

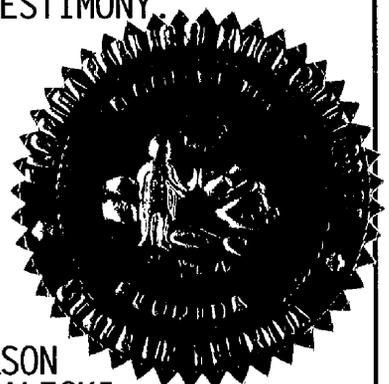
BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 990649A-TP

In the Matter of

INVESTIGATION INTO PRICING OF  
UNBUNDLED NETWORK ELEMENTS  
(BELLSOUTH TRACK).

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PROCEEDINGS: SPECIAL AGENDA CONFERENCE

BEFORE: CHAIRMAN LILA A. JABER  
COMMISSIONER J. TERRY DEASON  
COMMISSIONER MICHAEL A. PALECKI

DATE: Friday, September 6, 2002

TIME: Commenced at 9:30 a.m.  
Concluded at 10:35 A.M.

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

REPORTED BY: JANE FAUROT, RPR  
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2           BETH KEATING and LEE FORDHAM, General Counsel's  
3 Office, representing the Commission Staff.

4           ANNE MARSH, KEVIN BLOOM, DAVID DOWDS and LAURA KING,  
5 FPSC Division of Competitive Markets and Enforcement.

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

1  
2 CHAIRMAN JABER: Okay. Commissioners, that brings us  
3 to our first item.

4 Staff, do you have an introduction of this item?

5 MS. MARSH: Yes, ma'am. This recommendation  
6 primarily addresses issues that arose from the initial phase of  
7 BellSouth's UNE rate setting. BellSouth was ordered to file a  
8 bottoms-up loop cost study that explicitly modeled engineering  
9 structures and cable installation. BellSouth was also ordered  
10 to file a cost study revising the NID costs as well as a study  
11 for hybrid copper/fiber xDSL capable loops, which it addressed  
12 in its proposed rate for UCL-ND. Subsequent to that order,  
13 BellSouth determined that the daily usage file, or DUF rates,  
14 also needed revision.

15 This matter was taken up previously at the June 13th  
16 special agenda conference. At that time the Commission decided  
17 to hold the vote in abeyance for 60 days to allow negotiations  
18 between the parties. However, it appears that the parties were  
19 not successful in reaching agreement on these issues.  
20 Therefore, staff brings back its recommendation with some  
21 modifications, primarily in Issue 1.

22 Some of these issues are related to each other while  
23 others stand alone. In Issue 1A, the engineering factors staff  
24 arrived at include adjustments for inflation as recommended in  
25 Issue 6.

1 Issues 2 and 4 are stand-alone issues.

2 Issue 3 is also a stand-alone issue except that the  
3 rate is impacted by your vote on other issues.

4 Issue 5 has a decision tree on Page 137 which shows  
5 the impact of your vote on other issues.

6 At this time we are prepared to proceed  
7 issue-by-issue or begin with specific issues as you wish.

8 CHAIRMAN JABER: Commissioners, whatever your  
9 pleasure is with respect to issue-by-issue, but I have general  
10 questions, not really specific questions. I would like to get  
11 those out of the way if that is okay.

12 And, staff, Mr. Bloom, I think these questions are  
13 directed for you. Rather than go subsection-by-subsection, I  
14 found an exhibit that lends itself well, I think, to my  
15 questions. Exhibit 70, you may recall was a late-filed exhibit  
16 that was filed at my request. And I believe I asked the  
17 AT&T/WorldCom witness, certainly the attorney to take  
18 BellSouth's proposed rates, make the specific recommended  
19 adjustments that the AT&T/WorldCom witnesses were testifying to  
20 and show us how the AT&T/WorldCom proposed rates got to be  
21 6.53. That is Exhibit 70.

22 MR. BLOOM: Yes, ma'am.

23 COMMISSIONER DEASON: Madam Chairman, I apologize. I  
24 had a copy of that exhibit and I left it on my desk. If I  
25 could just get a copy.

1 CHAIRMAN JABER: I'm sure staff has it. (Pause.)  
2 Commissioner Palecki, do you have a copy of that  
3 exhibit?

4 COMMISSIONER PALECKI: Yes, I do.

5 CHAIRMAN JABER: Okay, great. Mr. Bloom, I know this  
6 might be tedious, but if you could walk us through the specific  
7 adjustments. My reading of your entire Issue 1, you accepted a  
8 lot of -- the majority of the AT&T/WorldCom witnesses' input  
9 values, and accepted a lot of their proposed reductions. And  
10 there were a few that you did not accept, whether it was for  
11 lack of -- in your opinion, lack of evidentiary support or the  
12 Commission had already decided. If you can look at this list  
13 and tell me what you accepted and what you did not accept and  
14 why, I think that would address a lot of my concerns.

15 MR. BLOOM: Yes, Commissioner. The first one you see  
16 listed there is structure sharing inputs. We did not accept  
17 that. And the reason we did not accept that is because this  
18 Commission has rejected that theory in the past, and we saw no  
19 reason or no compelling evidence to go against the Commission's  
20 prior findings. That essentially suggests that the investment  
21 should be distributed three ways. Whenever there is  
22 installation, the three-in-a-trench theory, I guess we would  
23 call it.

24 Whenever you trench you have to lay phone cable, you  
25 then also have to lay electric and you would also have to lay

1 cable in that same trench. What that has the effect of doing  
2 is reducing the investment by two-thirds, obviously, because  
3 you are sharing it among three parties instead of just the  
4 phone company.

