

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

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In re: Draft Report on Universal Service and Lifeline
Funding as Required by Section 364.025(4), Florida Statutes

PROCEEDINGS: **SPECIAL INTERNAL AFFAIRS**

BEFORE: CHAIRMAN JOE GARCIA
 COMMISSIONER J. TERRY DEASON
 COMMISSIONER SUSAN F. CLARK
 COMMISSIONER JULIA L. JOHNSON
 COMMISSIONER E. LEON JACOBS, JR.

DATE: Thursday, January 28, 1999

TIME: Commenced at 12:25 a.m.
 Concluded at 5:20 p.m.

PLACE: Betty Easley Conference Center
 Room 148
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 Tallahassee, Florida

REPORTED BY: H. Ruthe Potami, CSR, RPR
 Official Commission Reporter

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1 **CHAIRMAN GARCIA:** All right. We'll go back
2 on the record and we will go with the universal
3 service. Do you have something to tell us, or you're
4 fine?

5 **MR. DOWDS:** Do you want me to introduce
6 this?

7 **CHAIRMAN GARCIA:** No, I don't think so,
8 because the last time I introduced it at the beginning
9 I made you do it three times.

10 I wanted to go through the -- I had some
11 questions on my own draft that I wanted to ask about
12 your language, which of course I'm not finding.

13 (Pause) Here we go.

14 Let me just say -- because if I'm the only
15 one with concerns, most of my concerns are just
16 generic issues that can be addressed.

17 Commissioners, do you have any questions on
18 this report?

19 **COMMISSIONER CLARK:** Joe, was there going to
20 be any response to some of the questions brought up by
21 the parties yesterday? Or Tuesday, I guess.

22 **CHAIRMAN GARCIA:** Right. Do you want to
23 address some of those -- I thought you had at the end
24 the other day, but go right ahead if you want to
25 again, maybe without the fiery rhetoric this time.

1 (Laughter)

2 MR. DOWDS: Okay. Well, I think I addressed
3 myself to most of the comments.

4 COMMISSIONER CLARK: Well, let me be more
5 specific, though. Mr. Fons asked a question about we
6 were not asked to report on the need for the funding.

7 MR. DOWDS: That's correct.

8 COMMISSIONER CLARK: And then --

9 MR. DOWDS: I'm sorry?

10 COMMISSIONER CLARK: So is there anything --
11 if that's correct, have we done that, and should we
12 not do it? I guess I would like you to respond to his
13 comments.

14 MR. DOWDS: Oh, okay. In a literal sense,
15 with respect to universal service there were two
16 statutory requirements in House Bill 4785. One was
17 that they wanted us to provide an estimation of the
18 funding requirement if all qualifying Lifeline
19 subscribers were funded. At least, that's our
20 interpretation. That consists of Chapter 2 of the
21 report.

22 Second thing they told us to do was to
23 conduct a formal hearing to determine -- to select a
24 cost proxy model for determining the cost of
25 residential basic local telecommunications service in

1 Florida, which we did. And Chapter 1 is a summary of
2 the order.

3 Although the bill is silent as to whether
4 they wanted us to say anything further, we have on at
5 least a couple, three occasions said 90% of what's in
6 Chapter 3. So presumably it's not news to them. So
7 one could conjecture that it shouldn't be any surprise
8 if we happen to remind them of what the Commission has
9 told them on two or three occasions before.

10 Now, granted there are a few additional
11 modifications which I've pointed out in what's in
12 Chapter 3 at this time.

13 But I guess my response to Mr. Fons is, yes,
14 he's correct, but I would -- it seems to me that the
15 Legislature shouldn't be surprised to hear the same
16 thing again.

17 **COMMISSIONER CLARK:** Well, let me ask
18 another question, then. Are we saying that -- have we
19 given them a figure that if they want to fund the
20 Lifeline, they have that figure, explicitly fund the
21 Lifeline?

22 **MR. DOWDS:** I'm sorry. Are we -- I'm sorry.
23 I'm not sure I heard you correctly. Are we providing
24 them a recommendation that Lifeline should be funded,
25 or that are we providing them sufficient information

1 such that a Lifeline fund could be created?

2 COMMISSIONER CLARK: Yes, the --

3 MR. DOWDS: The latter?

4 COMMISSIONER CLARK: -- latter.

5 MR. DOWDS: I'm sorry. The latter?

6 COMMISSIONER CLARK: Yes.

7 MR. DOWDS: I hope the latter, that there's
8 a -- sufficient general precepts in Chapter 3 which
9 we -- they're primarily in the back under General
10 Information -- implementation principles that would
11 apply to any sort of fund.

12 There would be certain nuts and bolts
13 details that would be very difficult to enumerate in
14 the -- in this report, such as what criteria should be
15 used for an RFP to select a third-party administrator,
16 assuming the Commission wishes to go that route; what
17 forms should be created to determine the revenues for
18 reporting for assessment purposes by the providers.

19 There's countless details and minutia like
20 that which will nevertheless have to be resolved at
21 some point in time. They're just not all spelled out
22 here.

23 Does that help at all? Is that somewhat
24 responsive?

25 COMMISSIONER CLARK: Do we know what it

1 costs to fund -- for our local exchange companies to
2 fund the Lifeline and Link-Ups in Florida.

3 MR. DOWDS: Yeah, I believe --

4 COMMISSIONER CLARK: And is that stated?

5 MR. DOWDS: I think so. Let me tell you
6 what we do know, though I don't know the number off
7 the top of my head.

8 We have data as of a few months ago which
9 indicated by Florida LEC the number of Lifeline
10 subscribers. So to the extent that what you mean by
11 fund is \$3.50 that the LECs are currently absorbing,
12 that amount, I don't have the number readily at hand.
13 That's determinable.

14 COMMISSIONER CLARK: Okay.

15 MR. DOWDS: And I'm sure we have laying
16 around somewhere an analogous number for Link-Up.
17 Link-Up is a very, very small amount, though. And
18 actually we -- I'm not sure that we actually fund
19 Link-Up per se. It's not the same kind of program.

20 COMMISSIONER CLARK: Let me ask; there was,
21 as I recall, someone asked about eliminating something
22 on Page 31, the paragraph that small companies who are
23 still on rate of return couldn't make a showing of the
24 need for the fund.

25 MR. DOWDS: Right. Mr. Wahlen on behalf of

1 ALLTEL, Vista-United and Northeast took exception to
2 the paragraph starting fourth, which recommends that a
3 universal service high cost mechanism as it was
4 defined in this chapter, the small LECs should not be
5 party to that.

6 COMMISSIONER CLARK: Why shouldn't they?

7 MR. DOWDS: I'm sorry?

8 COMMISSIONER CLARK: Why shouldn't they?

9 MR. DOWDS: My primary reasoning is as
10 follows -- though I understand his position and I
11 empathize with it. My view is as follows: The
12 primary argument that's been levied since the advent
13 of local exchange competition that's been put forward
14 as the reasoning for a universal service fund is what
15 I call the barbarian at the gate argument.

16 And that is basically that local exchange
17 competitors are arriving daily. They're arriving in
18 greater numbers. They're becoming more successful.
19 And being good business people, they are targeting the
20 low cost, high margin sectors of the market. And when
21 they are successful, they will erode away the margins
22 which have historically been used to subsidize local
23 exchange rates.

24 The argument I'm proposing in this bullet,
25 or this paragraph labeled 4, is where you have small

1 local exchange companies who either currently are and
2 prospectively can continue to effectively bar local
3 exchange competitive entry, it becomes somewhat
4 stretched to argue that they should get high universal
5 service funding for competitive erosion due to local
6 exchange competitive entry.

7 COMMISSIONER CLARK: Well, wait a minute.

8 MR. DOWDS: Mr. Wahlen and, I believe, also
9 Commissioner Deason, pointed out quite correctly that
10 they may be suffering erosion, competitive erosion,
11 from other factors.

