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BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of : DOCKET NO. 991222-TP
Request for submission of :
proposals for relay service :
beginning in June 2000, for :
the hearing and speech :
impaired, and other :
implementation matters in :
compliance with the Florida :
Telecommunications Access :
System Act of 1991. :

*
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* AND DO NOT INCLUDE PREFILED TESTIMONY. *
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PROCEEDINGS: AGENDA CONFERENCE
ITEM NO. 4

BEFORE: COMMISSIONER J. TERRY DEASON
COMMISSIONER SUSAN F. CLARK
COMMISSIONER E. LEON JACOBS, JR.

DATE: Tuesday, February 15, 2000

TIME: Commenced at 10:30 a.m.
Concluded at 1:10 p.m.

PLACE: Betty Easley Conference Center
Room 148
4075 Esplanade Way
Tallahassee, Florida

REALTIME
REPORTING BY: JOY KELLY, RPR
BUREAU OF REPORTING

RECEIVED 2-21-00

DOCUMENT NUMBER - DATE
02300 FEB 21 0
FPSC-RECORDS-REPORTING

1 **PARTICIPATING:**2 RICHARD TUDOR and LAURA KING, Division of
3 Communications

4 MARTHA BROWN, Division of Legal Services

5 BOB ELIAS, Division of Legal Services

6 CINDY MILLER, Office of General Counsel

7 MIKE ELLIS, Sprint

8 CHARLES REHWINKLE, Sprint

9 MARTIN SIPPLE, Sprint

10 DONNA McNULTY, MCI

11 JENNIFER SPADE, MCI

12 MARSHA RULE, AT&T

13 SUE DECKER, AT&T

14

15

16 SIGNING INTERPRETER: STEVIE FENTON

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P R O C E E D I N G S

1
2 **COMMISSIONER DEASON:** Call the agenda back
3 to order. We're on Item 4.

4 **MR. TUDOR:** Good morning, Commissioners.
5 You should have available to you our recommendation of
6 February 8th, and then the interim proposals from the
7 three bidders, and then a comparison chart that we did
8 of the three bidders' proposals on the interim.

9 Just to give you a little background and
10 bring you up to date, as you recall on January 11th
11 you issued a decision of your intent to award a
12 three-year contract to Sprint for relay service.
13 January 14th, AT&T filed a notice of its intent to
14 protest and did file that on January 24th.

15 That formal protest stayed any further
16 activity on the permanent contract, and the current
17 contract expires May 31st, the contract with MCI. And
18 at this point, we have no contract for service after
19 that date.

20 It's mandatory under the law that we have a
21 service provider in the state by June 1st. And
22 currently we have no contract for that so we believe
23 an emergency situation exists. Our rules provide for
24 an emergency procurement when an emergency exists.

25 We have before us interim proposals from

1 AT&T, Sprint and MCI. MCI, of course, did not bid on
2 the permanent contract but they are the current
3 provider, and so their proposal would be to extend
4 their current service beyond the May 31st expiration
5 date.

6 I'd like to refer you to the last page of
7 the recommendation, if I could, which is a time line,
8 and just highlight a couple of things there.

9 On the time line, you can see there the
10 protest period is laid out on the second row there.

11 The hearing is scheduled on the DOAH protest
12 on February 24th, which is next Thursday. And the
13 time frame allowed for the recommended ordered and
14 exceptions and so forth carry us sometime into early
15 May. So we would expect a decision on the DOAH
16 protest in the month of May. What would happen after
17 that, of course, we can't predict. There could be a
18 court appeal or the DOAH protest could finalize the
19 protest.

20 Down at the bottom of the page there are a
21 couple of rows, and I just want to highlight that
22 where they are talking above the word "or" or below
23 it, we're looking at a time period from now until May
24 where someone will need time to prepare to provide
25 service on June 1st. So we need to make a decision

1 shortly that would let people know that they can begin
2 the effort that they'll need to undertake so that they
3 are prepared to provide service June 1st.

4 On the comparison between the providers, if
5 it's all right, I'd like to go through that briefly.
6 I think that might help gather our thoughts on the
7 comparison between each of them.

8 Each of the bidders has proposed to have
9 service ready June 1st, 2000, and that's essential and
10 they've all provided that. The minimum duration of
11 the interim contract for AT&T is six months and MCI
12 six months. Sprint differentiates here. And if a
13 provider ultimately is selected other than Sprint,
14 they would require a six-month contract also. If in
15 May the DOAH process is over and we enter into a
16 permanent contract with Sprint, then we would not
17 operate under the interim contract at all. We would
18 just go straight to the permanent contract.

19 Each of the providers offer an option to
20 extend beyond that minimum period. Each of them have
21 a provision about our notice to cancel or extend the
22 contract. AT&T and MCI, 60 days notice, and Sprint
23 would be 60 days if someone else besides them is
24 selected for the permanent. But if they are awarded
25 the permanent contract, then there would be no time

1 notice required to go straight to a permanent
2 contract.

3 The per minute rates are different. AT&T's
4 is a rate of 69 cents a minute, which is the same rate
5 as they proposed in their permanent proposal. MCI has
6 proposed during the first six-month period of the
7 extension, their charge would be -- as opposed to
8 their current 60 cents -- would be 71.5 cents per
9 minute, and if we go to a second six-month period it
10 would go 85 cents a minute.

11 Sprint's proposal starts off with a rate, if
12 we operate under the interim contract at all, it would
13 be 85 cents per minute. If they are ultimately the
14 company selected as the permanent provider, and if
15 that interim contract were in place for a period of 10
16 to 11 months, then there would be a credit off of that
17 85 cents of 2.5 cents, so the effective rate back to
18 June 1st would be 82.5, or 79 cents if we were under
19 it for a full 12 months. So a range of between 79 to
20 85 cents, depending on how long we operated under it.

21 Termination charges. This is a significant
22 item. AT&T has proposed no termination charges. Now,
23 there is -- they did have one caveat that if we
24 cancelled the interim contract on less than 60 days
25 notice, that they would want to recover such costs

1 incurred by them which are non-recoverable. That's
2 not defined. But in all likelihood, we would not be
3 able to cancel in less than 60 days notice anyway
4 because someone else would need time to gear up, so
5 that may not be an issue.

6 MCI proposed no termination charge. Sprint
7 has proposed, again, differentiated depending upon
8 whether they receive the permanent contract or not.
9 If they receive the permanent contract, there's no
10 termination charge. If they did not receive the
11 permanent contract, depending upon the period of time,
12 there will be termination charges of either 500,000,
13 if they provide the interim service for six to nine
14 months, and if it's 10 to 12 months, 250,000
15 termination charge.

16 Liquidated damages. AT&T has offered in
17 their interim proposal that they would operate under
18 the liquidated damages provision of MCI's current
19 contract. That MCI current contract provision is
20 essentially the same as our RFP requirement. The
21 difference is a force majeure clause, and, then, also
22 a provision that if the problem that exists is not
23 their fault, if it's something, for example, that the
24 state caused, they would not be liable for liquidated
25 damages.

1 And, also, in their interim proposal, they
2 propose no cap, while they did proposal a cap in their
3 permanent proposal.

4 MCI would continue operating under their
5 current contract liquidated damages provision, except
6 that for each of the six-month periods we would have
7 interim service, they would have a cap on theirs of
8 300,000. And then Sprint proposes to operate under
9 the same liquidated damages provision as is in their
10 permanent proposal.

11 All three of the bidders indicated that they
12 would not be able to provide service from an in-state
13 center during the interim period. And I think that's
14 a very reasonable provision. All three of those
15 proposed that.

16 There are some additional provisions in each
17 of them that there are a little different. And the
18 first one, AT&T, basically they've said they will
19 operate under their permanent proposal with some
20 exceptions. One exception would be that in-state
21 center. Another would be that they would operate
22 under a different liquidated damages clause, the one
23 that MCI is operating under today.

24 MCI says that they also would not operate --
25 be required to operate under an in-state center. They

1 also indicated they would put a cap on their
2 liquidated damages of 300,000. And then the other
3 provision they have is that the PSC must make an
4 agreement that their service has been satisfactory
5 throughout the initial contract period, which would be
6 including all the way up until May 31st of 2000. And
7 then Sprint, another provision in their's, is that
8 their interim offer is good only through today.

9 So that's the three proposals. We have
10 representatives here from AT&T and MCI and Sprint.
11 And if there's been any misunderstanding of my
12 description of their interim proposal, I'm sure they
13 will let you know that. Now would be a good time to
14 hear from the parties or Staff can answer questions.
15 Either one.

16 **COMMISSIONER DEASON:** Okay. Mr. Rehwinkel.

