proceeding, we think that Option 1 is the appropriate  
8 and logical way to go.

9           **CHAIRMAN JOHNSON:** Thank you.

10           **MS. WHITE:** BellSouth Telecommunications has  
11 nothing further to add at this time. Thank you.

12           **MR. ERWIN:** Excuse me. I've got to make  
13 some comment about the fact that all of the people who  
14 have spoken are giving you their opinions, but they're  
15 not constraining themselves to the record in this  
16 case, and there's nothing in this record that  
17 indicates that the Florida decision has had any effect  
18 on any other Commission or any other industry  
19 association or anything else.

20           The witnesses deposed indicated they didn't  
21 know anything about that. So this is fine for  
22 Mr. Wahlen to assume that, and for the other counsel  
23 to assume that, but that's not part of the record, and  
24 you shouldn't consider it.

25           **CHAIRMAN JOHNSON:** Thank you, Mr. Erwin. I

1 think that concludes, then, our oral presentations.  
2 Staff?

3 MR. PELLEGRINI: I think at this point it  
4 would be appropriate to recess the proceeding,  
5 Chairman Johnson.

6 CHAIRMAN JOHNSON: How much time will you  
7 need?

8 MR. PELLEGRINI: We would like 30 minutes if  
9 that appears reasonable to you.

10 CHAIRMAN JOHNSON: Do you need 30 minutes?

11 MR. PELLEGRINI: Is 20 --

12 CHAIRMAN JOHNSON: Okay. We will reconvene  
13 at 3:00.

14 MR. PELLEGRINI: Fine, thank you.

15 (Brief recess.)

16 - - - - -

17 CHAIRMAN JOHNSON: We're going to go back on  
18 the record. Staff.

19 MR. PELLEGRINI: Commissioners, the  
20 Commission voted at the April 1st agenda conference to  
21 reopen the record in order to determine what effect,  
22 if any, several letters written by Bellcore, the NANC  
23 and FCC following Order No. 970138 should have on its  
24 decision in that order.

25 Staff feels that the threshold question,

1 therefore, is this: What effect do the letters have  
2 on the Commission's decision?

3 Staff believes that the letters present no  
4 new evidence. Staff further feels that the  
5 Commission, in fact, considered the concern raised in  
6 these letters concerning code conservation when it  
7 considered the 15-year guideline.

8 Staff feels that the Commission made that  
9 consideration, if not directly, certainly indirectly.  
10 Therefore, it's Staff's recommendation that the new  
11 evidence is not material.

12 In that case, it's Staff's recommendation  
13 that the Commission not reconsider your decision on  
14 your own motion with respect to the new evidence.  
15 However, if you feel that the evidence presented in  
16 the first phase this afternoon is material, then you  
17 may, on your own motion, reconsider. And if that is  
18 your decision, Staff would be prepared at that point  
19 with a further recommendation. Is that clear?

20 CHAIRMAN JOHNSON: Uh-huh. Any questions of  
21 Staff?

22 COMMISSIONER DEASON: I have no questions.  
23 I would move Staff's recommendation.

24 COMMISSIONER CLARK: Is there a second?

25 COMMISSIONER KIESLING: Second.



1           **CHAIRMAN JOHNSON:** Any discussion.

2           **COMMISSIONER CLARK:** Well, I'm not clear.  
3           Staff's recommendation is what again?

4           **MR. PELLEGRINI:** Staff's recommendation is  
5 that the new evidence is not sufficiently material to  
6 cause you to make a different decision, therefore, you  
7 should not consider your decision on your own motion  
8 with respect to the new evidence.

9           **CHAIRMAN JOHNSON:** Okay. I guess that's  
10 what had me confused.

11          **MR. PELLEGRINI:** But move to the motion for  
12 reconsideration.

13          **COMMISSIONER CLARK:** It seems to me there  
14 would be nothing to do that. I don't know what you're  
15 moving.

16          **COMMISSIONER DEASON:** Maybe somebody can  
17 tell me what we're here today for then.

18                 We have had another hearing and there's an  
19 issue before us, I thought. If there's no issue  
20 before us, well, then I guess there's no need to make  
21 a motion.

22          **CHAIRMAN JOHNSON:** What Staff is doing is  
23 suggesting that we not reconsider this on our own  
24 motion based upon the testimony that was presented  
25 today.