12 COMMISSIONER CLARK: Right.

13 MR. DOWDS: Such as in the case of Quincy
14 intraLATA toll.

15 COMMISSIONER CLARK: Right.

16 MR. DOWDS: Now -- which I perfectly
17 acknowledge, and I believe I mentioned on Tuesday that
18 it seems to me you have three options.

19 Now, let's take a company like Quincy, who I
20 understand is probably over -- underearning. And they
21 are -- Mr. McCabe indicated that they have been
22 suffering competitive pressures from a loss of total
23 revenues for a couple of years.

24 Well, one option would be since they are a
25 rate of return company, they could file a rate case to

1 readjust rates if they are an underearnings position.

2 Another option would be is that you -- if
3 you determine it's appropriate to fund high cost
4 per se as opposed to high cost due to local exchange
5 competitive erosion, then a -- let's call it a
6 sub fund or something could be created for the small
7 LECs.

8 A third option would be just to erase this
9 paragraph labeled fourth and treat them all the same.

10 **COMMISSIONER CLARK:** I don't see why you
11 would not treat them the same. Why are we going to
12 make the assumption -- I guess in the instance of
13 Quincy, it may not be appropriate to raise their rates
14 because it would put them beyond an affordable rate,
15 and in fact you would want to subsidize them, and you
16 wouldn't want the subsidy to come just from customers
17 of Quincy; you would want to have it a statewide
18 subsidy.

19 **MR. DOWDS:** Oh, I agree, but --

20 **COMMISSIONER CLARK:** I don't think it's
21 appropriate to limit them being able to come in and
22 make a showing that they need to have a universal
23 service fund. I think they should be able to come in
24 and show it just like everybody else, and if the
25 Commission determines it's appropriate to raise their

1 rates rather than do that, that may be one option; but
2 to just write them out from the beginning I think is
3 wrong.

4 MR. DOWDS: I don't disagree, as I indicated
5 on Tuesday. The key misgiving I have is -- or
6 misgivings, are twofold.

7 One is, their unilateral ability to prevent
8 competitive entry and, two, under some circumstances I
9 have had heartburn about the total telecommunications
10 industries indirectly funding rate rebalancing of a
11 LEC, whether it be a large LEC or a small LEC.

12 COMMISSIONER CLARK: That's interesting. I
13 thought the notion of universal service is to get
14 funding from a wide source to those areas that have
15 high costs or have low income.

16 MR. DOWDS: Yes. But it's also, under my
17 paradigm, to replace funding that is at risk.

18 COMMISSIONER CLARK: Well, and they
19 apparently have funding then that is at risk, because
20 they were using revenues from local toll to support
21 their local rates.

22 MR. DOWDS: I don't disagree, but I would --

23 COMMISSIONER CLARK: So they should be
24 eligible for a universal service fund, I think.

25 MR. DOWDS: Oh, I don't disagree, but I

1 would conjecture that there are other small LECs who
2 are definitely not in that situation.

3 **COMMISSIONER CLARK:** But they couldn't come
4 in and prove the need for the fund that way.

5 **MR. DOWDS:** Oh, okay. As long as -- they'll
6 have to make a prima facie case to support funding,
7 that I have -- I personally have no problem with that.
8 I assume you're referring to Option 1, on a
9 case-by-case basis.

10 **COMMISSIONER CLARK:** I guess at this point
11 all I'm saying is I don't think we should draw the
12 conclusion, just because they're rate of return and
13 not subject theoretically to local exchange
14 competition, that they should be eliminated from any
15 consideration for universal service fund --

16 **MR. DOWDS:** In principle I don't disagree.
17 My argument was premised on the fact that they are
18 quote, rural LECs, unquote, under the act and thus
19 they can unilaterally petition the Commission to bar
20 entry. And to the extent that there is some
21 linkage -- what you can obviously -- and I have no
22 problem about your disagreeing with it, but if the key
23 impetus over the last few years has been local
24 exchange competitive entry as the risk that we're
25 trying to guard against, that was the basis of my

1 argument.

2 **COMMISSIONER CLARK:** Well, you know, I don't
3 think it's just that. I think it's the erosion of
4 revenues that currently support local service,
5 wherever that may come from; and currently it comes
6 from access charges in a lot of places, and I think
7 that's what it should be.

8 **MR. DOWDS:** I have no problem with that.

9 **COMMISSIONER DEASON:** Commissioner Clark,
10 then are you suggesting that we simply strike the
11 fourth -- well, it's the paragraph that begins with
12 the word "fourth" on Page 31?

13 **COMMISSIONER CLARK:** Let me get there.

14 (Pause)

15 I guess I don't think -- what we're
16 concerned about is any revenues that are lost as a
17 result of any kind of competition, if those revenues
18 were used to support local rates.

19 **COMMISSIONER DEASON:** Is this paragraph the
20 only place in the report which indicates that the
21 small LECs should be excluded?

22 **COMMISSIONER CLARK:** Well, I don't know.

23 **COMMISSIONER DEASON:** I'm --

24 **MR. DOWDS:** I believe so. I would have
25 to -- I'd like to double-check later on, but I believe

1 it's the only place that says that small LECs should
2 not be eligible for funding.

3 **COMMISSIONER CLARK:** Well, I disagree with
4 that. Therefore, I think we should take it out.

5 **MR. DOWDS:** That's fine with me.

6 **COMMISSIONER DEASON:** I agree.

7 **CHAIRMAN GARCIA:** I know we've got three
8 votes, so -- are you guys all right? All right. It
9 comes out.

10 **COMMISSIONER JACOBS:** I don't know the issue
11 should go totally unspoken to. Just go on for now.

12 **CHAIRMAN GARCIA:** Well, I think Susan makes
13 a good point. And looking at it from the other point
14 of view, if they come in for that type of funding,
15 with them it's a rate case, because they're a rate of
16 return company. If they're making too much money,
17 we're going to bring them in anyway. So I see we've
18 got them either way; right, Susan?

19 **COMMISSIONER CLARK:** Yeah. What I'm
20 suggesting is that there's a point at which I don't
21 think you want to raise local rates any higher in some
22 rural areas --

23 **CHAIRMAN GARCIA:** Right.

24 **COMMISSIONER CLARK:** -- and they should
25 be -- receive funding from the rest of the state to

1 keep --

2 CHAIRMAN GARCIA: Correct.

3 COMMISSIONER CLARK: I mean that's what
4 universal service is.

5 CHAIRMAN GARCIA: I agree. All right.
6 That's -- I guess we're unanimous on that.

7 MR. DOWDS: I have no problem.

8 CHAIRMAN GARCIA: Good.

9 MR. DOWDS: As I indicated, the only thing
10 that troubles me -- and I don't know what to do or say
11 about it -- is what -- how do you handle a price
12 regulated rural LEC where they opted into price
13 regulation obviously for a very explicit business
14 reason? Should they be on a par with the larger LEC?
15 And I just don't know. But I have no problem about
16 omitting this paragraph.

17 CHAIRMAN GARCIA: Okay.

18 COMMISSIONER DEASON: And obviously the
19 paragraphs have to be renumbered as a result.

20 MR. DOWDS: Yes.

21 COMMISSIONER CLARK: Let me ask another
22 question that listening to the tapes I wondered what
23 the response was. Mr. Fons indicated if universal
24 service funding is for two purposes, to subsidize high
25 costs and subsidize Lifeline and Link-Up, is it

1 inconsistent to say there's not a need for universal
2 service fund now when you already know how much
3 funding is going to the low income?

4 MR. DOWDS: I'm sorry. May I restate -- was
5 your point that this claim that --

6 COMMISSIONER CLARK: It's inconsistent to
7 say there's no need when, in fact, they're having to
8 pay for this universal service for low income.