17 **MR. REHWINKEL:** Thank you, Commissioners.

18 My name is Charles Rehwinkel. I'm here
19 representing Sprint Communications Company, Limited
20 Partnership.

21 I have here with me today Mike Ellis, Sprint
22 Relay Services Manager and Andrew Brenneman, also with
23 Sprint Relay Services, Sales Division. We have also
24 brought Martin Sipple, of the Ausley firm, who is
25 outside counsel for Sprint in the bid protest.

1 I'd like to make a few brief remarks
2 regarding Staff's recommendation. Mr. Brenneman and
3 Ellis are here to answer questions. I think Mr. Ellis
4 would be your primary contact there regarding the
5 interim proposal.

6 And because we feel that the outcome of the
7 bid protest itself is so crucial to your consideration
8 here today, I've asked Mr. Sipple to address the
9 status of the DOAH proceeding from the perspective of
10 his expertise in bid procurement law.

11 At the outset, Commissioners, Sprint
12 believes that the Staff has captured the most relevant
13 concept at this juncture of the process, and that is
14 the avoidance of disruption of service to customers.

15 You cannot look at this thing in a vacuum.
16 You are not here on a procurement based solely on a
17 desire to provide relay services. You are here
18 because of the situation you find yourselves in.

19 This is the very first time the Commission
20 in almost ten years have been faced with a bid
21 protest. This has thrown severe uncertainty into the
22 process, in a process that is already burdened with
23 already tight time frames.

24 MCI has indicated to you an inclination to
25 exit the Florida market. Customers are facing a

1 service transition for the very first time in this
2 service's history. Now, we think that the service
3 transition is a crucial consideration to you.

4 I'm not here to try to snow you and convince
5 you that Sprint is -- it wants to do anything other
6 than provide service and earn a fair return on its
7 investment in this process.

8 We have proposed a solution that is soundly
9 based on fundamental business principles of costing.
10 It is one that I think if you look at all the
11 proposals is based on the most thorough consideration
12 of the risks facing the provider and the Commission.

13 Mr. Tudor's presentation of Sprint's
14 proposal in here was an accurate one. You will notice
15 a price differential that is significant. You will
16 notice a termination liability or penalty that the
17 other providers are not proposing.

18 But I think you need to keep in mind that
19 Sprint is concerned about serving the very community
20 that depends on relay service and doing it well, as
21 the permanent proposal has also demonstrated. That is
22 why we have submitted the interim proposal in a effort
23 to provide a seamless transition to a single provider.

24 The Commission is in the unfortunate
25 position to need to protect consumers and meet the

1 requirements of federal law and avoid the sanctions
2 that you will incur if you do not have a provider in
3 place on June 1st.

4 Our option is one that we would like you to
5 consider, not as your desired solution or the one that
6 you're ultimately going to have to utilize, but really
7 a safety net in case the protest does not -- is not
8 supported at the Department of Administrative
9 Hearings. We are very confident that the law is on
10 the Commission's side in the protest hearing.

11 The point that we would like to emphasize is
12 that if you consider that the outcome of the DOAH
13 process will be that the Commission's concern with
14 liquidated damages as being a material provision of
15 the RFP and really the only hammer that you have in
16 enforcing the contract is upheld, then you really need
17 to consider selecting an interim provider that will be
18 the same as the likely permanent provider, and that's
19 Sprint.

20 This process is one that does not lend
21 itself to fungible providers just coming in and going
22 out. There are long lead times in preparing sites,
23 training personnel, and doing all the other business
24 transactions that are important in setting up a
25 service that will be one that is fundamental to the

1 users of the service, one that discharges a very
2 serious and important federal and state obligation.

3 That's one reason why we have the February
4 15th date in here. It's not because we're trying to
5 put pressure on the Commission to make a decision here
6 today. We have business contracts that need to be
7 signed that we do not have any flexibility in
8 extending it for significant periods of time. In
9 fact, the 15th was a date that we actually got some
10 leeway to extend to today because this is -- was the
11 first opportunity you were going to have to select a
12 provider on an interim basis. So I don't want you to
13 be put off by that provision in there.

14 I would like to urge the Commission to look
15 at the interim solution as not the desired solution.
16 There is, as Mr. Sipple will tell you, a very strong
17 likelihood that the DOAH proceeding will be concluded
18 prior to June 1st, and there will be, hopefully, an
19 opportunity for the Commission to sign a permanent
20 contract with Sprint such that you will not need to
21 utilize the provisions of any of the interim providers
22 proposals. We think there is an equally high
23 probability that the Commission's strong legal
24 position will prevail.

25 For this reason, we think it would not make

1 sense to go from MCI in the month of May to AT&T for
2 the month of June until the DOAH protest is finally
3 resolved, to Sprint, which we think will be the
4 prevailing party.

5 What you have in that situation is three
6 providers in a period of -- a relatively short period
7 of time. You have two transition points. And two
8 transition points means one additional point of
9 failure potential in your relay service.

10 We're not suggesting that because you're
11 transitioning from one to another that there's going
12 to be a failure or breakdown in service. It's only
13 that you're increasing the likelihood that that
14 occurs. And if the Commission is confident that they
15 will prevail on appeal -- in the protest, I mean, then
16 it does not make sense to interject a third provider
17 in that scenario. You should have a transition from
18 MCI to Sprint.

19 Now, that's addressing the AT&T proposal.
20 Certainly the AT&T proposal has a lower price that
21 does not have the termination liability. But I would
22 contend to you that if you look at the proposals that
23 are before the Commission, Sprint is the one that has
24 a comprehensive proposal ready for you to sign. AT&T
25 has a proposal that says, "We'd like to do this. Here

1 are some of the terms." But they have not negotiated
2 everything that would need to be done to be able to go
3 into business.

4 There's also an indication in AT&T's
5 proposal that they will put a -- the service in place
6 and then start aggressively pursuing an in-state
7 solution.

8 Now, an in-state solution is not what the
9 Commission requires for the first few months, even of
10 the permanent solution. But it is a requirement of
11 the permanent solution. And to me what that indicates
12 is that AT&T was not prepared, had not thought out
13 exactly how they were going to discharge the permanent
14 process were they to get that business.

15 Now, let me address MCI for a second. It
16 may seem that the easiest thing for the Commission to
17 do under my theory of two providers instead of three,
18 and minimizing the failure point possibilities, would
19 be to just go with MCI's extension proposal.

20 I would urge the Commission to be very
21 careful about that. Not that -- I'm not here to knock
22 MCI's proposal or their service. My concern is that
23 you have -- you're going to be going before DOAH on
24 the issue of liquidated damages and the materiality of
25 that requirement in the RFP. And you've voted and

1 said that that is a material provision. That is
2 something that is important. And you'll be defending
3 that position at DOAH.

4 MCI has proposed that the liquidated damages
5 be capped at \$300,000. Now, AT&T was failed in the
6 permanent proposal by capping them because they capped
7 them at a million dollars. To go in and accept a cap
8 on damages at \$300,000 I think would be very damaging
9 to your legal position before DOAH. Mr. Sipple can
10 address that in detail if you have any questions about
11 that. Plus there's a request in MCI's proposal that
12 you stop monitoring calls.

13 I'm not suggesting that there would be a
14 desire to degrade service, but certainly when you have
15 an entity that has decided to change their business
16 plan and exit the market, you should be concerned
17 about what service levels you're providing to
18 customers.

19 Just because there's an interim solution
20 does not mean that you would give any lower level of
21 service. And I'm not suggesting that's what MCI would
22 be proposing to do. It just would undermine your
23 position, I think, on the permanent process if you
24 were to accept a lower level of service guarantee,
25 which is what liquidated damages give you, and that's

1 what the monitoring clause gives you. So that's kind
2 of one of the conditions or qualifiers to their
3 extension proposal. It comes at a half a cent a
4 minute lower than Sprint's permanent proposal.

5 So I've addressed AT&T and MCI's proposals
6 and why I think that the Sprint proposal is the better
7 proposal. Only because it is one that would
8 transition on June 1st to the provider that is
9 ultimately going to be there. It has the customers
10 transitioning once, assuming the assumptions that I
11 do, that you have an excellent legal position with the
12 Department of Administrative Hearings's case.

13 With that, Commissioners, I would just like
14 to ask your indulgence to listen to Marty Sipple
15 briefly address the merits of the DOAH protest
16 because, again, we think that is the keystone or
17 should be the keystone to your decision-making on the
18 interim provider.

19 **COMMISSIONER DEASON:** Please proceed. Do it
20 briefly.

21 **MR. SIPPLE:** Thank you, Commissioners.