1           **MR. PELLEGRINI:** Exactly.

2           **COMMISSIONER CLARK:** And I think  
3 Commissioner Deason is in agreement with that. And I  
4 guess he was just trying to --

5           **COMMISSIONER DEASON:** That's simply what I'm  
6 trying to do.

7           **MR. PELLEGRINI:** If that's your decision,  
8 then you would move next to considering the motion for  
9 consideration.

10           **COMMISSIONER CLARK:** Well, I feel  
11 differently as it relates to that issue.

12           I believe that there was substantial  
13 information that was given, and to me that information  
14 was material and that was information that was not  
15 considered in the first instance.

16           I do recall that as a part of our discussion  
17 when we made our vote Commissioner -- I believe it was  
18 Commissioner Garcia that had suggested maybe we should  
19 wait. We're violating the guideline. Let's see what  
20 the federal folks think about this. And we decided  
21 no, we'd go ahead and act. But if they had something  
22 to tell us we were sure that they would try to let us  
23 know.

24           It's my opinion they've done just that.  
25 That they have, indeed, tried to express their

1 concerns with respect to these issues.

2 I don't think there was anything in the  
3 record beforehand that delineated the magnitude of the  
4 issue or the magnitude of their concerns. I believe  
5 that the depositions that we've received and the  
6 information that we've received and the arguments made  
7 by several of the parties also demonstrate that.

8 To me it's a difficult issue. Certainly I'm  
9 generally of the position that we should put Florida  
10 first, not Tallahassee, not Jacksonville; but that we  
11 should put Florida first as we make these kind of  
12 determinations.

13 And in the first instance as I evaluated  
14 these things I looked at just the length. How much  
15 time can we give our folks? How do we set something  
16 that will be best for the citizens of this state? Not  
17 necessarily overlaying what will be the federal  
18 ramifications of those actions. Are there other  
19 policies that we should consider?

20 I think that the evidence that was presented  
21 does show some other policies that we should consider.  
22 I think that it also tells me I shouldn't look at this  
23 with blinders just at what is happening here in  
24 Florida, but perhaps consider what is happening in our  
25 nation and the critical nature of this particular

1 issue. And it's with that in mind that I can move  
2 that we reconsider -- or on our own motion that we  
3 reconsider our determination.

4           **COMMISSIONER DEASON:** Let me express why I  
5 made the original motion that perhaps wasn't  
6 necessary.

7           That is, is that while I disagree with  
8 reopening this record, because I think that in and of  
9 itself perhaps sets bad precedent, but nevertheless  
10 we're here and we've taken this information. I find  
11 nothing in these letters whatsoever that is  
12 significant enough to change the decision that we made  
13 based upon a full evidentiary hearing and based upon  
14 the evidence which we've received at that time.

15           Furthermore, now I agree that the concerns  
16 expressed are real concerns. I do not try to imply  
17 that they were somehow fabricated by these  
18 individuals. Obviously there are concerns. However,  
19 the thrust of their concern is the impact upon the  
20 national plan and the anticipation exhaust date of the  
21 utilization of the existing area codes. And that that  
22 date was originally projected to be 2030 and is now  
23 somewhere in the neighborhood of 2025.

24           We have evidence in the record that  
25 indicates that there's going to be a need for another

1 area code in Northeast Florida by the year 2002 if we  
2 do not go to a three-way split.

3           Now, to me, if that third area code is going  
4 to be needed by 2002, when the exhaust date of the  
5 entire plan is 2025 on the national level, going ahead  
6 and getting that area code now and getting it  
7 implemented and getting customers acclimated to it and  
8 making the one change now is certainly preferable.  
9 The area code is going to be needed in 2002 anyway.  
10 That's not going to have any adverse impact about a  
11 plan whose life is 2025.

12           Now, if that third area code was not needed,  
13 for example, until the year 2020 and we were going  
14 ahead and grabbing it now and implementing it in the  
15 year 1997, I think perhaps that would be a different  
16 argument. But we're looking at utilizing that third  
17 area code within just a few years. And by doing that  
18 now I think it's better for our customers and prolongs  
19 the -- extends the exhaustion dates the maximum amount  
20 possible, which was the basis for the original  
21 decision. So for that reason I think that we should  
22 not reconsider.

23           **COMMISSIONER KIESLING:** Since I seconded  
24 your motion on that, let me tell you my reasons for  
25 having done so.