9 MR. DOWDS: Right. Well, we are
10 recommending that Lifeline should be funded now. What
11 we're recommending, however, with respect to high cost
12 is the data don't indicate that there's an imminent
13 threat at the present time. And with that latter
14 conclusion is where Mr. Fons disagrees with me.

15 He thinks that all, quote, implicit funding,
16 unquote, that is embedded in the rate structure of the
17 large LECs should be made. Quote, explicit, unquote,
18 and recovered through universal service mechanism.
19 And that's where we basically disagree.

20 COMMISSIONER CLARK: What did the
21 Legislature -- (inaudible) --

22 MR. DOWDS: I'm sorry. I didn't hear.

23 COMMISSIONER CLARK: What did the
24 Legislature ask us to do? Can you read that again,
25 the statute?

1 MR. DOWDS: The specifics?

2 COMMISSIONER CLARK: Yes.

3 MR. DOWDS: Yes. One second, please.

4 (Pause) Okay. 364.025(4)(b) says "To assist the
5 Legislature in establishing a permanent universal
6 service mechanism, the Commission by February 15th,
7 1999, shall determine and report to the President of
8 the Senate and the Speaker of the House of
9 Representatives the total forward-looking costs based
10 upon the most recent commercially available technology
11 and equipment and generally accepted design and
12 placement principles of providing basic local
13 telecommunications service on a basis, no greater than
14 a wire center basis using a cost proxy model to be
15 selected by the Commission after notice and
16 opportunity for hearing."

17 COMMISSIONER CLARK: Okay.

18 MR. DOWDS: Paragraph C, basically it gives
19 the Commission choices with respect to how the cost of
20 residential basic local service should be computed for
21 a small LEC.

22 Literally it says "In determining the cost
23 of providing basic local telecommunication for small
24 local exchange telecommunications companies which
25 serve less than 100,000 access lines, the Commission

1 shall not be required to use the cost proxy model
2 selected pursuant to Program B until a mechanism is
3 implemented by the Federal Government for small
4 companies, but no sooner than January 1st, 2001."

5 "The Commission shall calculate a small
6 local exchange telecommunications company's cost of
7 writing basic local telecommunications services based
8 on one of the following options: (1) a different
9 proxy model, or (2) a fully distributed allocation of
10 embedded costs identifying high cost areas within the
11 local exchange area the company serves and including
12 all embedded investments and expenses incurred by the
13 company in the provision of universal service."

14 "Such calculations may be made using fully
15 distributed costs consistent with 47 CFR Sections 32,
16 36, and 64. The geographic basis for the calculations
17 shall be no smaller than a census block group."

18 Then .025(4)(d) pertains to the Lifeline
19 study and it says "The Commission by February 15th,
20 1999 shall determine and report to the President of
21 the Senate and the Speaker of the House of
22 Representatives the amount of support necessary to
23 provide residential basic local telecommunications
24 service to low income customers.

25 "For purposes of this section, low income

1 customers are customers who qualify for Lifeline
2 service as defined in Section 364.10(2)."

3 COMMISSIONER CLARK: And we provided that
4 information to them --

5 MR. DOWDS: Yes, we have.

6 COMMISSIONER CLARK: -- our estimate of who
7 would qualify. And from there you can just multiply
8 it by the \$3.50 and figure out how much --

9 MR. DOWDS: That's correct.

10 COMMISSIONER CLARK: -- would be needed.

11 MR. DOWDS: Yes.

12 COMMISSIONER CLARK: If you decided to do
13 that explicitly now, the only thing we're required to
14 do with respect to the universal service fund was that
15 would be targeted for high costs just to identify
16 those areas that are high costs?

17 MR. DOWDS: They didn't ask us to --
18 explicitly just to make any recommendations or
19 reiterate any prior policy determinations as to the
20 structure or need for universal service, but all they
21 asked us to do is tell them what the, quote, cost was
22 on a wire center basis for the large LECs.

23 COMMISSIONER CLARK: Oh. So why are we
24 going beyond that?

25 MR. DOWDS: The reason we are going beyond

1 that, I guess, is because we have consistently for
2 three, three and a half years, and what we were
3 telling -- saying in Chapter 3 now is virtually
4 identical to what we said since 1995.

5 Needless to say, it's the Commission's
6 decision as to whether they want to reiterate what
7 they've said before and/or say anything again at this
8 time.

9 **COMMISSIONER CLARK:** Well, I'd like to hear
10 from the other Commissioners if they think that's
11 appropriate for us to do.

12 **COMMISSIONER DEASON:** I'm sorry, Susan. If
13 what is appropriate?

14 **COMMISSIONER CLARK:** Well, to me, we've
15 ventured into the point that Mr. Fons brought up.
16 We're not asked to report on the need for universal
17 service funding for high costs, or I guess, for low
18 income either; and that seems to be what we're doing.
19 Is that advisable to do that?

20 **COMMISSIONER DEASON:** And I'm sorry. What
21 is Staff's response to that question?

22 **COMMISSIONER CLARK:** They're just saying
23 "This is what we've said before and we're just saying
24 it again."

25 **COMMISSIONER DEASON:** Well, it may be -- I'm

1 with the -- support for low income is not. That's a
2 deviation.

3 COMMISSIONER CLARK: I agree.

4 COMMISSIONER DEASON: Correct. I'm
5 directing to Staff.

6 MR. DOWDS: Yes. As I said, 90% of what's
7 in Chapter 3 is nothing new, but what the key --
8 there's two key differences that occur here. One is
9 where we said in prior iterations, editions of this,
10 that if the Commission -- I'm sorry -- if the
11 Legislature wanted to act then, fund Lifeline, whereas
12 we're here saying, we think you should fund Lifeline
13 now.

14 The other major difference in Chapter 3 as
15 opposed to prior versions is the discussion of the
16 need to develop or specify what should trigger
17 funding. That particular discussion didn't occur in
18 prior narratives. Those are the primary differences,
19 though.

20 COMMISSIONER DEASON: Refresh my memory,
21 though. What should trigger funding?

22 MR. DOWDS: What we -- what's indicated on
23 Pages 29 and 30 is we laid out -- I laid out
24 essentially two options. Option 1 is essentially
25 maintaining the status quo. What that is, is you may

1 recall in the interim universal service mechanism that
2 was -- the order came out in late 1995, an expedited
3 petition process was established whereby if an
4 incumbent LEC could establish that its ability to
5 sustain its universal service responsibilities and
6 carrier of last resort responsibilities had been
7 eroded due to competitive entry, then they could file
8 a petition and would be afforded expedited treatment;
9 and if it was deemed this funding was appropriate, it
10 would occur at that time and it would be handled on a
11 case-by-case basis.

12 Option 2 is -- discusses various possible
13 ways to establish what I'll call for want of a better
14 term a benchmark. This is -- such as market share
15 erosion and whether the market share erosion should be
16 in sub-markets; should it be geographically
17 disaggregated; should it be -- impact on prices of
18 multiple CLECs operating in a service territory.

19 And I basically concluded that there are
20 countless options, and if the Legislature prefers
21 conceptually Option 2, that we will recommend that
22 they direct this Commission to conduct a formal
23 proceeding to determine what the benchmark should be
24 that would trigger funding.

25 MR. D'HAESELEER: Commissioners, from my

1 perspective, it was just -- there was this thought
2 anyway that the legislators would be interested in
3 what we had to say, even though it went beyond with
4 what they directly asked us to do.

5 So in that vein, we offered what we have
6 said historically, and from my perspective, it was --
7 we've been telling the legislators for three years at
8 least, if not longer, that we didn't think an
9 automatic universal service fund was needed; and,
10 therefore, we wanted to be consistent and let them
11 know that. Except for the high -- I mean, for the low
12 income fund, or part of it.

13 **COMMISSIONER CLARK:** Let me ask you this:
14 How do you propose -- do you propose an administration
15 for the low income fund?

16 **MR. DOWDS:** How would it be administered?

17 **COMMISSIONER CLARK:** Yes.