22 I will try to be brief on this.

23 Just as Mr. Rehwinkel said, we believe that
24 the premise of your decision today on the interim
25 contract ought to be that Sprint is going to be the

1 permanent contract provider. And the reason for that
2 is because in terms of an analogous situation you
3 might be familiar with in Circuit Court lawsuits, the
4 likelihood of success on the merits here are so low
5 for AT&T that it's virtually certain that Sprint's
6 going to end up with this contract in a few months.

7 The issue in the bid protest, which will be
8 heard next week, as you know, is whether the
9 Commission acted arbitrarily and capriciously in
10 rejecting AT&T's proposal. And the reason the
11 Commission rejected AT&T's proposal is because it
12 would not agree to the liquidated damages provision
13 that's in the RFP.

14 Now, before I even talk about the merits of
15 that at all, it's important to emphasize -- what I
16 just said there, what the standard is, which is did
17 this Commission act arbitrarily and capriciously?

18 This hearing next week is not a forum for
19 the Administrative Law Judge to second-guess this
20 Commission's decision. The standard of arbitrarily
21 and capriciously is extremely high for AT&T to meet.
22 It basically in the law means that this Commission
23 acted illogically, despotically, with no factual basis
24 whatsoever. That's an incredibly high standard to
25 meet. The purpose of the entire bid protest law in

1 this state is avoid collusion, fraud and those kinds
2 of situations in awarding contracts. And really,
3 Commissioners, the statement of the test gives you
4 your answer of whether AT&T's going to prevail or not.

5 Obviously, there's none of that in this
6 case. There's been no collusion. There's been no
7 fraud. The Staff worked very hard on judging the
8 proposals for the permanent contract just as they have
9 on giving you this background for the interim
10 contract. They worked very hard. Detailed, factual
11 reasoning and there's absolutely no basis for anybody
12 to say that anything was done arbitrarily and
13 capriciously.

14 So just on the standard alone, it's
15 virtually -- it's very difficult to win these cases
16 for any protester. And I have been on both sides of
17 the fence in these cases. And I can tell you that
18 sitting in AT&T's chair in a bid protest is no fun.
19 It's a no fun place to sit. It's a virtually
20 impossible burden to satisfy.

21 Now, with that standard of proof in mind,
22 the merits of the case are actually pretty clear. I
23 mean, it's an easy case, really.

24 AT&T's position is basically, first, that
25 their refusal to agree to the liquidated damages

1 provision is not material. And second, that they were
2 somehow treated differently than Sprint in that
3 regard. If you look at the facts, you'll see that
4 neither one of those positions carries any weight
5 whatsoever.

6 As to the materiality, this Commission is
7 subject to a 100,000 per day fine from the FCC if it
8 doesn't provide this relay service in the manner
9 required. Now, the private vendor isn't subject to
10 that. The Commission is. And so the liquidated
11 damage provision is the key, is the absolute key to
12 holding that private vendor to providing the service
13 in the manner it's supposed to be provided. So that's
14 an incredibly material provision of this contract.

15 AT&T refused to agree to it, as it's written
16 in the RFP, and instead wanted to cap its liability.
17 That's a very significant advantage that it tried to
18 get that none of the other companies demanded.

19 Sprint, in particular, specifically agreed
20 to the terms of the RFP liquidated damages provision,
21 and by refusing to do that, AT&T really obtained a
22 significant advantage; probably enabled it to propose
23 a lower price. And so it's just absolutely certain
24 that it's a material provision.

25 And, finally, as to being treated

1 differently than Sprint, the sort of slender reed that
2 AT&T is basing this bid protest on is the fact that in
3 an optional non-scored part of the RFP proposal,
4 Sprint proposed some different language on limitation
5 of liability. But --

6 **COMMISSIONER CLARK:** Did we accept that
7 language?

8 **MR. SIPPLE:** No. Absolutely not. And
9 you're not required to. That's the key difference.

10 Sprint accepted the RFP language and it said
11 we'd like to talk about it. But the PSC's under
12 absolutely no obligation to talk about -- to change
13 anything, let alone even talk about it. That's an
14 entirely different footing than AT&T, which basically,
15 if they were ever awarded this contract and it came
16 around time to sign the contract, the PSC would be in
17 the position of asking for a concession from AT&T in
18 order to get that liquidated damage provision that it
19 wants. And so I'm a lawyer, I'm not a businessman,
20 but even I can understand that that's an entirely
21 different footing than Sprint's agreement to the
22 provision up-front.

23 So based on all of that, Commissioners, I
24 think it's pretty clear that a couple months from now
25 Sprint's going to be awarded this contract. And for

1 the reasons that Mr. Rehwinkel described, your
2 decision today ought to be premised on that, and
3 premised to avoid this leapfrogging of different
4 companies in the next few months. And the interim
5 contract ought to be awarded to Sprint. Thanks a lot.

6 **COMMISSIONER DEASON:** Ms. McNulty. I'm
7 sorry, I didn't mean to skip someone. Are you --

8 **MS. McNULTY:** She's with AT&T.

9 **COMMISSIONER DEASON:** All right. Well,
10 we'll hear from AT&T then.

11 **MS. DECKER:** Thank you, good morning. I'm
12 Sue Decker.

13 **COMMISSIONER DEASON:** I'm sorry, your name
14 again?

15 **MS. DECKER:** I'm Sue Decker. And I'm the
16 General Manager of AT&T's Relay Division. And I'm
17 joined this morning by Marsha Rule, who is our
18 attorney. She'll be addressing the legal issues when
19 I'm done with my comments.

20 And my purpose today is to ask you to select
21 AT&T as the interim relay provider. Because we stand
22 by the offer submitted in the response to the recent
23 RFP, I can assure you, and the relay users throughout
24 the state of Florida, that by selecting us, you will
25 be experiencing the best relay service that the

1 industry has to offer and at the most competitive
2 price.

3 You see, during the recent RFP evaluation
4 process, AT&T received the highest marks for its
5 technical proposal, ranking it superior to its
6 competitors, and as I mentioned before, offered at the
7 best price, which was 69 cents per minute, equating to
8 a cost savings of more than a million dollars over the
9 life of the contract. That's one million dollars of
10 savings to Florida consumers.

11 This is an outstanding offer, which is
12 backed by AT&T's corporate commitment to invest
13 capital dollars upon the award of the permanent
14 contract, to build a state-of-the-art in-state center,
15 which, by the way, I would like to point out, will be
16 staffed by AT&T employees. Because you see, AT&T owns
17 its product and we own our centers. We do not
18 outsource, not even for a single mile.

19 Additionally, because we are internally
20 organized in AT&T's Consumer Markets Division, we are
21 offering Florida relay users free long distance for
22 the first three months the new center is open. This
23 is an unprecedented offer in the relay industry, and
24 one I would be happy to see started here in the state
25 of Florida.

1 And, finally, I want to assure you that it
2 was always AT&T's intent to comply with the liquidated
3 damages requirements in the RFP. And by selecting
4 AT&T as an interim provider --

5 **COMMISSIONER CLARK:** How did we know that?

6 **MS. DECKER:** In our response we emphasized
7 that we would be willing to sit down and negotiate and
8 try to reach a mutually acceptable position on
9 liquidated damages.

10 **COMMISSIONER CLARK:** You --

11 **MS. DECKER:** So in closing, I'd like to say
12 that by selecting AT&T as the interim provider, you
13 would be ensuring the very best relay service, at the
14 very best price the industry has to offer. And by
15 denying citizens of Florida with the very best -- I
16 mean we -- you know, just to deny the citizens of the
17 Florida with the very best because of this
18 misunderstanding would truly be such a great
19 disservice. Thank you.

20 **COMMISSIONER DEASON:** Ms. Rule, do you have
21 something to add? Well, before you do, we're going to
22 take a break. Okay. We're going to take a ten-minute
23 recess, and then you'll have your opportunity. Okay.

24 (Short break.)

25

- - - -

1 **COMMISSIONER DEASON:** Call the agenda back
2 to order. Ms. Rule.

3 **MS. RULE:** Thank you. I'm Marsha Rule with
4 AT&T. I'll keep my remarks brief.

5 It was not our intent today to address the
6 bid protest issue but I would like to respond to some
7 of the comments that Sprint raised.

8 AT&T has hired outside counsel. The outside
9 counsel are handling the matter. And rather than put
10 forth all of the arguments we intend to put forth at
11 DOAH, I would like to let you know that we have a very
12 different opinion on the ultimate result at DOAH than
13 Mr. Sipple does.

14 As you know, AT&T's bid proposal had the
15 lowest price out of any provider. It was ranked the
16 highest in quality. As a result, however, of what we
17 believe for an unfortunate misunderstanding of their
18 offer, the Staff recommended that you disqualify AT&T.