5 This Commission in a number of cases going back to, I  
6 believe, 1996 has rejected that theory on a couple of grounds.  
7 One is that the scorched node modeling that is used only  
8 applies to telecom. It does not apply to cable over which no  
9 state commission has jurisdiction, or to electric, it is  
10 strictly a telecom-related modeling technique or modeling  
11 theory. So on that basis alone, we could not accept it.

12 And, again, because the Commission has said that any  
13 modeling that is used has to be grounded in reality, the fact  
14 that the Commission doesn't have the jurisdiction over cable  
15 and over anything other than that telecom modeling technique  
16 for actually getting at telecom rates, to assume the  
17 three-in-a-trench, I guess, would not be considered -- I think  
18 you have used the language before, not grounded in reality.

19 CHAIRMAN JABER: And that discussion occurs on Page  
20 66 of the recommendation?

21 MR. BLOOM: Yes, ma'am, that is correct.

22 CHAIRMAN JABER: Okay.

23 COMMISSIONER PALECKI: With regard to that  
24 three-in-the-trench argument that has been made by  
25 AT&T/WorldCom, is there some percentage of situations where we

1 see three-in-a-trench? Could it be assumed, perhaps, in 10  
2 percent of instances, or 25 percent?

3 MR. BLOOM: Well, unfortunately, they don't give us  
4 that luxury. They present it to us as an all-or-nothing  
5 proposition. And there also are problems that are inherent  
6 with that. One is if you trench telecom and electric at the  
7 same time, then you have to dig a deeper trench because of the  
8 electrical interference that would arise. Therefore, you have  
9 greater costs.

10 And this Commission has also found that if you are  
11 the cost-causer in this instance for this kind of restructuring  
12 then you would also have to be responsible for that as well.  
13 So if it were possible to do that, which it is not based on  
14 this record because they haven't given us that information or  
15 given us that theory, you would also then have to impute other  
16 costs because they would be incurred.

17 COMMISSIONER PALECKI: So in a real world situation,  
18 we really rarely see three-in-a-trench unless there are  
19 additional modifications and expenses entailed in layering and  
20 putting certain cables, perhaps electric at a lower distance or  
21 deeper trench?

22 MR. BLOOM: That is correct, sir.

23 COMMISSIONER PALECKI: So it's not a simple thing  
24 just to say sometimes we see three-in-a-trench, you can't make  
25 a calculation.

1 MR. BLOOM: It's easy to say, it's not easy to  
2 perform.

3 COMMISSIONER PALECKI: Thank you.

4 COMMISSIONER DEASON: Let me follow up with a  
5 question. As I understand your recommendation, though, you are  
6 using a factor of 75 percent, is that correct?

7 MR. BLOOM: For feeder distribution facility sharing,  
8 yes.

9 COMMISSIONER DEASON: So that has the effect of  
10 reducing what otherwise would be the number for that particular  
11 element, correct?

12 MR. BLOOM: Well, feeder distribution sharing is  
13 specifically telecom, that does not encompass any other.

14 COMMISSIONER DEASON: So this is not -- the issue of  
15 other utilities is not relevant to the distribution facility  
16 sharing then currently?

17 MR. BLOOM: That is correct, sir.

18 CHAIRMAN JABER: And that value of 75 percent,  
19 Commissioner Deason, if I could just follow up on your  
20 question, is the recommendation that was made by Witness  
21 Donovan?

22 MR. BLOOM: That is correct.

23 CHAIRMAN JABER: Okay. Item 2.

24 MR. BLOOM: Item 2 is the elimination that AT&T  
25 proposed, AT&T/WorldCom proposed eliminating the double-count

1 of indirect labor. I think the difficulty there lies in for us  
2 to eliminate double-counting labor we would have to accept and  
3 find a valid premise that double-counting actually occurred.  
4 That is not present in the record, and therefore that was not  
5 accepted.

6 CHAIRMAN JABER: Number 3. You can just keep going.

7 MR. BLOOM: Okay. Correcting the DLC, the digital  
8 loop carrier in-plant factors, this Commission has already  
9 ruled on that issue in Order 01-1181, which is a prior phase of  
10 this proceeding. You have entertained all the arguments, and I  
11 would point out that that was not teed up as an issue in your  
12 order for the 120-day filing. One party, I believe it was  
13 Mr. Pitkin, included some testimony and an exhibit. But,  
14 again, I would reiterate you have rejected that theory  
15 previously, and that was not an issue in this proceeding, or  
16 was not intended to be an issue in this proceeding by your  
17 order.

18 Number 4 is correcting aerial structure quantities.  
19 This has to do with the spacing of poles. You may recall a  
20 discussion -- there was a discussion on both sides.  
21 BellSouth's input was 120 feet. Mr. Donovan came up with a  
22 distance of 184 feet based on some simple division of zones  
23 used by the FCC in its universal service inputs order.

24 We accepted the lowest of those inputs from the FCC  
25 inputs order, which is 150 feet between poles. We felt that

1 there was sound methodology behind the 150-foot distance that  
2 was outlined in the FCC's final inputs order to which Mr.  
3 Donovan alluded. We could not in good conscience accept his  
4 just taking nine different categories, taking all of those  
5 distances in aggregate and dividing it by nine and coming up  
6 with 184 feet. It was really apropos of nothing other than  
7 simple division.

8 CHAIRMAN JABER: Okay. And that discussion occurs on  
9 Page 51 of the recommendation. And you need to elaborate for  
10 me a little bit more on that, because it was not real clear to  
11 me what the difference in terms of the evidence in the record  
12 was between the 150 feet and the 184 feet. My reading of the  
13 testimony related to the 184 feet was that, too, was based on  
14 the FCC's application, the universal service order.