18 **MR. DOWDS:** Towards the end of this chapter
19 there's a section called General Implementation
20 Issues. It starts on Page 33. Those are sorts of
21 issues that would be applicable to any fund.
22 Essentially what we envision is that a third-party
23 administer -- excuse me -- administrator would be
24 appointed, presumably after an RFP process by this
25 Commission. The Commission would retain policy making

1 authority over all the substantive issues associated
2 with running the fund, and the third-party
3 administrator would -- the duties would be
4 administerial in nature.

5 There's also discussion, I believe, in those
6 same pages as to who would be -- who would contribute,
7 how assessments would be conducted and the like. For
8 example, we're recommending the assessments should be
9 revenue based, based upon intrastate end user
10 revenues. We're recommending again that all
11 telecommunications carriers plus any and all other
12 entities that the statute allows us to assess should
13 be assessed, which is basically all telecommunications
14 carriers plus CMRS providers --

15 COMMISSIONER CLARK: But we're suggesting
16 that kind of administration be set up right now just
17 for the low income.

18 MR. DOWDS: Yes. One of the reasons -- I
19 guess there's probably two reasons for that, which may
20 or may not be explicitly stated here. The first
21 reason is Lifeline responsibility is a one-way street
22 currently. Only incumbent LECs are required to offer
23 Lifeline.

24 If we want to encourage providers to offer
25 Lifeline, it seems to me there should be -- that

1 it's -- that it's definitely not competitively neutral
2 to require one industry sector to absorb \$3.50 a head
3 for the pleasure of serving these customers. It's not
4 exactly an incentive.

5 Coupled with that is Ms. Marsh and
6 Mr. McNulty have shown me data over the last --
7 recently that indicates a disturbing trend whereby
8 Lifeline subscribership is actually declining, which
9 is somewhat counterintuitive.

10 A related factor -- I don't recall exact
11 data, but I believe that Florida has a very low
12 subscription rate to Lifeline, on the order of 3 to
13 4%.

14 COMMISSIONER CLARK: Okay. I guess one of
15 the --

16 MR. DOWDS: Correction. 16%.

17 COMMISSIONER CLARK: One of the things
18 that's troubling to me with respect to you
19 recommending whether or not a universal service fund
20 should be established for -- to cover high cost areas
21 is -- as I understood the discussion Tuesday, it sort
22 of turned on what you were trying to accomplish. If
23 you were trying to accomplish replacing revenues lost
24 to competing carriers coming in, you might put off on
25 doing it.

1 But if you were also doing it in order to
2 encourage competing carriers to come into some of the
3 high cost areas, you would go ahead and do it now so
4 that they would know, for instance, that they could
5 serve a phone line in Quincy and would get -- be
6 assured of covering their costs.

7 And don't we have to make that kind of
8 decision first before we would make the recommendation
9 you made?

10 MR. DOWDS: Those are factors you would have
11 to consider.

12 COMMISSIONER CLARK: And I --

13 MR. DOWDS: However, to repeat something I
14 said on Tuesday, it is not the goal or the role of a
15 universal service fund to incent entry. It should be
16 competitively neutral such that anybody -- that the
17 same amount of funding is available wherever the
18 funding is available.

19 And in, my opinion, one thing a universal
20 service definitely should not do is arbitrarily and
21 inappropriately incent entry where entry would not
22 otherwise have occurred, with the caveat that if the
23 incumbent gets funding, explicit funding, so should
24 all potential providers. But perhaps I'm --

25 COMMISSIONER CLARK: Aren't you relegating

1 the people who live in high cost areas not to --

2 MR. DOWDS: I'm sorry?

3 COMMISSIONER CLARK: -- get competition?

4 Aren't you sort of making a decision for people in
5 high cost areas that they will not get competition?

6 MR. DOWDS: No. I hope that -- I didn't
7 mean to convey that. I don't think that whether or
8 not there's high cost money will incent entry one way
9 or the other, because all an explicit universal
10 service fund would do would be to put whatever
11 available funding is available on an equal foot for
12 both incumbents and entrants.

13 Moreover, I think it's not even at issue
14 that the level of funding that you would need to
15 incent entry in many, many high cost areas, it would
16 be so high as to, as it were, break the bank. In
17 other words, it would cause such an overall dead
18 weight loss on all consumers that it's doubtful that
19 you would want to set up an aggregate funding level
20 that high.

21 COMMISSIONER CLARK: But we want to require
22 the ILECs to serve them.

23 MR. DOWDS: I'm sorry?

24 COMMISSIONER CLARK: But we still want to
25 require the ILECs to serve them.

1 MR. DOWDS: We want to provide funding to
2 whomever serves an area we deem to be high cost such
3 that that provider cannot sustain the -- what we deem
4 to be a reasonable and affordable rate for residential
5 basic local service.

6 COMMISSIONER CLARK: I'm willing to hear
7 what other --

8 MR. DOWDS: Anyway --

9 COMMISSIONER CLARK: -- Commissioners have
10 to say, but I'm just uncomfortable with that part of
11 the report.

12 CHAIRMAN GARCIA: Tell me what you want it
13 to say, Susan.

14 COMMISSIONER CLARK: I don't think we should
15 say anything about it. We should answer the questions
16 that they asked us, and that was, if I understand it,
17 on the low income side, and then tell them what the
18 cost is to serve the various areas.

19 COMMISSIONER DEASON: And you're suggesting
20 that we make no recommendation whatsoever upon the
21 need for a fund?

22 COMMISSIONER CLARK: Right. At least with
23 respect to high costs.

24 COMMISSIONER JOHNSON: Well, I -- I mean, I
25 understand David Dowds' recommendation and analysis,

1 Susan, and candidly I don't see the problem with it.
2 It's consistent with what we've been saying in the
3 past, that there's no need to establish a fund at this
4 time.

5 Certainly it's information that they didn't
6 ask for, but it just seems to me to just kind of tell
7 the complete story. We address high cost and low
8 income, and we say what they should do with low
9 income. So it strikes me that we should also say what
10 they should or shouldn't do with the high cost fund
11 also, unless we're getting ready to change our
12 position.

13 And if we're getting ready to change our
14 position, then I think we'd need to kind of roll up
15 our sleeves and decide how we're going to accomplish
16 it if we did think that there should be a fund for the
17 high cost areas.

18 **COMMISSIONER CLARK:** What is the FCC going
19 to do in July, or whatever?

20 **COMMISSIONER JOHNSON:** I wish I knew. I'm
21 not certain. In the way that -- the way that the
22 Universal Service Joint Board recommendation is
23 written, we have a hold harmless provision with
24 respect to high cost funds that companies currently
25 receive. And that was basically because Congress sent

1 a very clear message that with respect to the current
2 funding levels, that they shouldn't go below that
3 level; but those dollars aren't big dollars anyway.
4 And throughout our recommendation we talk very
5 cautiously about keeping the fund very small.

6 And there's going to be -- with the FCC's
7 analysis it's going to really have a lot to do with
8 what they do with access reform, and they want to come
9 out with both of those orders at the same time I think
10 in such a way that they're going to be doing some
11 major restructuring of dollars.

12 **COMMISSIONER CLARK:** Let me just ask one
13 thing sort of off the wall and then I'll let go and
14 let you all decide what you want to do.

15 We have a case pending before us now, and I
16 understand it's going to be an issue in a lot of
17 places, and that's the notion of deaveraging rates.
18 Won't that impact the need for universal service?

19 In other words, if -- in putting out UNEs if
20 we do deaverage rates, people are going to want to
21 serve where it's low cost, high profits, and the
22 opportunity to get funds from those customers by the
23 ALECs to support people in the high cost areas is
24 going to be further adversely affected.

25 Have I got that right?

1 **MR. DOWDS:** Commissioner Clark, are you
2 referring to the purported effect of the Supreme Court
3 decision?

4 **COMMISSIONER CLARK:** No.