19 Mr. Sipple repeatedly told you that AT&T
20 refused to agree to liquidated damages. And had this
21 been the case, Mr. Sipple would be correct. The
22 question would be whether the Commission acted
23 arbitrarily or capriciously. However, for reasons we
24 would be happy to explain to you, we could walk you
25 through the RFP, we could walk you through the bid

1 response, we could give you an explanation of it that
2 we think you would be very satisfied with. That's not
3 the case. We were responsive. The real question
4 before DOAH is whether our response was within the
5 realm of acceptable responses according to bid
6 procurement law. That is, did we answer your
7 question? We say we did. We didn't refuse liquidated
8 damages by any means.

9 Due to this unfortunate misunderstanding, we
10 find ourselves in the posture of being forced to
11 institute a bid protest, although that was the last
12 thing we wanted to do. But it's practically the only
13 avenue available to us in this particular procurement.

14 What I would very much like to do is have
15 you schedule a separate oral argument period. I would
16 love to be able to show you specific provisions in the
17 RFP and explain our response to you. We intended to
18 be responsive. We intended to accept Staff's terms.
19 We put forth the absolutely best price. We added some
20 free long distance, and our proposal was the highest
21 ranked technically. And I think you can look at the
22 spreadsheet that Staff prepared and you can see how
23 favorably AT&T's compares.

24 I really don't want to be here making legal
25 arguments to you today, but I would like you to take

1 the opportunity to consider that perhaps there was a
2 misunderstanding and that we needn't be at odds with
3 each other. Thank you.

4 **COMMISSIONER DEASON:** Ms. McNulty.

5 **MS. McNULTY:** Good morning, Commissioners.
6 I'm Donna McNulty representing MCI WorldCom. With me
7 today is Jennifer Spade from MCI WorldCom who is the
8 Sales Director for Government Markets. She would like
9 to briefly address you regarding this matter, and
10 she's here to respond to any questions you may have.

11 **MS. SPADE:** Good morning. Can you hear me?

12 By the way, I'm a sales director and not an
13 attorney, so I won't go into any legal debates.

14 What I do want to put forth is we were
15 requested to assist the State of Florida in an
16 extension or interim period, and that's what we felt
17 we did. That we offered a reasonable offer for
18 service as an extension, and we feel that our offer of
19 extension is the path of least resistance. It offers
20 the least amount of disruption, as the gentlemen from
21 Sprint talked about, going from one carrier to
22 another. And there is a transition period. And what
23 we want to ensure is that the consumers in the state
24 of Florida are taken care of during this interim
25 period. We do not want any additional disruption in

1 service.

2 We feel that to use MCI's service for the
3 next six months, or six months beyond that if the
4 Commission so elected to do so, is a consistency of
5 feature and functionality. When you go from one
6 service provider to another service provider, features
7 are somewhat different. So the consumer then is
8 learning a different process in how to dial and make
9 telecommunications calls via TTY and via relay
10 service.

11 Another point I'm interested in making, the
12 gentlemen from Sprint also talked about MCI WorldCom
13 getting out of the relay business and that's flat out
14 not true.

15 We were a technology provider, as a
16 subcontractor to Vista, that was excluded from the bid
17 process because their price was higher than Sprint and
18 AT&T.

19 So MCI continues to provide service in
20 various states throughout the nation and will continue
21 to look at each state and each opportunity on a
22 case-by-case basis.

23 And we feel that as far as our proposal and
24 looking at the prior termination of the contract,
25 which ends in May, is that we look at the interim

1 contract as simply just an extension to allow the
2 Florida PSC to evaluate and go through the protest
3 period, again to offer assistance in this interim
4 solution so that it doesn't complicate matters
5 further, but rather we just offer that solution to
6 you.

7 And, secondarily, MCI's rate is just
8 slightly higher than the AT&T's interim solution, and,
9 again, it's the path of least resistance.

10 And then my final point is that MCI
11 WorldCom, although we've asked for the flexibility to
12 extend calls outside of the state, we continue to
13 operate a Florida Miami Center in that we have our
14 subcontractor that manages that call center for us,
15 and we intend to have calls go in that center as much
16 as possible. But through the normal attrition that
17 would happen as you then get ready to transition to
18 another provider, we would then want that flexibility
19 to go to another state.

20 So, again, the interim solution would
21 continue to provide dollars back to the State of
22 Florida, as well as employment for those relay
23 operators within the state.

24 So under all of these considerations, that
25 we feel that MCI WorldCom, again, is the best solution

1 during the interim contract. And thank you very much
2 for your consideration.

3 **COMMISSIONER DEASON:** Thank you. Questions,
4 Commissioners?

5 **COMMISSIONER JACOBS:** I have a question, I
6 guess, probably for Sprint.

7 You propose a termination fee if you're not
8 awarded the permanent contract. I want to explore the
9 basis for that. Could you walk me through that?

10 **MR. ELLIS:** This is Mike Ellis with Sprint
11 National Sales Manager, based out of Denver Colorado.

12 Yes, the termination fees are directly tied
13 to the costs that Sprint absorbs with our securing a
14 center in the state of Florida. Maybe this is a good
15 time to clarify Mr. Tudor's previous summary.

16 In the comparison of in-state traffic
17 requirements, Sprint's offering for the interim
18 proposal will plan to have to have a center up and
19 running in the state by June 1 in Miami. All we asked
20 was for relief of the percentage of the 80 percent
21 traffic in-state during that interim period. So
22 Sprint will be offering that economic development
23 during that interim period in Miami. And the
24 termination costs are directly tied to a leasehold
25 agreement with that facility.

1 **COMMISSIONER JACOBS:** So you are going to be
2 handling traffic outside of the state but at the same
3 time you're going to be bringing up your in-state
4 facility; is that correct?

5 **MR. ELLIS:** That is correct.

6 **COMMISSIONER JACOBS:** If I'm not mistaken,
7 your price per minute is declining over time. But I
8 guess my question goes to -- in the event that the --
9 your interim contract lasts beyond 12 months, at least
10 12 months, you offer a 79 cents per minute rate. But
11 if you get the permanent contract, your rate never
12 goes below 85. I found that difficult to understand.
13 It seemed like they should be similar, if not the
14 same.

15 **MR. ELLIS:** If the interim proposal goes a
16 full year, Sprint offers a credit of 6 cents for the
17 subsequent year.

18 **COMMISSIONER JACOBS:** I'm sorry, say again?

19 **MR. ELLIS:** So the credit period for one
20 year would be for the same length of the interim
21 agreement. So what would happen, suppose June 1 to
22 May, and June 1, 2001, Sprint's price begins to be 66
23 cents, a 6-cent credit off of 72. Staff's summary is
24 they applied that credit really assuming a price of 85
25 cents during that first year. Credit would begin --

1 **COMMISSIONER JACOBS:** Oh, I understand. I
2 understand what you're saying.

3 So that 79 cents is reflective of the credit
4 as of that time. Then it continues to decrease beyond
5 that. Is that what I understand you to say? The
6 credit continues to be applied beyond that time, is
7 that what I understand you to say? If you get a
8 permanent contract, that credit will continue to be
9 applied.

10 **MR. ELLIS:** If we have the interim agreement
11 for a full one year at 85 cents, we would issue a
12 6-cent credit for one full additional year. So for
13 one year from 2001 through May of 2002 you'd be paying
14 66 cents on the contract.

15 **MR. TUDOR:** Commissioners, if I could
16 clarify that maybe a little bit.

17 My understanding -- at the point where the
18 permanent rate goes into effect, there would begin to
19 be credits applied if we met the time frames on the
20 interim contract. It is true, as I understand the way
21 they would apply it is, it would apply to minutes
22 purchased in those future months. So since the
23 starting rate under the permanent contract is 72
24 cents, if you got a credit of six cents per minute,
25 that six cents is coming off of all of those minutes

1 you've already bought. You're getting a rebate, if
2 you would. It's coming off of those -- it's applying
3 to those minutes you've already bought in the previous
4 months before the permanent contract goes in.

5 Now, the way it's going to be returned to
6 the state is that that 72-cent rate would be reduced
7 by six cents until as many minutes have been used up
8 on a going-forward basis as were purchased during the
9 interim period at 85 cents. It's a matter of
10 semantics whether you say it's 85 with 6 cents off,
11 and so the effective rate is 79 cents, or if you say
12 the actual rate you get billed in the first month
13 under the permanent is 72 minus 6 cents. Either way
14 you're getting a 6-cent refund, if you would, or
15 credit, based on all of those minutes that you
16 purchased under the interim contract. And how you say
17 it doesn't matter. The dollars are the same.