15 MR. BLOOM: Let me try. I'm sorry.

16 CHAIRMAN JABER: And so was your accepting of the 150  
17 feet. So walk me through, once again, what is wrong with 184  
18 feet.

19 MR. BLOOM: Certainly. In order to arrive at 184  
20 feet, what you must do is take all the distances in all nine  
21 zones that the FCC recognizes for the universal service inputs  
22 model, take that aggregate number and divide it by nine, the  
23 number of zones. If you do that, you arrive at a number of 184  
24 feet. While the underlying input or the underlying assumptions  
25 there may be valid and based on valid cost modeling techniques,

1 simply taking nine zones, adding them in aggregate and dividing  
2 it by nine is what I would call simple division. We did  
3 believe that by accepting 150 feet we were relying on an input  
4 that is supported specifically by a cost methodology.

5 CHAIRMAN JABER: Said differently, just so that I  
6 understand, are you saying that the methodology used in taking  
7 the nine zones, adding them up and divided them by nine, is  
8 really not supported by evidence in the record to justify that  
9 that is a sufficient proxy for this input?

10 MR. BLOOM: I think that is a fair way of saying it,  
11 yes, ma'am.

12 CHAIRMAN JABER: Whereas you could point specifically  
13 to the 150 feet, and that is justified by the FCC.

14 MR. BLOOM: It has substance to back up the numbers.

15 CHAIRMAN JABER: Okay.

16 MR. BLOOM: Number five is the elimination of the 25  
17 -- it says here 25 percent, it is actually 25.43 percent  
18 closing factor, incorrect contract labor data. We did accept  
19 this input and we accepted this input because per the  
20 Commission's direction we were told to go back and look at  
21 linear loadings and eliminate them where possible. This is  
22 very clearly linear loading, and I'm sure the Commissioners  
23 recall the discussion with the witnesses where certain costs  
24 are included over certain categories of activities, even though  
25 those costs do not inure to those specific activities.

1           In effect -- I think the example was used of a  
2 bulldozer. You don't use a bulldozer for all kinds of  
3 restoration activity, but you take the cost of that bulldozer  
4 and you apportion it across all activities. That and several  
5 other items that are included in that category amount to a  
6 total loading of 25.43 percent. We thought that was very  
7 clearly contrary to what the Commission's original order was  
8 for the 120-day filing. And given the additional direction we  
9 received from the Commission in June, we felt that that was  
10 something that should be eliminated.

11           CHAIRMAN JABER: Define linear loading for me,  
12 Mr. Bloom.

13           MR. BLOOM: Well, linear loading would be one that  
14 spans all categories regardless of whether or not it belongs --  
15 whether or not there is a direct relationship between cost  
16 causation and cost recovery.

17           CHAIRMAN JABER: Costs that are spread across the  
18 board even though those costs may not be legitimate for a  
19 particular purpose?

20           MR. BLOOM: Yes, ma'am.

21           CHAIRMAN JABER: And why should linear loading  
22 factors be removed from the model?

23           MR. BLOOM: Well, one, because of the distortion they  
24 create between causation and recovery. And, second, for the  
25 distortions they create across the zones.

1 CHAIRMAN JABER: I didn't hear what you just said.

2 MR. BLOOM: I'm sorry. The distortions they create  
3 between cost causation and cost-recovery and for the  
4 distortions they create across zones one, two, and three. I  
5 mean, that's why this Commission specifically ordered the  
6 removal of linear loadings in the bottoms-up model.

7 CHAIRMAN JABER: Would you say removing the  
8 miscellaneous contractor charge because that constituted linear  
9 loading is a significant reduction?

10 MR. BLOOM: It is certainly a driver of costs, yes,  
11 ma'am.

12 CHAIRMAN JABER: And that equated to 25.43 percent  
13 you said?

14 MR. BLOOM: Yes, ma'am.

15 CHAIRMAN JABER: But it has an effect on many input  
16 values, doesn't it?

17 MR. BLOOM: Yes, ma'am, it does. We have got an  
18 exhibit here. And I can tell you in general terms, but because  
19 it contains some confidential inputs I can't give you numbers,  
20 but I can tell you some of the categories to which it applies.

21 CHAIRMAN JABER: Yeah. I don't need the numbers.  
22 Throughout your entire issue it seemed like the removal of the  
23 miscellaneous contractor charge had an effect on a lot of the  
24 values. And said differently, at the end of the day that has  
25 the effect of reducing UNE rates, doesn't it?

1 MR. BLOOM: Yes, ma'am, it does.

2 CHAIRMAN JABER: So what are the different input  
3 values that it effects?

4 MR. BLOOM: It will effect pole material costs,  
5 contract labor costs, buried excavation contract labor costs,  
6 pretrenching, plowing for cable or plowing cable. It goes into  
7 a number of the excavation categories, push pipe, pull cable.  
8 And also, by the way, attendant labor costs for those  
9 categories. It would also effect -- I believe that is --  
10 underground excavation contract labor. A number of backhoe,  
11 trenching, various means of digging in order to install cable.  
12 And also a number of restoration categories, whether it is  
13 asphalt, concrete, sod, or whatever. So it is spread across a  
14 number of categories.

15 CHAIRMAN JABER: And Appendix A will include the  
16 removal of the miscellaneous contractor charges everywhere it  
17 was appropriate?

18 MR. BLOOM: That is correct.

19 CHAIRMAN JABER: Okay. Item 6.

20 MR. BLOOM: Item 6 has to do with the elimination of  
21 duplicate facilities, what we call facilities sharing. I  
22 believe that is what we talked about previously with the 75  
23 percent feeder distribution sharing.

24 CHAIRMAN JABER: So that was accepted?

25 MR. BLOOM: That is accepted, I beg your pardon, yes.

1 it was.