1           And I went through and marked a lot of  
2 things in these depositions and letters, and I just  
3 want to highlight a couple of them.

4           On Page 36 of Mr. Conners' deposition he  
5 discusses that these are goals and there can be  
6 conflicting goals. And that in a real life case,  
7 would it be up to the Public Service Commission to  
8 make the judgment -- referring back to when you have  
9 conflicting goals. And he agrees that it's up to the  
10 judgment of the Public Service Commission when you  
11 have conflicting goals.

12           And that's what I see here. There is a  
13 conflicting goal or conflicting guideline. One part  
14 says that you should match the exhaust date so that  
15 they exhaust approximately around the same time. The  
16 other one says but you shouldn't do it beyond 15  
17 years.

18           And when I see that, I believe that, you  
19 know, what we're faced with is two competing -- or  
20 several competing goals and interests that we have  
21 already weighed and exercised our judgment on.

22           When you look at Mr. Hasselvander's  
23 deposition, at Page 31 he acknowledges that there's  
24 going to be -- the necessity of an assignment of a  
25 second code is almost inevitable in the near term.

1 But down at the bottom of page, Line 22, he says  
2 "There could be other plans, at least in theory, that  
3 were not proposed that could perhaps be more optimal  
4 than what was on the table before the Commission."

5 Well, I mean we had several plans on the  
6 table before us. We weighed those against the  
7 guidelines, and we exercised discretion, which is what  
8 we're supposed to do. In my mind, since none of these  
9 witnesses were able to say that there was some other  
10 plan that was better, I don't see any reason -- and I  
11 don't feel it's imperative based on this testimony for  
12 us to go back and relook at the decision we've made.  
13 And it would seem to me that in looking at this  
14 testimony what both Mr. Connors and Mr. Hasselvander  
15 were suggesting was they don't know what plan we  
16 should impose, but that the one that we did, they're  
17 not happy with. But they both acknowledge that  
18 there's not some other plan here that is going to be  
19 better other than in theory that there may be one that  
20 was not proposed. That concerns me since I think  
21 we've gone through and already weighed all of these  
22 things.

23 And then again on Page 43 of  
24 Mr. Hasselvander's, when he reads what the actual rule  
25 itself or guideline itself says, "Ideally all of the

1 codes in a given area shall exhaust at the same time  
2 in the case of splits." And there was other testimony  
3 in here that said this was an area code split. And  
4 "In practice, this may not be possible, but severe  
5 imbalances, for example, the difference in NPA  
6 lifetimes of more than 15 years shall be avoided."  
7 But that's modified by the first word "ideally." You  
8 know, we're not dealing with an ideal situation,  
9 and -- I won't go through and cite to all of the  
10 places where they both acknowledge that these are not  
11 enforceable guidelines, they are not mandatory  
12 guidelines. They are guidelines that were put  
13 together by industry. That there have been other  
14 cases where numbers have been given in deviation from  
15 the guidelines.

16           But I would just cite one other thing in  
17 Mr. Conners' deposition at Page 23 where he says  
18 that -- essentially he says "There are circumstances  
19 where it might be appropriate to deviate from the  
20 guidelines." And he's not trying to substitute his  
21 judgment for ours in that decision.

22           So in my mind, those are the reasons why I  
23 seconded the motion. And those are that there appears  
24 to be nothing in here other than speculation and some  
25 argument that indicates that there is any other better



1 plan than the one we've already made, or any other one  
2 that will meet all of the guidelines.

3 Certainly Plan 1 that has one of the area  
4 codes exhausting in 2002 doesn't meet the guideline  
5 any more than our plan, the one we finally passed did.

6 So those were my any reasons for having  
7 looked at this new evidence and tried to weigh what it  
8 tells me about the decision that we made to begin  
9 with.

10 I do not find anything in this new evidence  
11 that suggests to me that we are so far off that we  
12 need to change what we did.

13 In fact, I think there was one other place  
14 in here which I don't have my fingertips -- right at  
15 my fingertips, where one of the two witnesses also  
16 said that what you would be -- there are deviations  
17 permitted from the guidelines because the guidelines  
18 are not absolutely perfect. And I can find that cite  
19 begin -- I just opened it up to Page 23, look at that.  
20 "Mr. Conners: There are circumstances where it might  
21 be appropriate to deviate from the guidelines. I  
22 can't say they are absolutely perfect."