18 **COMMISSIONER DEASON:** The 6 cents is the
19 difference between 85 and 79?

20 **MR. TUDOR:** Correct.

21 **COMMISSIONER DEASON:** And that's dependent
22 upon the duration of the interim period.

23 **MR. TUDOR:** Yes.

24 **COMMISSIONER JACOBS:** Going back to the
25 issue of the -- your establishment of the Florida

1 Center, during the interim contract I would expect
2 that you're going to phase that whole facility in, so
3 that during an interim contract you're not going to
4 carry all of the traffic from Florida in that Florida
5 facility. I just want to be sure on that.

6 MR. ELLIS: That's part of the original
7 proposal that Sprint has under the permanent contract.
8 The requirement is that 80 percent of that traffic be
9 handled --

10 COMMISSIONER JACOBS: You're going to --

11 MR. ELLIS: That center will be designed to
12 handle 80 percent of the traffic. All we've asked is
13 for the interim period that we have relief on that 80
14 percent.

15 COMMISSIONER JACOBS: That's my question.
16 Your relief in the interim essentially says you're
17 going to get less than 80 percent traffic in the
18 Florida facility.

19 MR. ELLIS: That is correct.

20 COMMISSIONER JACOBS: Okay.

21 COMMISSIONER DEASON: Any further questions?
22 Motion?

23 COMMISSIONER CLARK: Mr. Chairman, I can
24 move that we approve Staff recommendation on this
25 item.

1 **COMMISSIONER JACOBS:** I'm real concerned
2 about the termination charges, as I indicated.

3 **COMMISSIONER DEASON:** I'm concerned about
4 the termination charges also.

5 **COMMISSIONER JACOBS:** The concern comes --
6 and I understand the company's rationale here.

7 Two things occur to me. One is there's a
8 great difference in the termination charges from -- if
9 we terminate between six and nine months as opposed to
10 between nine and twelve months of approximately half.
11 That given the rationale of the company, I don't see
12 how that computates. If the idea is if you gear up
13 this facility and if you don't get the contract, then
14 you have to recover the cost of the facility, I guess
15 what they are saying is that by operating for an
16 additional three months they'll cover half of those
17 costs.

18 I'm not persuaded that the fees that we see
19 there -- and I'm quite hesitant to expose the state to
20 that kind of liability. Essentially, we're at the
21 whim of the DOAH judge. If the DOAH judge decides
22 that there's validity in this appeal, after six months
23 we can't give this contract to Sprint, is my
24 understanding. And even if we can appeal we can't
25 give it to them. So are we subject to this half

1 million dollars if the legal process continues after
2 six months?

3 **MS. BROWN:** Commissioner, if I could just
4 clarify the law on that. Section 120.57 provides that
5 once the DOAH hearing officer has made its decision,
6 the process for establishing the permanent contract
7 can go forward.

8 **COMMISSIONER JACOBS:** So if Sprint --

9 **MS. BROWN:** Practically speaking that may
10 not happen because Sprint may not want to do it until
11 everything was decided if it were appealed, but we can
12 go forward.

13 **COMMISSIONER JACOBS:** I understand. If the
14 result of the DOAH decision is that there's merit in
15 the appeal, it's my understanding on June 1 we cannot
16 finalize this contract. Is that correct?

17 **MS. BROWN:** Well, a couple of things happen
18 at that point. The decision that the DOAH ALJ makes
19 comes back to us in the form of a proposed recommended
20 order. And then we approve or disapprove that and
21 issue a final order.

22 Our review of their proposed order is
23 limited. As I'm sure you're aware, we pretty much
24 have to take the judge's factual determinations. And
25 there are some limits to the scope of our review of

1 his legal determinations. But at that point, as I
2 understand it, we have several choices. We can go
3 forward. We can pursue the case on appeal. We can --
4 we have provided the hearing required under 120.57 and
5 we can pursue the award as well. We can reject all
6 bids. We could award the contract to the Sprint. We
7 have all of those options.

8 **COMMISSIONER DEASON:** I have a question for
9 Sprint. If Sprint does not receive the interim
10 contract but prevails in the protest, how long after
11 the protest decision is made will Sprint be able to
12 provide service?

13 **MR. ELLIS:** Mr. Commissioner, there would be
14 a minimum of six months, which is typical in the
15 industry for the size of the center that's required in
16 the state.

17 **COMMISSIONER DEASON:** Thank you.

18 **MR. REHWINKEL:** Commissioner Jacobs, just to
19 respond to your question about the termination charge,
20 if the DOAH hearing officer rules that the bid was
21 without merit and the Commission goes forward with
22 awarding the permanent contract to Sprint, there would
23 be no termination of liability. I just wanted to make
24 sure that was clear. It's only if it goes to someone
25 other than Sprint. Because if it is awarded to

1 Sprint, then there will be no termination costs that
2 are incurred by Sprint and any lease payment
3 arrangement.

4 **COMMISSIONER DEASON:** There has been a
5 motion made. Is there a second or does it die for
6 lack of a second?

7 **COMMISSIONER JACOBS:** Let me try to offer
8 something here that might fall in line with the
9 motion.

10 In my mind there ought to be a process at
11 the time that the DOAH decision is made. No matter
12 who we give this contract to, we come in and we allow
13 the company that did the interim contract and if they
14 did not get the permanent, they come in and there's a
15 process whereby we resolve whatever remains to be
16 completed under that interim contract. I'm unwilling
17 to accept up-front a liquidation when I don't see
18 anything that actually gives me support for that. Nor
19 do I see anything that would say how those costs could
20 be mitigated. Whatever costs are incurred by the
21 interim company, I would imagine there could be some
22 litigation by the company that comes in and receives
23 the permanent contract.

24 I would want to see the process at the time
25 the DOAH decision is made as opposed to accepting a

1 liquidation provision up-front.

2 **COMMISSIONER DEASON:** As I understand it,
3 and Ms. Decker can correct me, under AT&T's proposal,
4 there is no termination charges whatsoever; is that
5 correct?

6 **MS. DECKER:** Yes, that's correct. Because
7 we intend to use our existing system to support the
8 Florida traffic during the interim period.

9 **COMMISSIONER JACOBS:** First of all, I'll see
10 if that would be something that somebody accepted in
11 the motion.

12 **COMMISSIONER CLARK:** I don't know. It seems
13 to me we have proposals, bid proposals on an interim
14 in effect. I'm not sure we're at liberty to provide
15 for an allowance to change those bids. I mean, isn't
16 that essentially what you're suggesting? You're
17 saying if you change your offer, we will accept it.

18 **COMMISSIONER JACOBS:** I guess I am.

19 **MS. BROWN:** Well, let me take a stab at
20 this, and, Cindy, if I go off the deep end, please
21 stop me.

22 We're in a emergency procurement situation.
23 Our rule, and I don't have the cite, provides that
24 under an emergency procurement we shall enter into as
25 much competitive negotiation as the circumstances

1 permit. That's my language. Let me read it.
2 "Emergency procurement shall be accomplished with such
3 competition as may be prudent under the
4 circumstances."

5 What that means to me is that strict
6 procurement practices in normal bids are relaxed for
7 emergency situations where we have to get something in
8 place; we don't have the time. If we want to
9 negotiate here at the table, I don't know why we can't
10 do that under the circumstances.

11 **COMMISSIONER CLARK:** So Commissioner Jacobs,
12 you're suggesting that it would be -- you would be
13 amenable to accepting the Sprint proposal if the
14 termination charges -- is that what they are?

15 **COMMISSIONER JACOBS:** Yeah. There will
16 essentially be a true-up process on the termination
17 charges.

18 **COMMISSIONER CLARK:** Right. That it would
19 be actual costs of termination not to exceed a certain
20 amount?

21 **COMMISSIONER JACOBS:** Yeah. We could -- I
22 don't know what that amount would be. If I were to
23 say off the cuff I would say the lower amount they
24 have here, but I don't know. I'd give Staff some
25 discretion to go back and talk about that.

1 **MS. BROWN:** We would probably need some sort
2 of response from Sprint at this point.

3 **MR. ELLIS:** Commissioners, I think Sprint
4 could agree to some type of true-up on the termination
5 charges at such time that were necessary. Again,
6 Sprint's intent here is that this interim agreement
7 will never need to be put into place anyway and there
8 would be no termination charges. So the probability
9 of this becoming a risk, in my opinion, is minimal to
10 none. But I'm willing to address that with you.

11 **COMMISSIONER DEASON:** Well, if it's such a
12 small risk, why are you even asking for termination
13 charges?

14 **MR. ELLIS:** Because those are fixed costs
15 that we do have, and if for some reason the contract
16 were to go to another vendor.

17 **COMMISSIONER DEASON:** So there's some risk.