2 CHAIRMAN JABER: Item 7.

3 MR. BLOOM: Item 7 is to correct the placement cost  
4 inputs. This has to do with a number of categories. And,  
5 again, they are simple line items here, but they very expansive  
6 in terms of the model. This has to do with the number and  
7 placement of underground structures, manholes and things of  
8 that nature.

9 CHAIRMAN JABER: So you made corrections to placement  
10 costs?

11 MR. BLOOM: We have accepted the recommended changes.

12 CHAIRMAN JABER: Item 8.

13 MR. BLOOM: Item 8 are simply logarithmic calculation  
14 errors that were in the model. They were discovered early on  
15 in the process by Mr. Pitkin with AT&T/WorldCom, and those were  
16 accepted and incorporated into the model very early on in the  
17 process.

18 CHAIRMAN JABER: Item 9.

19 MR. BLOOM: Treatment of exempt material, we did not  
20 accept that adjustment. We found that the evidence was not  
21 persuasive.

22 CHAIRMAN JABER: That was 10, right?

23 MR. BLOOM: Yes, correct treatment for exempt  
24 material. I skipped past update inflation factors. I'm going  
25 to have to defer to Ms. Lee on that one.

1 CHAIRMAN JABER: Updating inflation factors, Ms. Lee.

2 MS. LEE: Yes, Commissioner. On the inflation  
3 factors if you recall in the prior phase because it was a  
4 tops/down model, the inflation factor that was applied was a  
5 melding or a merging together of both material inflation and  
6 labor inflation. Because you ordered the bottoms-up cost model  
7 material costs and placement costs, they are both being  
8 developed separately. Therefore, it is appropriate for a  
9 material-only inflation to be applied to material costs as well  
10 as a labor-only inflation factor to be applied to your  
11 engineering labor, as well.

12 This was suggested by AT&T, except AT&T recommended a  
13 material-only inflation factor, but did not address engineering  
14 costs as was brought out by BellSouth's Witness Caldwell. If  
15 you do this, you really need to inflate the engineering cost as  
16 well, and we agree with that.

17 AT&T's also concern was we are looking at -- we are  
18 sitting here now in 2002, why shouldn't the inflation forecasts  
19 be updated for actuals. The forecasts, if you recall  
20 correctly, was based on a 1998 forecast with '99 and 2000  
21 actual known factors at this time, why not update it for the  
22 most current picture of inflation. There is a degree of sense  
23 to that.

24 The problem I had with accepting or going with an  
25 updated forecast, if you recall all the -- the entire basis,

1 the fundamental basis of BellSouth's cost model was all based  
2 on 1998 data. The UNEs that you approved in Order 1181 were  
3 all based on 1998 base data. The only UNEs that you were  
4 talking about or as the subject of litigation in this phase are  
5 loop rates.

6 If you update the inflation applying to loop rates  
7 then you have a mismatch of rates between your loop rates and  
8 other rates that you used another basis for. That is why I  
9 thought it was appropriate to stay with the fundamental premise  
10 of let's keep everything consistently on a '98 basis.

11 CHAIRMAN JABER: Because this phase of the proceeding  
12 is really just that, it is a continuation of the proceeding  
13 that established the first round of UNE rates.

14 MS. LEE: Correct.

15 CHAIRMAN JABER: Item 11.

16 MR. BLOOM: Item 11 is engineering factors. This is  
17 probably one of the most hotly debated issues in this phase of  
18 the proceeding. We have ultimately determined that AT&T's  
19 engineering factors adjusted for inflation come closest to what  
20 we believe the Commission intended in its order for this  
21 proceeding. I can go into more detail on that or not if you  
22 prefer.

23 CHAIRMAN JABER: I don't need any more detail. Item  
24 12.

25 MR. BLOOM: We did accept virtually all of the

1 AT&T/WorldCom proposed inputs here because they were specific  
2 and they were broken down into such things as travel, setup  
3 times, those sorts of things. BellSouth had modeled it that  
4 travel setup and placement costs were all incorporated on a per  
5 100-foot basis. That creates some anomalies. In addition to  
6 being extremely linear in nature, it creates some anomalies  
7 that simply are nonsensical in a real world environment. And  
8 for that reason we have chosen to recommend to you AT&T's input  
9 values on that.

10 CHAIRMAN JABER: Mr. Bloom, if I look at the  
11 appendix, I remember from the agenda conference where we didn't  
12 rule on your recommendation, but instead required the companies  
13 to consider negotiating rates.

14 MR. BLOOM: Yes, Commissioner.

15 CHAIRMAN JABER: I expressed a concern over staff's  
16 discomfort with the linear loadings and the effect that had in  
17 relation to the zones. And as I recall, I also had a concern,  
18 when I looked at the appendix of that prior recommendation  
19 there were some adjustments to rates that actually resulted in  
20 staff recommendations that had rates going up even from  
21 BellSouth's current rates.

22 As I look at Appendix A now and consider all of your  
23 recommendation in Issue 1, I see that there are significant  
24 reductions in various places and I see that -- I understand  
25 that a lot of that has to do with removing the miscellaneous

1 contractor costs and some of the reductions that you accepted  
2 from AT&T Witnesses Pitkin and Donovan. But am I reading this  
3 appendix right? Is it correct if I look at A.1.1, BellSouth's  
4 current approved rate is 12.79, just looking at Zone 1, staff  
5 adjusted rates are 10.69. And, again, that is just Zone 1.  
6 Although I note that that decrease is true for all three zones.  
7 And then I look at the UNE, the loop/port combo on Page 163,  
8 P.1, res/bus. For Zone 1, again, current BellSouth rates there  
9 are 12.94, you are recommending a decrease to 10.94.