5 **COMMISSIONER JOHNSON:** Is that that document
6 that ComTel filed? Did they talk about deaveraging
7 rates? And it was at the wholesale -- yeah, that's
8 the competitive providers.

9 **COMMISSIONER CLARK:** Right. As I understand
10 it, they want rates for various UNES to be
11 geographically deaveraged. Isn't that going to impact
12 whether or not the ILECs will be able to save this
13 implicit subsidy to the high cost areas?

14 **MR. DOWDS:** To be honest, I don't know.

15 **COMMISSIONER DEASON:** Wouldn't it have that
16 effect? I mean, if you reduce the UNE prices in the
17 low cost areas, and -- I would think that would have
18 the result of competitors would target those areas
19 because they can provide service at a lesser cost; and
20 since rates are currently averaged, well, then they
21 have a better competitive margin there to compete
22 against the incumbent LECs' rates.

23 And then that takes away contribution from
24 those customers in the low cost areas, contribution
25 that in theory is being used to support service in

1 high cost areas.

2 MR. DOWDS: Right, well, there only would --
3 there would be two impacts. One would be in there
4 would be a groundswell of filings from LECs asking for
5 deaveraged retail rates, and also at the same time,
6 they --

7 COMMISSIONER DEASON: Let me interrupt you
8 right there. But if they do that, at some point,
9 though, we still have to apply the affordability
10 factor.

11 COMMISSIONER CLARK: Right.

12 COMMISSIONER DEASON: We just can't --

13 MR. DOWDS: I'm certain --

14 COMMISSIONER DEASON: -- let the rates go up
15 to \$100 a month in high cost areas.

16 MR. DOWDS: Yes. That's what I was about to
17 say.

18 COMMISSIONER DEASON: Okay.

19 MR. DOWDS: That what they would argue is
20 that they need both -- they need two things. They
21 need the ability to deaverage retail rates to compete
22 heads up with the -- if they're required to have
23 geographically deaveraged UNE rates, and, secondly,
24 any shortfall that they experience due to a
25 deaveraging rural rate, for example, would be --

1 should be offset through a credit mechanism, or
2 something like that for the end user, so that the end
3 user faces no net increase in price. But you're quite
4 right; yes, that's possible.

5 MS. SIMMONS: Commissioners, I was just
6 going to observe that I agree with Mr. Dowds that I
7 expect the LECs would want deaveraging both at the
8 retail and wholesale level at the same time. However,
9 if you deaverage merely at the wholesale level, that
10 would encourage competitive erosion. I don't think
11 there's any question about that. But I think he's
12 correct that local exchange companies would be seeking
13 both of those actions simultaneously.

14 COMMISSIONER CLARK: Sally, and if we do
15 deaverage at the retail level, then some rates are
16 going to become unaffordable and we'll need to come up
17 with an explicit universal service fund.

18 MS. SIMMONS: That could be. I think we're
19 speculating, though.

20 COMMISSIONER CLARK: Well, I guess what it
21 boils down to for me is that there are probably a
22 number of arguments and considerations that apply to
23 whether or not it is appropriate now to do an explicit
24 subsidy as opposed to an implicit subsidy.

25 And I'm not advocating we change what we've

1 already done, but nor am I advocating -- nor am I
2 saying that I think we should advocate it yet again in
3 this proceeding, because there may be things very soon
4 down the road that will force us to a different
5 conclusion even though the items we've set should
6 trigger that kind of thing have not occurred.

7 **COMMISSIONER JOHNSON:** So do you think we
8 should have -- that we should have the authority to
9 set a fund if necessary? Maybe that would help with
10 all of the unknowns that are out there now. And are
11 you afraid that if we just say there's no need for a
12 fund right now, it doesn't get addressed --

13 **COMMISSIONER CLARK:** Right.

14 **COMMISSIONER JOHNSON:** -- then we have to
15 wait another year to go back to the Legislature; if
16 between the last Supreme Court order and some of the
17 deaveraging dockets we may have before us we may need
18 to do something sooner?

19 **COMMISSIONER CLARK:** Yeah. I guess what I'm
20 suggesting is that, you know, we don't recommend an
21 explicit universal service now, but we might also say,
22 here are the things that you would take into
23 consideration when making that kind of decision.

24 **MR. DOWDS:** But with all -- I'm confused,
25 Commissioner Clark. It seems to me that was the

1 intent of the recommendation on high cost; namely that
2 there are a number of points that are made in terms of
3 what I'll call ducks in a row in terms of things you
4 have to decide to implement any fund.

5 Those are all -- start on Page 33. And with
6 respect to high cost, the conclusion is we don't know
7 what should trigger fundings, and so we're hesitant
8 about turning on the tap. And we recommend to the
9 Commission one of two options, one of which is to have
10 the Commission investigate under what circumstances
11 and what conditions would necessitate funding
12 beginning.

13 Now, I would also point out that since we're
14 recommending that Lifeline be explicitly funded once
15 you set up -- you know, the administrative nuts and
16 bolts for one fund, you've basically done it for
17 both -- for any future funds, just a different pot.

18 **COMMISSIONER CLARK:** I'd like --

19 **COMMISSIONER DEASON:** It's the same point I
20 want to discuss, whether we should do that or not. I
21 don't think --

22 **MR. DOWDS:** Certainly.

23 **COMMISSIONER DEASON:** -- that's a given.

24 But -- I'm sorry for the interruption, but I just
25 wanted --

1 MR. DOWDS: That's all right. I mean, I --

2 COMMISSIONER DEASON: -- to clarify that.

3 COMMISSIONER CLARK: Well, I've discussed
4 this at length, and I'll just leave it out there then.

5 COMMISSIONER JOHNSON: Susan, though, going
6 back to your point -- because you raise a good
7 point -- with respect to the high cost fund and
8 whether we should or could have the authority to make
9 a determination as to when one is needed, that might
10 be helpful, David, and followed up if we had some
11 language that almost goes to some of the debate or --
12 not debate -- the discussion that we've had thus far,
13 and even perhaps citing to what's happening on the
14 federal level with respect to the FCC -- or the
15 Supreme Court overturning the 8th Circuit's decision,
16 some of the local pricing issues with respect to the
17 fact that we're being -- we probably will be dealing
18 with some rate deaveraging issues.

19 And given that we are in a changing
20 environment, that maybe we do need the authority to
21 set up a fund if one is necessary, and then we get it,
22 determine when and how and we can do that through a
23 proceeding; but at least that tees it up in such a way
24 that we don't have to wait another year to -- for the
25 Legislature to meet to make those kind of

1 determinations.

2 **COMMISSIONER DEASON:** Would you be including
3 in that the low income, the current \$3.50, or would
4 you want that to be authorized and mandated that we go
5 ahead and do that now?

6 **COMMISSIONER JOHNSON:** You know, it
7 generally strikes me that it's best if the two
8 programs are funded together. My only concern about
9 the Lifeline Link-Up program is that the LECs are
10 funding it now. We know --

11 **COMMISSIONER DEASON:** Let me interrupt you
12 just a second. I really apologize for interrupting.
13 But when you say the LECs are funding it, yes, they
14 are, but no, they're not. They are getting -- there
15 are implicit subsidies which are paying that, and
16 whether it's access charges and the IXCs are paying
17 for it or they're doing it through toll rates
18 themselves, you know, the customers are paying for it.
19 Somebody is paying more than they otherwise would have
20 to be paying.

21 So I agree with what you're saying, but in a
22 way -- and we know that the companies' earnings are
23 not hurting. So in a way, yes, they're funding it,
24 but in a way, somebody else is funding it.