23 And in a perfect world perhaps we would have  
24 made a different decision. But faced with guidelines  
25 that are not mandatory, that are not enforceable, and

1 comparing those to the individual circumstances and  
2 the facts that we heard about here in Florida, in this  
3 area, I don't feel like there is anything in this  
4 record that supports a changing of our recommendation.  
5 So that was the reason why I seconded the motion.

6 **CHAIRMAN JOHNSON:** Any other discussion?

7 **COMMISSIONER CLARK:** I'm confused about  
8 where we are and it's probably something I did, for  
9 which I apologize.

10 I guess my question was that it seemed to me  
11 if we were going to follow Staff's original  
12 recommendation there was nothing to do. But we did  
13 have a motion and a second on there, so I'm confused  
14 as to where we are procedurally.

15 And I need to inquire if there is a motion  
16 for reconsideration, can it be seconded by somebody  
17 who was not on the majority side of the issue?

18 **MR. COX:** First of all, with regard to  
19 whether someone can second, the motion was made by  
20 someone who was in the majority and anyone is entitled  
21 to second that under Roberts Rules of Order.

22 **COMMISSIONER CLARK:** Thank you. Now, where  
23 are we procedurally?

24 **CHAIRMAN JOHNSON:** I moved that we  
25 reconsider on our own motion.

1           **COMMISSIONER KIESLING:** But we already had a  
2 pending motion and a second.

3           **CHAIRMAN JOHNSON:** To do what?

4           **COMMISSIONER KIESLING:** Terry made the  
5 motion.

6           **COMMISSIONER DEASON:** I had -- the normal  
7 practice around here is to act upon Staff's  
8 recommendation. We had a recommendation from Staff  
9 not to reopen the record.

10           Now, if we're going to follow that  
11 recommendation -- I'm sorry, not to reconsider on our  
12 own motion, thank you.

13           And I simply made the motion to follow that  
14 recommendation because I assumed there was going to be  
15 some issue before us because we decided to reopen the  
16 record.

17           But procedurally, if to get to that point is  
18 that we simply do nothing, well, then fine, I guess I  
19 can follow that, too. But I think we might as well  
20 confront the issue and get it out and vote on it. And  
21 I felt like we heard Staff's recommendation and I  
22 moved it because I agreed with it.

23           **CHAIRMAN JOHNSON:** We can vote on that  
24 particular motion. Because I thought we had  
25 decided -- you were saying, "Well, we could do

1 nothing." And I was thinking, well, if we're going to  
2 do nothing, I want to do something. But if your  
3 motion still stands, and it has been seconded, we can  
4 rule on that particular motion and I'll withdraw mine  
5 for now.

6 There's a motion and a second that we not  
7 reconsider this on our own motion. All those in favor  
8 signify by say "aye."

9 COMMISSIONER DEASON: Aye.

10 COMMISSIONER KIESLING: Aye.

11 CHAIRMAN JOHNSON: Opposed "nay."

12 COMMISSIONER GARCIA: Nay.

13 COMMISSIONER CLARK: Nay.

14 CHAIRMAN JOHNSON: Nay. I move that we  
15 reconsider on our own motion.

16 COMMISSIONER KIESLING: Do you want to pass  
17 the gavel?

18 COMMISSIONER CLARK: I second.

19 COMMISSIONER DEASON: We have a motion and a  
20 second. All those in favor say "aye."

21 COMMISSIONER CLARK: Aye.

22 CHAIRMAN JOHNSON: Aye.

23 COMMISSIONER GARCIA: Aye.

24 COMMISSIONER DEASON: Opposed, "nay."

25 COMMISSIONER KIESLING: Nay.

1           **COMMISSIONER DEASON:** Nay. Motion carries  
2 on a three-to-two vote.

3           **CHAIRMAN JOHNSON:** Now we are at the point  
4 of reconsidering on our own motion.

5           **COMMISSIONER CLARK:** Madam Chairman, I don't  
6 know -- we have reconsidered and I guess -- for the  
7 reasons I stated at the original agenda conference I  
8 would move I think it is Plan 1.

9           At that time I explained my reasons for  
10 believing that was the better plan to follow. And I  
11 think based on what we have heard today it has the  
12 added feature of being in concert with the guidelines.  
13 But it was still my first choice.