10 MR. BLOOM: Yes, ma'am.

11 CHAIRMAN JABER: Am I reading the appendix correctly?

12 MR. BLOOM: Yes, ma'am, you are.

13 CHAIRMAN JABER: Then I go to -- there are a couple  
14 of places where the rates do increase; Page 157, A.12.5,  
15 unbundled subloop concentration. Again, Zone 1, 45.17. Staff  
16 adjusted will be 47.81. Is that because some costs had to  
17 be -- some input values had to be readjusted based on the  
18 testimony in the record and costs were shifted to other places?

19 MR. BLOOM: That is correct, Commissioner.

20 Inevitably if we take certain investment out of some categories  
21 and include it in others, then logically the categories in  
22 which that investment is included will rise. And I would point  
23 out there are a couple of references in the record by AT&T  
24 witnesses who acknowledge that this will occur and that they  
25 were willing to accept it in specific instances for the reason

1 that, one, they believe that that gets to the heart of how  
2 modeling should be done. And, second, that is what you ordered  
3 done. And it is a logical fallout of taking from one and -- I  
4 mean, if you are going to assume the cost is valid, there is no  
5 dispute that it is a valid incursion of cost, and you take it  
6 from one place, it has to be included logically somewhere else.

7 CHAIRMAN JABER: Commissioners, those are the only  
8 questions I have for now.

9 COMMISSIONER PALECKI: I understand that not all of  
10 these calculations you have fallouts that result from the  
11 piece-parts that are actually worked on by various members of  
12 staff. And my question is have you stepped back and looked at  
13 your final results to make sure each of them fall within a  
14 range of reasonableness?

15 MR. BLOOM: For my part I can say yes. I wouldn't  
16 want to speak for anyone else on staff.

17 CHAIRMAN JABER: Mr. Dowds.

18 MR. DOWDS: Yes.

19 COMMISSIONER PALECKI: Thank you.

20 CHAIRMAN JABER: Commissioners, those were the only  
21 questions I had on 1A and 1B. I have to tell you, I thought --  
22 I am completely comfortable with that issue.

23 COMMISSIONER PALECKI: Madam Chairman, I really think  
24 that the parties in this docket, both sides have taken extreme  
25 positions, and we have had a situation where our staff has had

1 to come in where the parties -- one party has taken the  
2 position A and the other party is all the way over at the  
3 letter Z, and has had to determine what is reasonable here:

4           And I think that our staff has -- well, they say you  
5 can't make a silk purse out of a sow's ear. I think in this  
6 case our staff has. We have a situation where our staff has  
7 had to do a tremendous amount of analysis and work to get to  
8 reasonable cost levels, and I think they have done an excellent  
9 job.

10           CHAIRMAN JABER: Do you want to take up Issues 1A and  
11 1B together or --

12           COMMISSIONER DEASON: That's fine with me, Madam  
13 Chairman.

14           CHAIRMAN JABER: Okay. Questions or a motion.

15           COMMISSIONER DEASON: I can move staff on Issues 1A  
16 and 1B.

17           COMMISSIONER PALECKI: Second.

18           CHAIRMAN JABER: There is a motion and a second to  
19 approve 1A and 1B. All those in favor say aye.

20           (Unanimous affirmative vote.)

21           CHAIRMAN JABER: Issues 1A and 1B are approved.

22           2A, 2B. My only question here, staff, related to the  
23 chart. Page 93, again, rate comparison Table 2-4.

24           MS. MARSH: Yes, ma'am.

25           CHAIRMAN JABER: Am I reading this correctly that

1 with your recommendation you are recommending a decrease in the  
2 ADUF rate from BellSouth's current approved rate?

3 MS. MARSH: Yes, ma'am. BellSouth's filing did  
4 reduce those rates, but staff's recommendation reduces them  
5 further to the rates that are in the far right-hand column  
6 there titled staff proposed rates.

7 CHAIRMAN JABER: And on page -- I think it's the same  
8 issue. Is Page 98 the same issue?

9 MS. MARSH: No.

10 CHAIRMAN JABER: Okay.

11 MS. KING: Page 98 is Issue 3, the UCL-ND element.

12 CHAIRMAN JABER: Okay. Let me wait on that, then.

13 Commissioners, do you have questions on 2A or 2B, or a motion?

14 COMMISSIONER DEASON: I can move staff on 2A and 2B.

15 COMMISSIONER PALECKI: Second.

16 CHAIRMAN JABER: Motion and a second on 2A and 2B.

17 All those in favor say aye.

18 (Unanimous affirmative vote.)

19 CHAIRMAN JABER: Issue 2A and 2B are approved. On  
20 Issue 3A and 3B, Footnote 4, Covad/BellSouth arbitrated  
21 interconnection agreement. I'm curious. The rates that you  
22 are recommending in -- first of all, is that arbitration  
23 agreement, that is not confidential, the rates are public?

24 MS. KING: The rates are public, yes, ma'am.

25 CHAIRMAN JABER: The rates that you are recommending

1 in this issue, are they higher or lower than what was  
2 negotiated in the Covad/BellSouth agreement?

3 MS. KING: On the recurring side, the rates that  
4 staff is recommending here are lower. For example, in Zone 1  
5 staff is recommending a rate of 7.69. In the Covad agreement  
6 that Zone 1 rate is \$11.01.

7 CHAIRMAN JABER: Say that again. Staff's recommended  
8 rate is what?

9 MS. KING: \$7.69. That is shown in Appendix A. And  
10 in the Covad agreement, that rate is \$11.01.

11 CHAIRMAN JABER: Okay. Commissioners, do you have  
12 questions on Issues 3A or 3B, or a motion?

13 COMMISSIONER DEASON: Let me just make sure that I'm  
14 clear. If we adopt staff's recommendation we would be  
15 approving those rates contained in Appendix A, is that correct?