25 **COMMISSIONER JOHNSON:** Yeah, that's a good

1 point. But to both points -- and your question is,
2 should they be tied together. I don't think that's a
3 bad idea if they give us the authority and then we can
4 make some determinations as to when each should be
5 implemented through a docket or whatever that might
6 take, but at least give ourselves that option; cite to
7 everything you cited to about the Lifeline Link-Up;
8 you know, if we had full take rate what that would
9 cost; cite the issues that we're dealing with with the
10 high cost fund and get the authority instead of
11 waiting a year to get the authority and then we
12 determine if the Legislature is willing to do that
13 when they should be implemented, when both those
14 programs should be implemented and not tie it to a
15 date certain, just get the authority to do it and
16 explain the reasons why.

17 That might be the best of all worlds.

18 COMMISSIONER DEASON: I can agree with that.
19 I think it's something that we need the authority to
20 do and when the time is right to have the authority to
21 go forward and implement it.

22 The problem I'm having right now with the go
23 forward immediately with funding the low cost, you
24 indicate that it's not competitively neutral, and I
25 agree 100% with that, but neither are all the other

1 implicit subsidies out there. They're not
2 competitively neutral, are they?

3 MR. DOWDS: Well --

4 COMMISSIONER DEASON: And, for example,
5 right now having to serve a high cost area with a
6 carrier of last resort obligation and competing
7 carriers not having that obligation, I don't think
8 that's competitively neutral either.

9 MR. DOWDS: I agree.

10 COMMISSIONER DEASON: Okay.

11 CHAIRMAN GARCIA: But isn't that what your
12 Option 2 says, what we've been discussing, sort of? I
13 mean, it just changes the standard. Maybe the
14 standard -- this sort of puts the onus on us -- but
15 doesn't Option 2 say, come on in; if you think we need
16 it, we'll -- and we'll do it?

17 MR. DOWDS: Sort of. What I had in mind
18 when I structured this was fund Lifeline now, because
19 I really couldn't think of a particularly good reason
20 not to. And there's been -- the datas are kind of
21 squirrely when you see --

22 COMMISSIONER CLARK: Where are you going
23 with that?

24 MR. DOWDS: I'm sorry?

25 COMMISSIONER JOHNSON: I think she's talking

1 to someone else.

2 COMMISSIONER CLARK: Sorry, David.

3 MR. DOWDS: Okay. My strategy was as
4 follows: Go ahead, establish a fund to administer
5 Lifeline -- a Lifeline fund to reimburse for \$3.50 now
6 for various reasons; one, we were seeing Lifeline
7 penetration decline. It seems that weird.

8 Commissioner Deason is absolutely right that
9 the big three LECs in particular are doing just fine
10 finally, thank you. So maybe one could opine that
11 they can easily absorb the \$3.50 times whatever the
12 number of customers they're serving, except the number
13 of customers they're serving is declining.

14 Absent -- so the argument would go, absent
15 explicit funding, the LECs have no incentive to tell
16 their customer service reps to tell people, by the
17 way, do you want Lifeline.

18 Some of the small LECs have, understandably,
19 a rather abysmal take rate for Lifeline. I don't have
20 the data, but I know my colleagues do. If we want to
21 turn that around, one way to do it is to fund it.
22 Obviously it's a policy decision, and there is -- I
23 mean, as you've espoused, Commissioner Deason, there's
24 good arguments for both sides, I think.

25 Anyway, putting that aside for a moment,

1 what I envisioned was we go ahead and set up a fund
2 mechanism now with all the overhead to fund Lifeline.
3 Then I propose one of two options in terms of
4 determining under what circumstances would high cost
5 funding for a LEC or whomever come about. One was the
6 existing inner mechanism; you know, if there's a
7 problem, come see us, or we have a proceeding to
8 determine what sorts of advance -- or our activities
9 would trigger it.

10 We already have the fund in place or the
11 mechanism, but not the actual -- the actual beginning
12 assessments to -- and disburse -- and thus
13 disbursements for high cost fund. That was the
14 paradigm I was working from.

15 And I gather from Commissioner Johnson and
16 Commissioner Deason, your preference is to modify the
17 recommendation such that we don't seek -- we don't --
18 contain an explicit recommendation to, as it were,
19 turn on the tap for Lifeline now, but seek explicit
20 authority to fund both Lifeline and high cost when
21 necessary.

22 COMMISSIONER JOHNSON: And if we --

23 COMMISSIONER DEASON: And it may be our
24 decision that we do one or the other at that time.

25 MR. DOWDS: Right. And that recommendation

1 is consistent to that which I believe we made in '96
2 and sort of with the one in '97. '97 we said, don't
3 do anything, because the Feds were still acting. Is
4 that an accurate characterization?

5 **COMMISSIONER JOHNSON:** Like right now we
6 don't have the authority if we wanted to set up a high
7 cost fund or universal service fund, we don't have the
8 authority to do that under the existing law; right?

9 **MR. DOWDS:** That's correct.

10 **COMMISSIONER JOHNSON:** So I'm just trying to
11 get us the authority. We may end up doing exactly
12 what you've suggested --

13 **MR. DOWDS:** Sure.

14 **COMMISSIONER JOHNSON:** -- but I just don't
15 want to box ourselves in and make us start
16 implementing something in six months or anything, but
17 we have all those options. They're still all on the
18 table. And given the environment, maybe we do want
19 those options and the ability to do that.

20 Now, the Legislature may come back and say,
21 we don't want to give you that kind of authority.
22 Then maybe at an Internal Affairs we'll have to come
23 up with, you know, more parameters. Maybe they want
24 to know up front. But if they feel comfortable that,
25 as we have described, these are the things that are

1 happening, and even talking to the high cost fund,
2 what's happening there, allowing us -- and is giving
3 us that kind of authority, then I think that's the
4 best of all worlds.

5 **COMMISSIONER DEASON:** I agree.

6 **COMMISSIONER CLARK:** I'm still here. I
7 forgot to say I'm fading fast. Isn't it getting close
8 to 5:00?

9 **COMMISSIONER JACOBS:** I think I'm persuaded
10 to follow that line of reasoning. I like the idea of
11 going ahead and doing the Lifeline support now, but
12 what I'm hearing you say is that your approach assumes
13 we get that authority anyway.

14 **COMMISSIONER JOHNSON:** Right.

15 **CHAIRMAN GARCIA:** Well, I think he goes
16 farther than what I sort of wanted to do, but I'm more
17 comfortable with what you wanted to do. I mean, I
18 just didn't think I could get it, but Staff^s certainly
19 wasn't that far along. They only believe that we're
20 comfortable, at least in their study, with the
21 Lifeline.

22 But it does make sense -- I mean, we've laid
23 out the parameters -- to simply ask for it. And if we
24 find that it's necessary, if circumstances show it --
25 I mean, one of the grave concerns that I as I read

1 through this -- and, you know, the problem is that
2 both of these reports are -- sort of meld into each
3 other. I mean, it's all one concept, but we separate
4 it.

5 You know, is the assertion that, you know,
6 2 or 3% of the market -- I think it was GTE that made
7 the assertion that 2% of the market supported 46% of
8 the customers? Something like that is in here, right?

9 **MR. DOWDS:** As a reference that three or
10 four years ago GTE asserted that something like 2% of
11 their toll customers accounted for 46% of the toll
12 revenues, I believe, is the reference.

13 **CHAIRMAN GARCIA:** As you read through here
14 you know, and the truth is that it is weighted; and
15 the companies have made some good arguments, and Staff
16 recognizes the truth to how certain areas are
17 targeted.

18 It would strike me that -- I don't know if
19 it was Susan or Julia proposed it -- that maybe what
20 we needed, a mechanism in place that -- you know, we
21 obviously have a series of hearings to develop exactly
22 what and how, and what the benchmark and so forth; but
23 it would be there. And when it would be needed, we
24 could put it into play. I'm comfortable with that.
25 Is that what you're suggesting?

1 **COMMISSIONER JOHNSON:** Uh-huh.

2 **CHAIRMAN GARCIA:** Well, that said, I just
3 think that may be a little bit more complex than
4 David, as bright as he is, could pen for us in a few
5 moments here; but at least the concept, and then maybe
6 walk it around one more time.