18 **MR. ELLIS:** There is.

19 **COMMISSIONER DEASON:** Yes.

20 **MR. ELLIS:** Yes. And that's why we captured
21 those; solid business development.

22 **COMMISSIONER CLARK:** Let me ask a question
23 with respect to what may happen.

24 Suppose the ALJ says -- agrees that it was
25 arbitrary and capricious, if that is the standard, and

1 I don't, by asking the question, in any way believe
2 that we acted arbitrarily and capriciously, do we have
3 the option of rebidding?

4 MS. BROWN: Yes.

5 COMMISSIONER CLARK: Okay.

6 MS. SPADE: May I address the Commission?

7 MCI WorldCom, under the FCC guidelines,
8 would be considered the carrier of last resort as long
9 as we are able to provide and continue service. So
10 even though there's an emergency order and situation
11 that we have here, MCI, as the incumbent, has offered
12 an interim solution for the Commission. And if Sprint
13 is able to then sit in front of you and negotiate
14 terms, then MCI WorldCom certainly would like to have
15 that similar opportunity. And I'm sure not
16 necessarily speaking on behalf of AT&T, but I'm sure
17 they would like to have that same opportunity.

18 COMMISSIONER DEASON: Yeah. That causes me
19 some discomfort; that we're here at the table
20 negotiating. I think we need to make a decision
21 quickly. I mean, that's the reason we've labeled this
22 as emergency because of the time constraints. If
23 we're going to entertain counterproposals and try to
24 negotiate, I think to be fair to all, we've got to
25 give time to everyone to respond, and it may be a

1 never-ending process.

2 I think we need to make a decision today on
3 the three proposals we have in front of us without
4 modification; whichever one provides the best quality
5 service at the best price, and other considerations
6 playing into it, we need to make a decision.

7 My own personal opinion is that's AT&T.
8 It's the lowest rate. I'm sure they have high quality
9 service. They have agreed to no termination charges.
10 They do agree to liquidated damages. And I'm sure
11 that they will facilitate a smooth transition once
12 there's a permanent provider chosen, which may be
13 AT&T. We don't know yet.

14 **COMMISSIONER CLARK:** There has been a
15 permanent provider chosen, and it's just subject to a
16 bid protest, which just hearing the two grounds I --
17 with all due respect to AT&T, I think the -- we did
18 not act arbitrarily and capriciously. They had to
19 have known liquidated damages were a material aspect
20 of it. And I don't think they got treated different
21 than Sprint. I mean, the facts don't just bear it
22 out. And for that reason, and for the issue of --

23 **COMMISSIONER DEASON:** Let me --

24 **COMMISSIONER CLARK:** I don't see the need --
25 if it were not Sprint, I would say leave it with the

1 MCI. I don't see changing three times. Because I
2 don't believe that they will be successful on their
3 protest.

4 **COMMISSIONER DEASON:** Let me say that by
5 suggesting that AT&T should be granted the interim is
6 in no way reflective upon my opinion whether the
7 Commission acted arbitrarily and capriciously. It's
8 just simply upon the merits of the proposal. I'm
9 looking at the three interim proposals and in my
10 opinion it is by far the best proposal and that's what
11 we should go with.

12 **COMMISSIONER CLARK:** But on the merits of
13 it, the merits should include an evaluation of the
14 likelihood of -- in my view -- approving them being
15 able to prove what they need to in terms of the bid
16 protest. And this was a process that, you know, was
17 open to everyone. They had the opportunity for 72
18 hours after the RFP was put out to take issue with
19 what was in the RFP. They didn't do that. There were
20 numerous opportunities to address the materiality of
21 the liquidated damages and they didn't do it.

22 **COMMISSIONER DEASON:** And I don't debate
23 that. That's a different -- what we have in front of
24 us now is the interim. And I understand you're saying
25 that we need to consider who do we think is going to

1 win the protest.

2 **COMMISSIONER CLARK:** And who did we award
3 the permanent contract to.

4 **COMMISSIONER DEASON:** That's correct. But
5 what we have in front of us are three distinct offers
6 for the interim and we need to evaluate what is best
7 for the interim, in my opinion, and that's AT&T.

8 **COMMISSIONER CLARK:** And I have concerns
9 about it going through three hands at that point.

10 **COMMISSIONER DEASON:** We have the time
11 period before there's going to be a decision made at
12 DOAH. And Sprint has already indicated that once that
13 decision is made, it's going to have to be at least
14 six months before they are prepared to provide the
15 service if they are the ones that prevail. So we're
16 looking for at least six months of an interim
17 provider, and maybe longer than that; maybe up to on
18 year.

19 **COMMISSIONER CLARK:** Maybe I misunderstood.
20 I understand, on the protest, if they win, then what
21 will be provided is not interim but under their
22 permanent proposal.

23 **MR. REHWINKEL:** Yeah. The six months is
24 only if a interim provider is selected other than
25 ourselves. If we're selected, we're there right away

1 at the time the DOAH process is final.

2 **COMMISSIONER DEASON:** But the contract for
3 the interim is going to be at least six months
4 regardless of who wins.

5 **MR. REHWINKEL:** No. If Sprint is the
6 interim provider, and the DOAH process concludes and
7 Sprint is the permanent provider, there will be no
8 six-month minimum. It transitions automatically to
9 the permanent, to the lower permanent price, to all
10 the other provisions.

11 **COMMISSIONER DEASON:** If Sprint prevails.

12 **MR. REHWINKEL:** That's correct. Yes.

13 **COMMISSIONER DEASON:** Okay. But the proposal
14 from AT&T, for example, is for a minimum of six
15 months. And if we grant the interim to them, they
16 have the contract for six months regardless of whether
17 Sprint prevails at DOAH.

18 **MR. REHWINKEL:** That's not necessarily true.
19 Because AT&T has said they would agree to a 60-day
20 termination window. That is in a subsequent letter
21 they provided to the Commission. It's not in the rec.
22 But you could terminate upon 60 days notice. And it's
23 only if you terminated on less than 60 days notice
24 would there be any possibility that they would want
25 termination charges.

1 Commissioners, I know the Chairman has asked
2 that the vote go up or down, but Sprint's offer to
3 demonstrate our termination cost is still on the
4 table, so we would agree to make that modification.

5 **COMMISSIONER DEASON:** Well, I appreciate
6 that offer, but I don't think it's fair to the other
7 participants to give you latitude to change your
8 proposal without giving them the latitude to do the
9 same. Then we're going to go beyond your deadline of
10 February 15th. Then your whole proposal goes away.

11 **MR. REHWINKEL:** If that was taken beyond
12 today, yes, Commissioner, that would be true.

13 **MR. TUDOR:** Commissioners, just to clarify,
14 as I read AT&T's proposal, and perhaps we should just
15 ask them to clarify for themselves, but the sentence
16 in the letter says, "AT&T will agree to an interim
17 contract term of a minimum of six months, or for a
18 term of any length of time thereafter, including, but
19 not limited to one year. The interim contract will be
20 extendable on 60 days advanced request." So as I read
21 their proposal it's a minimum of six months, and then
22 we'd have to give them 60 days notice if we wanted to
23 extend --

24 **COMMISSIONER DEASON:** That was my
25 understanding also. Maybe we need to ask AT&T what

1 that language means.

2 MR. TUDOR: I agree.

3 MR. REHWINKEL: I'm referring to a February
4 9th letter where AT&T said they would agree to Section
5 A.24 which states, "The FPSC shall have the right to
6 unilaterally cancel, terminate or suspend any ensuing
7 contract, in whole or in part, by giving the provider
8 60 days written notice by certified mail." That's the
9 February 9th letter from Ms. Decker to Mr. Tudor.

10 MR. TUDOR: And that's the same letter I was
11 reading from. It could be -- that could be a conflict
12 within the letter that maybe we should ask AT&T to
13 clarify.

14 MS. RULE: This is Marsha Rule with AT&T.

15 I don't believe it is a contract. There's a
16 minimum term and then there's a cancellation
17 provision.

18 COMMISSIONER DEASON: So the Commission
19 would have the flexibility to terminate the agreement
20 before the expiration of six months, that is giving
21 that we provide 60 days notice.

22 If we provide 60 days notice, we can
23 terminate before the expiration of six months?

24 MS. DECKER: Yes, we would be will to
25 entertain that. However, prior to a six-month minimum

1 term, AT&T would need to recover certain expenses
2 associated with early termination.

3 **COMMISSIONER DEASON:** So you're modifying
4 your agreement now. Where does it say in your
5 agreement -- I asked you earlier if there was any
6 contemplation of termination charges whatsoever. You
7 said no. And now I hear that there are. So I need
8 that clarified.