16 MS. KING: The recurring rates are shown in Appendix  
17 A and the nonrecurring rates are those shown on Page 100 of  
18 staff's recommendation.

19 COMMISSIONER DEASON: Okay. Page 100.

20 MS. KING: And the nonrecurring rates in the Covad  
21 agreement are within pennies of the nonrecurring rates staff is  
22 recommending here except for the engineering information. In  
23 the Covad agreement, the engineering information rate is \$28.77  
24 and staff is recommending \$13.49.

25 COMMISSIONER DEASON: Madam Chairman, I can move

1 staff's recommendation.

2 COMMISSIONER PALECKI: Second.

3 CHAIRMAN JABER: Motion and a second to approve staff  
4 on Issues 3A and 3B. All those in favor say aye.

5 (Unanimous affirmative vote.)

6 CHAIRMAN JABER: Issues 3A and 3B are approved.

7 Issue 4A and 4B.

8 MS. KING: Issue 4 is a housekeeping matter. We  
9 identified some inconsistencies in the prior phase of this  
10 hearing. We asked BellSouth to identify or correct those  
11 inconsistencies. We felt they have done that, and there is a  
12 change to a rate that was adopted earlier, and that adjusted  
13 rate is found in Table 4-1 on Page 107 of staff's  
14 recommendation.

15 CHAIRMAN JABER: Commissioners, do you have questions  
16 or a motion? Page 102.

17 COMMISSIONER PALECKI: I can move staff on 4A and 4B.

18 COMMISSIONER DEASON: I can second the motion.

19 CHAIRMAN JABER: Motion and a second to approve staff  
20 on 4A and 4B. All those in favor say aye.

21 (Unanimous affirmative vote.)

22 CHAIRMAN JABER: Issues 4A and 4B are approved.

23 Issue 5A and 5B.

24 MS. LEE: And 5C?

25 CHAIRMAN JABER: Yes.

1 MS. LEE: Issue 5 has to do with a hybrid  
2 copper/fiber xDSL capable loop. You recall in the prior phase  
3 there was a desire brought up by the ALECs that they would like  
4 to have such a loop offering as this. The Commission decided,  
5 well, let's look at it, let's define it, let's see whether it  
6 is technically feasible for BellSouth to provide this. And if  
7 it is, then maybe they should, and let's look at the rate  
8 structure and the rates.

9 You will recall BellSouth provided -- their proposed  
10 loop offering consisted of the subloop distribution, DSLAM at  
11 the remote terminal, subloop feeder, and a dedicated DS-1  
12 transport from the remote to the collocation cage, the ALECs  
13 collocation cage at the central office. On the other hand, the  
14 ALEC's position as it developed through the course of testimony  
15 and at the hearing came out that their desire was to share the  
16 DSLAM a port at a time and also share the transport.

17 As the record developed, in order to share the  
18 transport, if you share the transport you are co-mingling all  
19 the packets on that loop. And in order to deload, or  
20 depacketize, or deco-mingle those packets would require the  
21 unbundling of the ATM switch at the central office, an element  
22 that was not addressed. There were no costs in the record. It  
23 was not even addressed as an element by any party.

24 While it is technically feasible to provide the loop  
25 offering that BellSouth has designed, which would be the

1 16-port DSLAM, the subloop feeder, subloop distribution, and  
2 the dedicated transport, we are suggesting or we are  
3 recommending that you do not require BellSouth to offer this.  
4 The subloop offerings are already UNEs. The only part of this  
5 offering that is not a UNE is the DSLAM. We do not think that  
6 you should unbundle the DSLAM at this point. There has been no  
7 showing of, other than materiality, that the ALECs are denied  
8 access. And we think that that showing would -- that  
9 impairment standard would have to be shown before you could go  
10 that far as to unbundle the DSLAM.

11 CHAIRMAN JABER: Well, with respect to unbundling the  
12 DSLAM, though, doesn't the rationale go even further with --  
13 the FCC said you cannot unbundle DSLAMs unless there are  
14 limited circumstances?

15 MS. LEE: Oh, yes, ma'am.

16 CHAIRMAN JABER: So part of your recommendation is  
17 that there is no evidence in the record to indicate that there  
18 are unique limited circumstances that would warrant unbundling  
19 DSLAMs?

20 MS. LEE: That is correct. Those circumstances do  
21 not exist.

22 CHAIRMAN JABER: Now, does that speak to companies  
23 voluntarily agreeing to unbundling DSLAMs in certain  
24 situations? Is there anything that would prevent companies  
25 from reaching that kind of an agreement?

1 MS. LEE: I don't think that that would prevent  
2 anybody -- just like an interconnection agreement, any kind of  
3 agreement the two parties can come to, I don't think that what  
4 you establish or what you approve today should hinder those  
5 types of negotiations or stand in the way of those  
6 negotiations.

7 CHAIRMAN JABER: Ms. Keating, do you agree with that?

8 MS. KEATING: I do, Madam Chairman.

9 COMMISSIONER PALECKI: Now, it is my understanding  
10 that the FCC's order was based upon the argument that, A, an  
11 ILEC that wishes to make the monetary investment and take a  
12 large risk in making that investment in this expensive  
13 equipment should not be put in a position where it is, in  
14 effect, discouraged from making that investment by being  
15 required to share that expensive equipment with their  
16 competitors.

17 MS. LEE: I would agree with that, Commissioner  
18 Palecki. And if you recall, BellSouth testified to the fact  
19 that they have only been deploying DSLAMs at remote terminals  
20 since the year 2000, so it is very new on the scene. And I  
21 think you are absolutely right on.