7 Is there any other issue that any other
8 Commissioner wants to bring up here? Because,
9 honestly, if we have the votes for that, I -- you know
10 mine can go by the wayside. I think this is much
11 stronger.

12 **MR. DOWDS:** May I ask a couple questions.

13 **CHAIRMAN GARCIA:** Oh, absolutely.

14 **MR. DOWDS:** Is there anything --

15 **CHAIRMAN GARCIA:** As long as they're not
16 hard.

17 **MR. DOWDS:** With those -- well, are there
18 any other explicit recommendations here that were
19 asking for authority -- let me back up. There are
20 recommendations on Pages 30 through 35 or 6, or
21 whatever it is, which indicate that if and when a fund
22 is implemented, these are recommendations we think
23 should be made.

24 Do you have any problem with any of those?

25 **COMMISSIONER JOHNSON:** Would we need --

1 that's a good question, David, because like --

2 **MR. DOWDS:** If you look on the middle of
3 Page 30 it says, "If and when an explicit high cost
4 mechanism is implemented, PSC has certain
5 recommendations that are specific to such a
6 mechanism." And there's several pages of them.

7 And then over on Page 33, there is again
8 General Implementation as used as to who should pay,
9 that kind of stuff. Do you have any problem with any
10 of that stuff?

11 **COMMISSIONER JOHNSON:** I think what you're
12 saying is to the -- this would be perhaps if the
13 Legislature said, Commission, you have the authority
14 to develop and implement a universal fund, and then
15 they would set forth principles that should be used.
16 And I guess one principle that we're suggesting is
17 that any fund should be portable, technologically and
18 competitively neutral, those kind of things. So we
19 would make these the kind of principles that would
20 guide us.

21 **MR. DOWDS:** Right.

22 **CHAIRMAN GARCIA:** I would have loved to have
23 dropped the last line of the report. "Further we
24 recommend that explicit charges appear on customers'
25 bills -- I don't know if we need to sort of force

1 that. I know you -- I think you touched on it
2 somewhere else in terms of the explicitness of it. I
3 don't know if that's necessary.

4 COMMISSIONER JOHNSON: Which one was that,
5 Joe?

6 MR. DOWDS: On Page 36. It's basically an
7 outgrowth of the truth in billing NPRM about -- well,
8 as we know, certain entities won't like that at all,
9 but basically it prohibits a provider who is assessed,
10 say, \$1 for serving you of putting a charge on your
11 bill for that purpose that exceeds \$1. I mean, that's
12 the short way of explaining it.

13 CHAIRMAN GARCIA: Oh. Is that what it does?
14 I thought it would just --

15 MR. DOWDS: Yes.

16 CHAIRMAN GARCIA: Isn't there somewhere in
17 here where we have the explicit --

18 MR. DOWDS: To give you an example --

19 CHAIRMAN GARCIA: -- language that it has to
20 be -- any universal service fund has to be explicit --

21 MR. DOWDS: No. This says if explicit
22 charges --

23 CHAIRMAN GARCIA: Oh, okay.

24 MR. DOWDS: This discussion is about --

25 CHAIRMAN GARCIA: Maybe I mis -- maybe I --

1 MR. DOWDS: -- (inaudible overlap) -- of the
2 universal service assessments. And it says if
3 explicit charges -- say, by an IXC, for example --
4 appear on customers' bills, it says any charge should
5 not exceed the amount attributable to that customer.

6 CHAIRMAN GARCIA: That's fine. That's fine.
7 But I thought we had asserted in here somewhere --
8 maybe I'm mistaken --

9 MR. DOWDS: I'm sorry --

10 CHAIRMAN GARCIA: We had asserted in here
11 somewhere that whatever fee it would be, however --
12 whichever mechanism we used to collect this, that it
13 had to be explicit on the bill, or something --

14 MR. DOWDS: No.

15 CHAIRMAN GARCIA: -- like that. Okay. My
16 mistake --

17 MR. DOWDS: And then I have -- there's
18 language that says that they have leeway to collect it
19 how they want subject to certain constraints; and
20 their -- the discussion begins on the bottom of Page
21 35, I believe.

22 CHAIRMAN GARCIA: Okay.

23 MR. DOWDS: I mean, they're forbidden from
24 mislabeling what the charge pertains to or
25 misrepresenting what gave rise to the charge.

1 **CHAIRMAN GARCIA:** Let me ask you one
2 question, sort of, and I think it's philosophical in
3 nature, but it's sort of out there. The carrier of
4 last resort obligations to the companies end next
5 year; right at the end of this year, right?

6 **MR. DOWDS:** I'm sorry. That's a good
7 question. I don't know. And if you'd like, I can
8 explain why.

9 **CHAIRMAN GARCIA:** Yeah, because you made
10 some assertion here that I didn't understand, and you
11 referred to the federal statute, right; if I'm not
12 mistaken?

13 **MR. DOWDS:** There's certain \$64 questions
14 that are out there. Our statute, 364.025(1) requires
15 incumbent LECs to be COLRs until, I believe, it's
16 1/1/99 -- or in 12/31/99. I'm sorry. Four years
17 after the date of the '95 revision.

18 So until December 31st, 1999, it says they
19 will be COLRs.

20 **CHAIRMAN GARCIA:** Okay.

21 **MR. DOWDS:** In 364.025, I believe it's
22 Section 4 or 5, it says "On or after 1/1/2000, an ALEC
23 may petition to be a COLR, okay. But there's a gap
24 here. There's nothing that says one way or the other
25 whether or not an incumbent LEC can relinquish its

1 authority to be a COLR. Our statute is basically
2 silent in my opinion.

3 CHAIRMAN GARCIA: Okay.

4 MR. DOWDS: I reference 214(e)(4), I think,
5 somewhere in here, which is from the federal statute.
6 And basically what that Section 214(e) talks about is
7 the -- an eligible -- the notion of an eligible
8 telecommunications carrier. And you have to be an
9 eligible telecommunications carrier in order to
10 receive federal funding for any of their programs.
11 I'm sorry. Strike that. For the federal high cost
12 and low income programs.

13 Now, in order to be an ETC, you have to
14 offer what are -- under the federal law -- the
15 so-called supported services, which is whatever is in
16 the definition of the universal service package, and
17 you have to advertise their availability.

18 In, I believe, the end of '97, in order to
19 ensure continued interstate funding for our incumbent
20 LECs, we -- the Commission issued an order deeming
21 every one of them an ETC, okay.

22 Now, 214(e)(4), as I recall, in the federal
23 statute talks about the conditions under which an ETC
24 can relinquish its authority to serve an area, and it
25 basically is such that they can't leave under the

1 cover of darkness. In other words, they have to seek
2 approval from a state commission to do so.

3 To the extent that it is a smooshing
4 together of a notion of an ETC, which we already told
5 our incumbent LECs they are ETCs, it could very well
6 be, in my opinion -- and again, I'm not a lawyer,
7 obviously -- that 214(e)(4) is -- has sufficient
8 safeguards such that the -- what's analogous to a COLR
9 responsibility is sustained, because they would
10 have -- they have to petition a state Commission to
11 give up their ETC responsibility.

12 And the state commission, if I recall the
13 wording, it says something to the effect, the state
14 commission will not approve it until there's a
15 replacement.

16 **CHAIRMAN GARCIA:** It just struck me that
17 because of this carrier of last resort issue, that
18 there was sort of an imperative issue here. You're
19 telling me that I shouldn't be worried, that, you
20 know, we've got one legislative session --

21 **MR. DOWDS:** Sure.