14           As I indicated then I think competition is  
15 developing. It is not clear whether or not LATA  
16 boundaries will continue to have any impact if and  
17 when BellSouth is allowed to get into the long  
18 distance market. And there are enough things  
19 happening near term that I think calls for us not to  
20 draw the three areas as was proposed in this  
21 alternative plan. And I take some comfort in the fact  
22 that the people who have expertise on the numbering  
23 plan and have the overall responsibility for the  
24 numbering system in the United States have some  
25 concerns about the plan that was previously approved.

1 And I understand others feeling that the other plan  
2 had more merit. I just don't agree with it.

3           **COMMISSIONER GARCIA:** Madam Chairman, I'm  
4 going to second that motion. I think that clearly for  
5 the reasons I stated the first time when we came to  
6 vote I think that these letters only reenforce that  
7 position. And had they been here, I'm certain that we  
8 would have reached a different conclusion the first  
9 time around.

10           It clearly is true these are merely  
11 guidelines. But guidelines only work when people  
12 adhere to them.

13           There's the implicit need for us to make the  
14 decision. But there's also the responsibility that  
15 this state has to act in concert with the nation. And  
16 what is in the best interest of our state and that, I  
17 believe, would be to follow Plan 1, which was  
18 originally the Staff rec on this.

19           **CHAIRMAN JOHNSON:** There's a motion --

20           **COMMISSIONER DEASON:** Let me ask a question  
21 because I'm having some difficulty understanding how  
22 the original decision of the Commission so adversely  
23 affects national policy if we're going to have to have  
24 a third area code in Northeast Florida by the year  
25 2002 anyway.

1           **COMMISSIONER GARCIA:** Well, Commissioner,  
2 there's a lot of things that can be done in terms of  
3 that, and not being an expert, but understanding there  
4 are ways to reconfigure existing area codes so you  
5 shorten the time link is just one of many options we  
6 can look at.

7           And clearly we can decide to buck what the  
8 policy is. But I think that the rationale given by  
9 Commissioner Clark is also very valid. That we're  
10 going to look at a whole series of new concerns as  
11 competition spreads that may not address this concern  
12 quite the same way.

13           That said, I think we should go with what we  
14 know, with what policy is and with an attempt to try  
15 to conserve as much as possible an existing resource  
16 that is limited.

17           **CHAIRMAN JOHNSON:** Is there any other  
18 discussion?

19           **COMMISSIONER KIESLING:** Yes. I won't  
20 reiterate what I've already said, but I would point  
21 out that I did not believe that there's anything in  
22 the record that indicates that Plan 1 doesn't also  
23 deviate from the guidelines, from the perspective of  
24 deviating from the guidelines about having the area  
25 codes expire somewhat at the same time. And one that

1 expires in 2002 compared to one that is going to  
2 expire in 2006 I think violates that first part of the  
3 guideline as much as our plan that we had passed  
4 violate the second part.

5           **COMMISSIONER CLARK:** Obviously we disagree.

6           **CHAIRMAN JOHNSON:** There's been a motion and  
7 a second. Any other discussion?

8           Let me, then, reiterate some of the things I  
9 said earlier.

10           I do believe that the information that was  
11 brought to our attention was quite valuable. I, too,  
12 can look at the depositions and find information that  
13 I believe was new and also provided us with an  
14 opportunity to better understand NANC's position with  
15 respect to the high level of urgency to conserve  
16 numbers.

17           The issue of the exhaust dates being moved  
18 from the year 2035 to 2025. And certainly I agree  
19 that these are just guidelines. I know that often the  
20 Commission in our dealings with the FCC, we've asked,  
21 "Give us some guidelines. Don't tell us what to do  
22 but tell us what you think needs to be done. And in  
23 those instances we can follow those guidelines. You  
24 don't need to preempt us. You don't have to require  
25 us. But if you provide us with guidelines that



1 provide some rationale, in fact, then we will indeed  
2 endeavor to follow those particular guidelines."

3 I think that -- my first thoughts on this  
4 was to look solely at Florida and what was best for  
5 Florida, and how we could best protect all of our  
6 particular customers. But looking at that issue in  
7 the long term and listening to what both the Chairman  
8 of NANC has stated and the other witness with respect  
9 to the exhaust dates, with respect to the precedent  
10 that this may establish, I'm more inclined to feel  
11 like I think Utah did, that perhaps we should give  
12 this thing a second look. That Federal law was passed  
13 giving the FCC and federal government authority over  
14 this issue for very good reasons. That they are  
15 looking at this from a national perspective and we  
16 oftentimes look at it from a more narrow Florida  
17 perspective with blinders on.