22 COMMISSIONER PALECKI: And I don't believe it was in  
23 this docket, but I believe there has been an assurance by  
24 BellSouth in another docket that if a competitor wishes to  
25 place a DSLAM in its remote terminals or its central offices

1 that that space will be made available in all situations. Is  
2 that correct?

3 MS. LEE: I believe you are correct, sir.

4 COMMISSIONER PALECKI: Thank you.

5 CHAIRMAN JABER: Commissioners, questions or a motion  
6 on 5A, 5B, and 5C.

7 COMMISSIONER DEASON: Madam Chairman, I can move  
8 staff on 5A and 5B. And if that is approved, it is my  
9 understanding that 5C is moot.

10 MS. LEE: That's correct.

11 COMMISSIONER PALECKI: Second.

12 CHAIRMAN JABER: There is a motion and a second to  
13 approve Issues 5A and 5B, and recognize that Issue 5C is moot.  
14 All those in favor say aye.

15 (Unanimous affirmative vote.)

16 CHAIRMAN JABER: Issues 5A, 5B, and 5C are resolved.  
17 Issue 6 is on Page 138.

18 MS. LEE: Commissioners, Issue 6 is the inflation  
19 issue. We have already had some discussion on that where staff  
20 is recommending a material-only inflation be applied to  
21 material cost and a labor-only inflation be applied to  
22 engineering costs. The engineering factors that are  
23 recommended in issue -- that you have already approved in Issue  
24 1A, I think it is, reflect the impact of inflation that we have  
25 recommended here in Issue 6. And our recommendation is also

1 saying let's keep the 1998 forecast, let's work with that.

2 COMMISSIONER PALECKI: I have one question.

3 CHAIRMAN JABER: I don't have a question, I just  
4 really want to give you all a heads-up on something I have  
5 asked staff to do with respect to UNE rates going forward. It  
6 is my understanding, and staff needs to correct me if I'm  
7 wrong, our vote today doesn't necessarily end the discussion of  
8 UNE rates in terms of evaluating where the market stands in a  
9 year, or two, or three, or five years. And that is not to say  
10 they are not moving targets, because they are not. I think  
11 that there needs to be stability and certainty in how these  
12 companies negotiate and how these companies interact with each  
13 other for the sake of the end user.

14 But saying all of that, I want our Office of Market  
15 Monitoring with a good 12 to 18 months worth of data to be  
16 prepared, you know, in a year, year and a half to come back to  
17 us with sort of a status of where we are in relation to a local  
18 telecom market and the development of a market. You know, I  
19 think Roberta Bass' area is poised to give us that sort of  
20 analysis. It's because of that that I am comfortable going  
21 forward with the '98 data.

22 I wholeheartedly agree with staff, if we start  
23 mismatching the data, it has us, I think, starting over,  
24 whereas I would like to move forward. I would like to get --  
25 and I say this to the parties, too, that is not a signal that I

1 want to see petitions on UNE rates. That is a signal that I  
2 want a good year's worth of information and an opportunity for  
3 our staff to analyze that and let us know how things are going.

4 COMMISSIONER PALECKI: I agree with you, Madam  
5 Chairman. This was an issue that I had quite a bit of  
6 difficulty with, and I had some discussion with Ms. Lee on this  
7 issue. My initial thought is here we are in 2002, if we have  
8 updated information data why don't we go ahead and use it? But  
9 it was explained to me by Ms. Lee that there are many other  
10 parts of the data that would go up or down since 1998, and that  
11 in order to be fair we have to be consistent and use the 1998  
12 data. But there will be the day, perhaps 12 months from now,  
13 where we have the 2002 data available to us, and the 2002  
14 inflation forecast when we can use the updated data for all of  
15 the cost components. And for that reason, I could move staff  
16 on Issue Number 6.

17 COMMISSIONER DEASON: I can second the motion. And  
18 let me say, Madam Chairman, I agree with you. In fact, it was  
19 one of the items I was hoping we would discuss before we  
20 concluded today, is how we view our actions today in the  
21 long-term and what we envision as to be the on-going  
22 requirement upon this agency to continue to monitor the effects  
23 that these rates have on the market. And I am pleased to hear  
24 you say you share that same concern and that it is our  
25 intention to do so. But that we do need to have a period of

1 time where we can have some experience before we start trying  
2 to go forward immediately with changing UNE rates again. I  
3 agree with that concept, as well. But having said that, I can  
4 second the motion on Issue 6.

5 CHAIRMAN JABER: There is a motion and a second to  
6 approve staff on Issue 6. All those in favor say aye.

7 (Unanimous affirmative vote.)

8 CHAIRMAN JABER: And, Doctor Bane, I need you to  
9 follow up with Ms. Bass consistent with previous discussions.  
10 And whatever makes sense, Mary, is what she needs to do. But I  
11 want a solid database to work from. And I recognize that will  
12 take a lot of cooperation with the industry. I expect nothing  
13 less from the industry than their cooperation with the Office  
14 of Market Monitoring.

15 Issue 7.

16 MR. BLOOM: Commissioners, Issue 7 simply says apart  
17 from Issues 1 through 6, is the filing consistent? This is  
18 uncontested by any of the parties, by the way.

19 COMMISSIONER DEASON: I can move staff's  
20 recommendation.

21 COMMISSIONER PALECKI: Second.

22 CHAIRMAN JABER: Motion and a second on Issue 7. All  
23 those in favor say aye.

24 (Unanimous affirmative vote.)

25 CHAIRMAN JABER: Issue 7 is approved. Before we get

1 to Issue 8, staff, when are the -- when does this get  
2 implemented? There was no issue related to implementation of  
3 the UNE rates.