9 **MS. RULE:** At the bottom of the page on the
10 February 9th letter, Ms. Decker has just repeated to
11 you what's in the letter. We're not attempting to
12 change our position at this time.

13 **COMMISSIONER CLARK:** What -- I don't think I
14 have the letter.

15 **MR. TUDOR:** In the package that was attached
16 to your chart there's AT&T's proposal. AT&T's
17 materials are all stapled together. It starts with a
18 February 4th, and then a February 7th, and then a
19 February 9th.

20 **MR. REHWINKEL:** I think they put the 7th
21 letter in the --

22 **MS. RULE:** I guess all I can say is there
23 would have to be an interim contract before a
24 cancellation clause would come into effect.

25 **COMMISSIONER DEASON:** You're reading at the

1 bottom of Page 1 of the February 9th letter?

2 MS. RULE: Yes, sir, I am.

3 COMMISSIONER DEASON: That's in the event
4 that there is a termination with less than 60 days
5 notice.

6 MS. RULE: Yes, sir.

7 COMMISSIONER DEASON: So if we give at least
8 60 days notice, there's no termination charges?

9 MS. RULE: That's correct.

10 COMMISSIONER DEASON: Is that Staff's
11 understanding?

12 MR. TUDOR: I would agree that the sentence
13 at the bottom of the page does say that if we give
14 them a full 60 days notice -- whenever that occurs, if
15 we give them 60 days notice, then there is no
16 termination charge.

17 What I think is still up in the air is the
18 paragraph from the RFP which they quote and say they
19 would agree with versus the statement in the February
20 9th letter below that that says there's a minimum
21 contract term of six months. I believe there is a
22 conflict there.

23 The sentence preceding the quote says, "AT&T
24 proposes the Commission consider its own RFP
25 requirement in terms of cancellation." I don't know

1 if AT&T is saying we should consider it and they are
2 going to follow it or not. But then down below they
3 say, "We'll agree to an interim contract term of a
4 minimum of six months."

5 MS. RULE: I'm not certain where Mr. Tudor
6 was reading from before. Could you point me to that?

7 MR. TUDOR: Yes. The February 9th letter.

8 MS. RULE: Okay.

9 MR. TUDOR: There's an indented quote from
10 the current RFP.

11 MS. RULE: Yes.

12 MR. TUDOR: Okay. And then down below that,
13 about three lines, it says, "Additionally in response
14 to your inquiry, AT&T will agree to an interim
15 contract term of a minimum of six months."

16 MS. RULE: Well, I apologize for being
17 tentative. I didn't write the letter. I've read it.
18 But I'm not in the same position as if I were the
19 author, but what it says to me is we are standing by
20 our response. We are willing to comply with this
21 provision. This provision gives the PSC the right to
22 unilaterally cancel, terminate or suspend the contract
23 upon 60 days notice.

24 COMMISSIONER CLARK: If that 60 days
25 occurs -- suppose a month into the interim contract

1 we -- somebody else gets the permanent and we decide
2 to terminate it. We give you 60 days notice. That
3 will be before the six months. I think the question
4 that has been asked is will there be any termination
5 charges if it's less than six months?

6 **MS. DECKER:** No, there would not be.

7 **COMMISSIONER CLARK:** So even if you only
8 provided it for a month, there would be no termination
9 charges?

10 **MS. DECKER:** Yes, that's correct.

11 **MR. TUDOR:** Then that raises the question of
12 what is meant by the words "a minimum of six months"
13 later on in the letter. The word "minimum" to me says
14 it cannot be cancelled within the first six months.
15 That's the way I read it.

16 **COMMISSIONER DEASON:** I think what that
17 means is that we can cancel it after six months with
18 no notice if that's our choice because we've provided
19 the minimum period of time. That's the way I would
20 read it. But --

21 **MS. RULE:** That would be the way we would
22 read it too. The contract without further action by
23 either party then would expire at six months.

24 **COMMISSIONER DEASON:** And then there are
25 terms for extending it beyond six months.

1 **MS. RULE:** Yes, sir. And terms for giving
2 notice to terminate it before the six months.

3 **MR. TUDOR:** I think the question maybe that
4 wasn't asked, using the example from earlier, if we're
5 one month into the interim, and then we give 60 days
6 notice to cancel, we're in agreement that there is no
7 termination charge. The question is at the end of
8 that three months, the one-month interim and the two
9 months notice, can we cancel the contract, period?
10 Can we cancel the contract with no obligation of any
11 kind?

12 **MS. RULE:** I believe if you give the 60 days
13 notice, according to the RFP, you're giving notice of
14 your intent to terminate in 60 days and that's the end
15 of it.

16 **COMMISSIONER CLARK:** The answer is yes?

17 **MS. RULE:** Yes.

18 **COMMISSIONER DEASON:** Commissioners, we do
19 need -- the interpreter needs a break, if we don't
20 conclude quickly.

21 **COMMISSIONER JACOBS:** Your motion still
22 stands.

23 **COMMISSIONER CLARK:** But it strikes me that
24 we've heard a number of modifications. We might want
25 to give Staff the opportunity to maybe talk to each

1 one again and come back in about a hour. Because
2 it's -- you know, I'm always hopeful of getting a
3 better deal.

4 But I personally thought that the process we
5 went through to award the contract to begin with was
6 fair, and it was awarded in an appropriate manner.
7 And I think it makes sense to consider that fact --
8 those facts in our decision today.

9 **COMMISSIONER JACOBS:** I'm okay with that
10 suggestion if Staff thinks they need it. If they
11 don't -- let's hear from Staff.

12 **MR. TUDOR:** I just need clarification on
13 whether we stand with people not changing their
14 proposals or whether we're simply talking about
15 clarifications and understanding.

16 **COMMISSIONER CLARK:** Let me ask Cindy and
17 Marsha, do you think under that rule we have the
18 ability to say we'll accept the offer if you modify it
19 in this way. And if they agree to it, have we
20 complied with the requirements of the rule and the law
21 with respect to emergency processes?

22 **MS. BROWN:** The question phrased that way, I
23 think yes. With -- we do have the authority to do it.
24 What worries -- I want to take into consideration is
25 Commissioner Deason's concern that all other parties

1 have the opportunity to participate in that as well.

2 **COMMISSIONER DEASON:** And I have a concern
3 we're going to get a protest of the interim, and then
4 we'll be trying to get an interim interim proposal.

5 **COMMISSIONER CLARK:** I understand that too.
6 I agree that's a consideration.

7 **MR. REHWINKEL:** Commissioners, if there is a
8 protest of this award, there is no stay in this
9 statute or your rules as there is in the permanent.
10 So you may have a protest but you would not be
11 obligated to discontinue negotiations or signing a
12 contract.

13 **MS. BROWN:** Also if I just might add one
14 thing to that, a protest of an emergency award, if the
15 agency can demonstrate the emergency, which I think we
16 can here, that's a tougher road to hoe even than the
17 one AT&T has now.

18 **COMMISSIONER CLARK:** Let me ask a question.
19 I know Sprint's offer is only available today. What
20 is the latest we need to do an interim?

21 **MR. TUDOR:** We don't have a certain
22 understanding of how late any of the providers could
23 go before they would have to say they simply can't
24 offer an interim service. MCI certainly has service
25 in place. They would have to do some kind of activity

1 to continue providing service to you, one in terms of
2 extending current contracts, that sort of thing. AT&T
3 and Sprint are in a little different posture. And I
4 don't know exactly how long they could go.

5 COMMISSIONER JACOBS: Well --

6 COMMISSIONER DEASON: Commissioners, what's
7 your pleasure? We need to make a decision. Or else
8 if we are going to postpone it we need to make that
9 decision too. We will be losing the interpreter at
10 noon.

11 COMMISSIONER JACOBS: Here's my view. If
12 Staff thinks they are still supporting -- first of
13 all, I'm -- I essentially am not supportive of Staff's
14 initial recommendation. We've heard the parties
15 modify the offer.

16 My analysis of the offer is, as I understand
17 them to be modified, would be that I agree with the
18 concern that there's a difference in price.

19 Quite frankly, if I look at this purely as
20 an interim agreement, I'm persuaded to hold price as a
21 very high priority. But I think it is more prudent to
22 look at this on the whole.

23 I think that on the whole there is -- and
24 Staff did the analysis where if -- not if we -- but if
25 the decision is to support our original award, there

1 is every opportunity that the permanent provisioning
2 could begin more quickly if the party who has -- if
3 the party who has the interim contract is also the
4 party who has the permanent contract.

5 That is an important consideration here.
6 And as we've already engaged in discussions for the
7 last few minutes, in the opposite view there's all
8 kinds of alternatives that might be out there. In
9 fact, I suspect in the opposite view we probably are
10 at a rebid.