18 This has given me more information to  
19 consider. And, in fact, I do believe and agree that  
20 the best option then would be Option 1. It is a way  
21 that we can stay within the guidelines and still meet  
22 the interest of the citizens of our state.

23 **COMMISSIONER DEASON:** Let me reiterate  
24 something that Commissioner Kiesling has stated. And  
25 that is that I don't think there's an ideal situation.

1 And the guidelines are not going to be met strictly to  
2 the letter by any of the scenarios we have in front of  
3 us. And it has to do with the uniqueness  
4 configuration of the LATAs that we have in North  
5 Florida, with Daytona being one of the smallest LATAs.  
6 And the necessity, at least in this point, that we try  
7 to implement area code changes along LATA boundaries.

8           So I don't think there's any ideal solution  
9 to this. And I agree with you, that we should seek  
10 for guidelines, and that we should retain our  
11 discretion and utilize our expertise and apply it to  
12 the situation within our own jurisdiction the best way  
13 that we deem fit. And I think that is precisely what  
14 we did when we made our original decision.

15           COMMISSIONER KIESLING: Let me just add one  
16 other thing. I think one thing that distinguishes  
17 these, and I may have misunderstood Chairman Johnson,  
18 but these are not FCC guidelines. They have never  
19 been adopted by the FCC, and, in fact, that is what is  
20 being urged in some of these letters to the FCC is  
21 that they might want to look at having some FCC  
22 guidelines, but the direct testimony of both witnesses  
23 was that our plan that we passed does not violate any  
24 FCC guideline.

25           CHAIRMAN JOHNSON: That's true. I agree

1 with you there, that these are federal guidelines.

2           **COMMISSIONER KIESLING:** No, these are  
3 industry guidelines.

4           **CHAIRMAN JOHNSON:** Is this not a federal  
5 organization?

6           **MR. GREER:** They are just industry. NANC is  
7 a federal advisory council. These are industry  
8 guidelines developed by the Industry Numbering  
9 Committee, which is an industry organization.

10           **CHAIRMAN JOHNSON:** Okay. With respect to  
11 that particular issue, though, I guess there is some  
12 urging, perhaps even by NANC, that maybe the FCC, if  
13 the guidelines aren't sufficient to -- the guidelines  
14 aren't sufficient incentive for the states, that  
15 perhaps there should be some preemption and perhaps  
16 that they should lay out more specific criteria.

17           Now, don't get me wrong, if I think the FCC  
18 acts in a way that is not prudent for the citizens of  
19 this state and for the nation, then as we've done with  
20 the interconnection order, even if it was something  
21 that the FCC was doing that was not in the best  
22 interest of our state and the nation, then we have  
23 objected.

24           In this particular instance, the guidelines  
25 do appear to be fair and reasonable. The threat of

1 the exhaust and the conservation issues are real in  
2 fact. And it is with that in mind that I can again  
3 take the additional information and support the motion  
4 and the second that has been made.

5           **COMMISSIONER DEASON:** Let me ask the  
6 Chairman, how do you see that by implementing a  
7 three-way split now, when there's going to have to be  
8 another area code around the year 2002, jeopardizes  
9 the national numbering plan?

10           **CHAIRMAN JOHNSON:** I think the issue is the  
11 precedent that it is setting. And that if everyone  
12 decides they are going to get three or maybe four  
13 numbers today, that from a national perspective that  
14 that is not a good policy. That is not the kind of  
15 thing that we want to encourage for states.

16           It's not what is going to happen in three or  
17 four years. It's what we're doing now and the  
18 precedent that we're establishing now.

19           **COMMISSIONER DEASON:** The precedent we're  
20 setting is that when you have a situation where the  
21 only viable options -- or one of the viable options is  
22 to have another area code requested in the year 2002,  
23 that seems to be a very narrow precedent and probably  
24 fairly unique, and probably is not going to be setting  
25 some grand floodgate where every state in the country

1 is going to be trying to hoard area codes.