22 **CHAIRMAN GARCIA:** -- you know, I know it's
23 not going to happen, but let's say it did happen. You
24 know, you're saying that the federal statute protects
25 us that if --

1 MR. DOWDS: I think so.

2 CHAIRMAN GARCIA: -- Bell --

3 MR. DOWDS: I honestly don't know. I
4 haven't heard --

5 CHAIRMAN GARCIA: It just strikes me as
6 something that we need to -- and maybe it should be
7 part of this report. You know, we're saying to the --
8 we're saying to the Legislature, here's what happens
9 and then, you know, we're saying give us this option
10 of letting us institute a universal service fund. But
11 I think one of the reasons you need to do it is
12 because there is a possibility that come 1/1/2000,
13 someone says I'm not serving Pahokee, or whatever, I'm
14 just not going to serve it, it's too expensive to
15 serve it.

16 And this Commission needs to have some way
17 of doing it, and the best way of doing it is if we had
18 a universal service fund at least authority so that
19 if -- and I don't know if BellSouth serves Pahokee --
20 but if BellSouth serves Pahokee and says
21 "Commissioners, I'm not going to do it, this is
22 costing me \$300 a line, I have nowhere to make this
23 up," they can come do this Commission and we've got
24 something to give them.

25 I mean, obviously they've got to give us

1 something to figure out -- but -- and you're telling
2 me you think the federal statute helps us here, but it
3 worries me that it's sort of a gamble, and certainly
4 it strengthens our position to get authority to create
5 a universal service fund if we have that reality out
6 there.

7 And I know that the IXCs don't want a
8 universal service fund; they don't think it's
9 necessary. Maybe it's true it's not necessary. We're
10 not saying we're going to create it, but certainly if
11 we need it, it would be good to have.

12 **COMMISSIONER DEASON:** Well, I think they may
13 not be able to leave in the night, so to speak, but I
14 think it's obvious that they could come to this
15 Commission and demonstrate a case to where it is cost
16 prohibitive to serve and that it's not being made up,
17 and that due to competitive pressures, their earnings
18 cannot withstand it or whatever, and that they need to
19 be -- I don't know what the standard would be, but
20 there could be some type of a showing they should be
21 released from the obligation to serve.

22 And if they make that showing, it's going to
23 be hard to say, no, you're right on all the points,
24 but you still have to serve. They need to be able to,
25 on a competitively neutral basis, offer them an

1 alternative.

2 **CHAIRMAN GARCIA:** Right. I know that that's
3 sort of what Staff has talked about in the past, if --
4 you know, we don't need one yet, and when they need
5 one, they should come in and then we'll -- but if
6 we're going to ask for the authority to be able to do
7 this and implement this, we need to have a reason; and
8 the reason being, well, there may be the need.

9 Well, I can't think of a stronger reason
10 than the fact that, you know, GTE may decide not to
11 serve Spring Hill, you know. If they even serve
12 Spring Hill. I don't know.

13 **MR. DOWDS:** Let me recap and make sure I'm
14 on the right page. What I've already heard is it's
15 the Commission's will that this recommendation be
16 modified such that we seek authority to implement
17 universal service mechanisms when we deem it's
18 necessary, and there's discussions of certain general
19 principles and stuff like that.

20 Now, do I understand you as saying that you
21 think there may be need for explicit statutory
22 language additions to 364.025, which is our universal
23 service statute, extending the carrier of last --
24 explicitly extending the carrier of last resort
25 responsibilities of the incumbents?

1 **MR. D'HAESELEER:** I read it as just another
2 add-on why we need the authority for --

3 **CHAIRMAN GARCIA:** Exactly.

4 **MR. D'HAESELEER:** -- a universal service
5 fund.

6 **CHAIRMAN GARCIA:** Exactly. Clearly it's
7 something that the Legislature is going to have to
8 grapple with. It's something that we didn't address
9 very directly.

10 I know you touched on the federal and why
11 you think they can't walk away. But it certainly is
12 something that -- it's a frightening prospect to me,
13 and it certainly makes the reasoning behind us needing
14 authority to do this, it makes it much stronger.

15 And I think it should be added as part of
16 the reasoning. And maybe you could do a little bit
17 more research on it, but -- just to back that up,
18 because it worries me tremendously that someone comes
19 to us and says, yeah, I'm leaving Pahokee, or Spring
20 Hill is not worth serving to me, it's costing me too
21 much, and then we have no --

22 **COMMISSIONER CLARK:** You're saying that
23 might be the circumstances under which we would say we
24 need to set an explicit fund.

25 **CHAIRMAN GARCIA:** Exactly.

1 **COMMISSIONER CLARK:** Right. I agree with
2 that.

3 **CHAIRMAN GARCIA:** Now, if you looked -- and
4 I don't know if you're aware of the language that I
5 handed out earlier -- there I just simply started
6 collecting it at a date certain, and it was because I
7 thought that we were further down the road.

8 I think this is a much -- I'm much more
9 comfortable with this. And maybe also a standard that
10 had to be created. The problem we have with the
11 standard that exists presently is that the companies
12 don't want to come in. They don't want to show us
13 what's there. I understand that, but we need to
14 protect the Florida citizens. Forget the company. To
15 protect Florida citizens.

16 We need to have some tool that we can say,
17 you know, all right, the time has come for a universal
18 service fund. Let's implement it.

19 That said, I don't think there's any
20 disagreement on the bulk of the work. We're just
21 going to add that -- sort of that concept of asking
22 for authority to create a universal service fund.

23 **COMMISSIONER DEASON:** Walter, is that a good
24 idea?

25 **MR. D'HAESELEER:** Yes. I wish I had

1 recommended it myself.

2 **CHAIRMAN GARCIA:** Now I'm really worried.

3 (Laughter)

4 All right. Well, we're going to see it in
5 the language that you're going to propose on this, I
6 guess, the quicker the better. I guess -- let me just
7 go in my mind just to put us -- first of all, let me
8 do this.

9 Is there any objection that we pass this
10 report with those additional topics that we've
11 discussed? We'll obviously see the specific language.
12 Is there any objection? (No response.)

13 There being none --

14 **COMMISSIONER DEASON:** There was some
15 additional -- there were some things taken away, too;
16 namely that paragraph --

17 **CHAIRMAN GARCIA:** Correct. Correct.

18 **COMMISSIONER DEASON:** That fourth paragraph.

19 **CHAIRMAN GARCIA:** Correct; with all the
20 changes that we've made, and Staff will show us that.
21 All right. So.

22 **MR. D'HAESELEER:** Yeah, what we could do is
23 when we're ready we'll pass it around and let
24 everybody look at it.

25 **CHAIRMAN GARCIA:** I know you've got some

1 constraints of printing this all up and the like, but
2 I think we can get it around. The changes weren't
3 that big and this report isn't as large as the other
4 one.

5 MR. D'HAESELEER: Unless you want to just
6 trust me.

7 CHAIRMAN GARCIA: No. No. (Laughter) So
8 we'll take a look at that.

9 And is there anything else, Commissioners?
10 (No response.)

11 That said, we thank you all for your time.
12 Good work done. Thank you Commissioner Clark for
13 sitting through this with us and not being here.

14 COMMISSIONER CLARK: I really enjoyed it,
15 Joe Garcia.

16 CHAIRMAN GARCIA: It's hereby adjourned.

17 (Thereupon, the hearing concluded
18 at 5:20 p.m.)

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1 STATE OF FLORIDA)
2 COUNTY OF LEON)

CERTIFICATE OF REPORTERS

3 I, H. RUTHE POTAMI, CSR, RPR, Commission
4 Reporter,

5 DO HEREBY CERTIFY that the Special Internal
6 Affairs Proceeding was heard by the Florida Public
7 Service Commission at the time and place herein
8 stated; it is further

9 CERTIFIED that I stenographically reported
10 the said proceedings; that the same has been
11 transcribed by me; and that this transcript,
12 consisting of 58 pages, constitutes a true
13 transcription of my notes of said proceedings.

14 DATED this 1st day of February, 1952.

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H. RUTHE POTAMI, CSR, RPR
Official Commission Reporter