11 If the appeal does show to have merit, I
12 suspect we're probably looking at a rebid. And in
13 that event, we're back at another interim contract
14 anyway. Probably. Unless we chose to continue the
15 interim contract that's already in place. Given that,
16 I'm prepared to take the modified offer from Sprint
17 consistent with Staff's opinion that it is within the
18 authority we have in the emergency rule, and deny
19 Staff's initial recommendation except that modified.

20 **COMMISSIONER DEASON:** Is that a motion? Or
21 is that an amendment to the original --

22 **COMMISSIONER JACOBS:** If that amendment is
23 accepted I'll second the original motion.

24 **COMMISSIONER CLARK:** I have concerns about
25 drawing another protest in terms of negotiating with

1 one party. I think if we want to do that, we should
2 give it a week's period of time for everybody to
3 resubmit a proposal and then decide on that basis.

4 **COMMISSIONER JACOBS:** The motion is
5 withdrawn.

6 **COMMISSIONER DEASON:** And you may lose your
7 Sprint proposal because their deadline is February
8 15th.

9 **COMMISSIONER CLARK:** That's right.

10 **COMMISSIONER JACOBS:** Then I can't second
11 it. Sounds like I want to get -- I want -- then my
12 proposal as a motion probably -- you know what, that's
13 a better consideration. Because I'm kind of
14 uncomfortable with the nature of the affairs today. I
15 simply could not accept the risk that was being
16 supported in the original recommendation. I'm okay
17 with that. If that's the wish of the Commissioners,
18 I'm okay with taking a moment to breathe and coming
19 back with a fresh approach.

20 **COMMISSIONER CLARK:** You know, it strikes me
21 we could even do it today. We could give everybody
22 three hours, you know, relook at it, come back and
23 make a proposal and then we'll make a decision. Can
24 we get an interpreter back in three hours?

25 **THE INTERPRETER:** Is that part of the

1 consideration?

2 **MS. SPADE:** May I say something? We're
3 working with a time line that is a Sprint time line.
4 It's not an MCI WorldCom time line and it's not an
5 AT&T time line. So I feel a three-hour time line, a
6 one-hour time line is putting pressure on two others
7 companies because we have a Sprint time line.

8 **COMMISSIONER CLARK:** I think that's a good
9 point.

10 **MS. SPADE:** So -- and also, too, the
11 questioning that has been going on all day today has
12 been kind of pushing the companies to a certain type
13 of proposal that you're expecting them to come back,
14 even if it's a week from now.

15 **COMMISSIONER CLARK:** Say that last part
16 again.

17 **MS. SPADE:** That based on the questioning,
18 on the various components of what you've talked about
19 and kind of went through each carrier's proposal, that
20 it appears as if you're wanting various things from
21 various companies. So you're almost like positioning
22 them to respond in a certain way.

23 **COMMISSIONER CLARK:** I think that's part of
24 the negotiations. We're telling what we're looking at
25 so you can factor it into what you're willing to

1 propose back.

2 I think you made a good point, that it's one
3 party who has made the proposal. And I do understand
4 the basis for putting a deadline up today. But I'm
5 not sure you're going to get a motion that's supported
6 by at least a majority out of this panel.

7 **COMMISSIONER DEASON:** Commissioners, I'm at
8 the point that we make a decision. Even if it's --
9 the decision is no decision, we need to conclude this.
10 We have an interpreter who need to leaves immediately
11 and she's been working now for some 45 minutes without
12 a break.

13 **COMMISSIONER CLARK:** Let me ask a question.
14 Can we do -- I'd like to conclude it within a week's
15 time. I don't want it to go any further. Is there
16 any way we can do a special agenda, continue this
17 agenda, only this item, for a week?

18 **MR. TUDOR:** That's a question for the
19 calendar. The DOAH hearing is next Thursday, so, of
20 course, that day is not available. And it would
21 depend on your personal calendars. As far as Staff's
22 concerned, I mean, we can deal with that.

23 **COMMISSIONER JACOBS:** Is it free on the
24 Commission calendar?

25 **MR. TUDOR:** Well, next Tuesday there's --

1 Clark, Deason and Jacobs are on a 9:30 TECO hearing.

2 COMMISSIONER CLARK: There you go. There's
3 a day.

4 MR. TUDOR: TECO doing business as Peoples
5 Gas System. I'm not sure what that case is.

6 COMMISSIONER CLARK: It's under the rider.

7 MR. ELIAS: It's the FTA 2 tariff. And
8 we're fairly close to a settlement proposal that Staff
9 can recommend approval of. We're working on that as
10 we speak. So I don't anticipate that that hearing
11 would take very much time.

12 COMMISSIONER CLARK: Can we continue this
13 item so that we don't have to renotice it? Can we
14 continue it until next Tuesday at 9:00 o'clock or
15 8:30?

16 MR. ELIAS: Yes.

17 COMMISSIONER CLARK: Well, Mr. Chairman, I
18 propose we do that. Because I don't think at this
19 point, given the offers and what we've talked about,
20 that we would find a majority position.

21 COMMISSIONER JACOBS: I'll second that.

22 COMMISSIONER DEASON: Okay. Well, let me
23 express my concern that I don't think that's what we
24 should do. But there's a majority, there's been a
25 motion and a second. I do have one question.

1 Are we delaying this with the intent that
2 we're instructing Staff to negotiate with the parties
3 or are we just getting more time to make a decision
4 based upon the proposals in front of us?

5 **COMMISSIONER CLARK:** No. I would give it a
6 week's time for the parties to come back with a
7 proposal. I would suppose that the proposal needs to
8 be -- each proposal needs to be submitted by close of
9 business Friday. And then Staff will make a
10 recommendation, hopefully Monday, or orally make a
11 recommendation. It would be helpful to have the same
12 kind of matrix you put out, maybe Monday, and we'll
13 make a decision on Tuesday.

14 **COMMISSIONER DEASON:** So we will be
15 continuing this on item of the agenda until August
16 22nd at the conclusion of the TECO hearing?

17 **COMMISSIONER CLARK:** February 22nd.

18 **COMMISSIONER DEASON:** Why am I saying
19 August? I'm looking at the wrong side of the
20 calendar. February 22nd. I'm six months ahead or
21 behind. I don't know which.

22 Okay. That is the motion and there's a
23 second. All in favor way say "aye." Aye.

24 **COMMISSIONER CLARK:** Aye.

25 **COMMISSIONER JACOBS:** Aye.

1 **COMMISSIONER DEASON:** All opposed say "nay."
2 Thank you all.

3 (Hearing recessed at 12:03 and reconvened at
4 1 p.m.)

5 **CHAIRMAN GARCIA:** Martha, you wanted to add
6 something to Item 4?

7 **MS. BROWN:** Yes, Mr. Chairman. We're back
8 here on Item 4 just briefly to ask the panel to set a
9 time certain for us to come back after we receive the
10 other proposals. We set it for the conclusion of the
11 TECO hearing. We have to hire interpreters and we
12 need to tell them exactly when to come. We'll inform
13 the parties as soon as you make that decision.

14 **COMMISSIONER DEASON:** Commissioners, what's
15 your pleasure?

16 **COMMISSIONER CLARK:** What time did you --

17 **MS. BROWN:** 8:30 or 9:00 in the morning.

18 **COMMISSIONER CLARK:** 8:30 is fine with me.

19 **COMMISSIONER DEASON:** 8:30. Is that going
20 to be enough -- they are going to fly someone in the
21 night before?

22 **MS. BROWN:** Probably, yes.

23 **COMMISSIONER DEASON:** So 8:30 would be fine
24 then.

25 **MS. BROWN:** Probably, yes.

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(Thereupon, the hearing concluded at
1:10 p.m.)

1 CERTIFICATE OF REPORTER

2

3 STATE OF FLORIDA:

4 COUNTY OF LEON:

5 I, JOY KELLY, RPR, do hereby certify that the
6 foregoing proceedings were taken before me at the
7 time and place therein designated; that my shorthand
8 notes were translated by me; and the foregoing pages
9 numbered 3 through 68 are a true and correct record of the
10 aforesaid proceedings.

11 I FURTHER CERTIFY that I am not a relative,
12 employee, attorney or counsel of any of the parties,
13 nor relative or employee of such attorney or counsel,
14 or financially interested in the foregoing action.

15 DATED this 21st, day of February, 2000.

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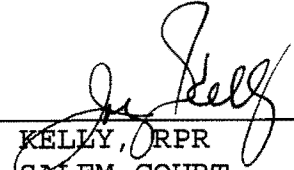
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