2           **CHAIRMAN JOHNSON:** I'm not so sure of that;  
3 I'm not so sure that this is unique --

4           **MR. COX:** Commissioner, I think --

5           **CHAIRMAN JOHNSON:** I'm not so sure it's just  
6 for Florida that this would be the only situation.  
7 And I guess what I hear the federal people saying is  
8 they aren't so sure it's unique and wouldn't repeat  
9 itself either. So it's still -- it's just an open  
10 question.

11           **COMMISSIONER KIESLING:** I would only suggest  
12 one thing in that regard, and that is that if any  
13 other state, or if Florida, even, started without  
14 rationale area codes just to try to hoard them for the  
15 future, I think that's terrible. That's not what  
16 happened here. What happened here is we had a full  
17 hearing, we looked at a lot of different options and  
18 we came up with the one we thought made the most  
19 sense. And I see those two situations as extremely  
20 different.

21           So that's -- I think that it's not  
22 comparable to say that, well, this is going to lead to  
23 states getting two, three or four area codes to save  
24 for future development, because that's not what we  
25 did.

1           **COMMISSIONER GARCIA:** It's misconstruing  
2 what I believe is clearly what these letters indicate,  
3 what the testimony that we received from Staff  
4 indicated, and what the guidelines were meant to do.

5           Clearly, Commissioner Deason, you could make  
6 an argument that this is unique. But I'm sure that a  
7 lot of states could make a similar argument about why  
8 they need to do this and why it is necessary to do  
9 this.

10           Under the present condition and the current  
11 guidelines, and the policies that this Commission has  
12 in one previous proceeding followed, I think that  
13 we've delineated a course which I think will best  
14 serve not only our state but the nation.

15           And you're absolutely right, these aren't  
16 FCC guidelines. And I think Commissioner Johnson made  
17 a very valid point, and maybe she didn't bring it home  
18 enough, but we at this Commission spend our lives  
19 railing against the federal authorities for intruding  
20 upon our territory. In this case we have an industry  
21 which I think very carefully in its letters, at least  
22 the way I construed them, tried to say, "It's your  
23 decision to make, but this is what you're doing."

24           And, you know, Florida is not some backwater  
25 state that only cares about what happens here and what

1 we do here. This Commission's role clearly is to  
2 protect the interest of this state as a whole. But  
3 also there is something about a communications network  
4 that implies we're all working in concert as a nation.  
5 And I believe that those guidelines are the best  
6 example of that, at least right now under the current  
7 conditions that exist. And I think that that is  
8 expressed by the experts who wrote these letters, and  
9 I believe it was expressed quite clearly by Chairman  
10 Johnson in her position.

11 **CHAIRMAN JOHNSON:** There's a motion and a  
12 second. Any further discussion? Seeing none all of  
13 those in favor signify by saying "aye."

14 **COMMISSIONER CLARK:** Aye.

15 **COMMISSIONER GARCIA:** Aye.

16 **CHAIRMAN JOHNSON:** Aye. Opposed "nay."

17 **COMMISSIONER DEASON:** Nay.

18 **COMMISSIONER KIESLING:** Nay.

19 **CHAIRMAN JOHNSON:** Show it approved on a  
20 three-to-two vote. Are there any other issues?

21 **COMMISSIONER DEASON:** Is this decision today  
22 subject to reconsideration by the parties?

23 **MR. PELLEGRINI:** The Commission still has  
24 before it the motion for reconsideration, Issues 1 and  
25 4.

1           **COMMISSIONER DEASON:** Aren't those moot at  
2 this point? We have an entirely different decision.

3           **MR. PELLEGRINI:** Yes.

4           **COMMISSIONER DEASON:** Now my question is, is  
5 the decision now subject to reconsideration by the  
6 parties?

7           **COMMISSIONER KIBSLING:** It certainly seems  
8 like it would have to be. You can't change your mind  
9 and not allow the parties who are affected by that --  
10 you can't deny them a point of entry to also ask for  
11 reconsideration.

12           **MS. BROWN:** Commissioners, this was a  
13 decision on reconsideration. And it's my opinion that  
14 the parties have some options at this time and they  
15 are to appeal your -- the decision. That there should  
16 be no further opportunities for reconsideration at  
17 this point because you've now reconsidered your  
18 decision.

19           **COMMISSIONER DEASON:** I would agree with you  
20 if the Commission decided to reconsider on its own  
21 motion and the evidence was the same, the record was  
22 the same upon which the original decision was made.  
23 We have another record now. And it seems to me you're  
24 denying the parties due process to petition for  
25 reconsideration considering that the record has now



1 been supplemented.

2 MS. BROWN: I think, Commissioner, the  
3 reason for having this whole hearing in the first  
4 place was to give everyone the due process they would  
5 need, with the understanding that the purpose for  
6 doing that was to determine reconsideration by  
7 whomever's motion.

8 And this is off the top of my head, but I  
9 don't think that the parties now have another  
10 opportunity to do what? To ask for more consideration  
11 of the reconsideration? I think it goes to the court  
12 at this point. And the order that we'll issue as a  
13 result of this decision on your part will be a final  
14 order appealable at the Florida Supreme Court.

15 COMMISSIONER DEASON: What happens if we get  
16 some more letters that seem to indicate we need to  
17 reopen the record, because I'm afraid we're going to  
18 get lots of letters.

19 COMMISSIONER CLARK: That's a different  
20 issue.

21 COMMISSIONER KIESLING: All I can say is I  
22 respectfully disagree with that analysis. Because I  
23 think that at the point we had issued a final order  
24 already once in this case, the parties asked for  
25 reconsideration of that. And now we have changed it.

1 So we're going to enter a new final order that is  
2 different in substance. And I think that if any  
3 parties think that there -- we have material issues of  
4 fact or of law that we have overlooked or  
5 misapprehended, that they should have a right to bring  
6 that on this new final order which is going to be  
7 substituted for the old one.

8           **CHAIRMAN JOHNSON:** Ms. Brown, any comments  
9 or suggestions as to how we would entertain, if the  
10 parties did, indeed, want to request a  
11 reconsideration? If they were to file something, you  
12 would bring it to the Commission and then we'd have to  
13 make a decision at that point in time through an  
14 agenda.

15           **MS. BROWN:** Yes, I suppose that would be the  
16 way to go. I'm having trouble thinking of this  
17 proceeding as another whole new hearing. I thought it  
18 was to be a continuance of the existing hearing that  
19 you had. And the decision that you have made I  
20 thought was a reconsideration decision, that the  
21 parties, all parties, have had full opportunity to  
22 address, and it was specifically on the issues that  
23 were addressed in the letters. So I don't see another  
24 opportunity.

25           **CHAIRMAN JOHNSON:** Not to put you on the

1 spot then, because I'm sure these parties are  
2 competent and able. And to the extent they believe  
3 they have an opportunity here, they will be filing  
4 something that you wouldn't just throw away, you would  
5 bring to the Commission's attention and then allow us,  
6 when you have had more time, to think through the  
7 process, too -- allow us, based upon a Staff  
8 recommendation, perhaps, to determine how we should  
9 proceed at that point in time.

10 MS. BROWN: Sure.

11 COMMISSIONER CLARK: I would only have this  
12 plea to the parties: that in considering whether you  
13 move for consideration remember what the standard is.  
14 And if you don't meet the standard and disagree with  
15 the decision, go ahead and appeal it and let's get  
16 this thing moving.

17 COMMISSIONER GARCIA: I only add the  
18 discussion I had with Ralph earlier. He had one  
19 interesting call that he thought was the most  
20 interesting he had received, and it was from a printer  
21 in Jacksonville who stated, "I really don't care what  
22 you do. I just need you to give us an area code  
23 because my printing business is dying." So I think we  
24 need to move forward. And I think that the decision  
25 we made today is the right one and that the parties



1 STATE OF FLORIDA)  
 2 COUNTY OF LEON )

CERTIFICATE OF REPORTER

3 I, JOY KELLY, RPR, Chief, Bureau of  
 4 Reporting, and RUTHE PATONI, CSR, RPR, Official  
 5 Commission Reporters,

6 DO HEREBY CERTIFY that the Hearing in Docket  
 7 No. 961153-TL was heard by the Florida Public Service  
 8 Commission at the time and place herein stated; it is  
 9 further

10 CERTIFIED that we stenographically reported  
 11 the said proceedings; that the same has been  
 12 transcribed under our direct supervision; and that  
 13 this transcript, consisting of 100 pages, constitutes  
 14 a true transcription of our notes of said proceedings.

10

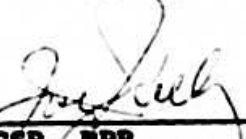
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DATED this 17th day of April, 1997.

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