4 MS. KEATING: Good question. We were thinking that  
5 the appropriate implementation time period would be along the  
6 same lines that you originally approved in your order back in  
7 May. And that is that the rates would become effective when  
8 incorporated in current interconnection agreements through  
9 their change of law provisions or into new interconnection  
10 agreements.

11 CHAIRMAN JABER: Commissioners, I think we need a  
12 motion on that.

13 COMMISSIONER DEASON: Let me ask a question. It's my  
14 understanding that most if not all of the agreements have  
15 change of law provisions, is that correct?

16 MS. KEATING: I believe so. That is probably  
17 accurate.

18 COMMISSIONER DEASON: So we can anticipate that these  
19 new rates can be implemented quickly.

20 MS. KEATING: I believe so. I would strongly  
21 suspect.

22 COMMISSIONER DEASON: Madam Chairman, I can -- well,  
23 let me ask a further question. We had a prior discussion  
24 concerning our requirement to continue to monitor the impacts  
25 of these rates, and really not only these rates, but other

1 matters as far as the development of competition within the  
2 state. Is that something that we need to include in this order  
3 or is that just something that we can just direct staff to do?  
4 How is the appropriate way that we go about --

5 CHAIRMAN JABER: Well, I will defer to Ms. Keating.  
6 My two cents worth is we don't need to include it in the order,  
7 but I think in an effort to put all on notice it is probably  
8 wise to include that discussion in the order.

9 COMMISSIONER DEASON: Well, I'm not opposed to that.  
10 I guess my observation is that the difficulty we are all faced  
11 with here, not only the Commission but certainly the parties,  
12 as well, is there is a certain standard to which we have to  
13 abide by in the '96 Act, and that is one based upon cost.

14 Now, costs can be viewed in many different ways and  
15 there are different approaches to cost studies and different  
16 inputs into those includes, and that is part of the complexity  
17 which we are having to deal with. I want to echo Commissioner  
18 Palecki's comments as well as yours, Chairman, I congratulate  
19 staff on a job well done. And I think they have approached  
20 this in the correct manner. And I think that we do have the  
21 obligation to continue to monitor the effects of these rates  
22 and other decisions that we make upon the development of  
23 competition in our state.

24 But as far as it pertains to UNE rates, I wouldn't  
25 want to give false hopes that we have the discretion just to

1 choose rates which we feel are going to promote competition.  
2 While that enters into our overall policymaking, that desire is  
3 certainly constrained by the fact that we have to establish  
4 rates that are based upon costs. And I think that is part of  
5 the constraint under which we have to operate.

6 CHAIRMAN JABER: And evidence in the record.

7 COMMISSIONER DEASON: Absolutely. So I just wanted  
8 to make that clear.

9 CHAIRMAN JABER: And I wholeheartedly agree. I  
10 wholeheartedly agree with that. And, again, I think we have  
11 sent the message, we have put folks on notice that our Office  
12 of Market Monitoring in its current obligations will be looking  
13 at the development of a competitive market and what factors  
14 effect that, and that is not necessarily limited to UNE rates.

15 COMMISSIONER DEASON: Having said that, though, let  
16 me say this. I am optimistic that the rates that we are  
17 setting here today are going to provide the opportunity for  
18 there to be even more meaningful competition within the state.  
19 I think that the direction of our decision today is consistent  
20 with that goal of promoting competition, and that we are doing  
21 that based upon evidence in the record and the costs which that  
22 evidence supports.

23 CHAIRMAN JABER: Absolutely.

24 COMMISSIONER DEASON: So having said that, are we on  
25 Issue 8 at this point, Madam Chairman?

1           CHAIRMAN JABER: Before we get to Issue 8, I think I  
2 need a motion from you all to codify that the rates become  
3 effective pursuant to change of law provisions in current  
4 agreements or as they are incorporated into future agreements.

5           MS. KEATING: I think I could just -- if I could ask  
6 that that just be a modification, perhaps, to Issue 8.

7           CHAIRMAN JABER: There you go.

8           COMMISSIONER DEASON: Well, then I can move Issue 8  
9 as modified.

10          COMMISSIONER PALECKI: Second.

11          CHAIRMAN JABER: Motion and a second to approve Issue  
12 8 as modified. All those in favor say aye.

13          (Unanimous affirmative vote.)

14          CHAIRMAN JABER: Issue 8 is approved.

15          Commissioner Deason, I think I would like to end my  
16 comments with what you just said. I think that wraps it up  
17 accurately. I have high hopes for this decision having a  
18 positive effect on the development of a competitive market. I  
19 do want to compliment staff. I know that the last 60 days have  
20 been tough in the sense that you have had to go back and  
21 reevaluate the evidence in the record and make the adjustments  
22 that you have made here. It's a job well done. I am extremely  
23 proud of our staff.

24          COMMISSIONER PALECKI: I agree 100 percent. This has  
25 been a tremendous balancing act. UNE prices need to be set at

1 a place that is not at a big discount to the incumbent's costs,  
2 and at the same time have to be set at a level that will  
3 encourage competition in the State of Florida and make  
4 competition happen.

5 I think the staff has done a tremendous job with that  
6 balancing act. It has not been an easy one. It has been very  
7 difficult, especially considering the extreme positions that  
8 have been taken by the parties. And I congratulate our staff.

9 CHAIRMAN JABER: Thank you. Agenda is concluded.

10 (The deposition concluded at 10:35 a.m.)

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1 STATE OF FLORIDA     )  
2                             :     CERTIFICATE OF REPORTER  
3 COUNTY OF LEON     )

4  
5             I, JANE FAUROT, RPR, Chief, Office of Hearing Reporter  
6 Services, FPSC Division of Commission Clerk and Administrative  
7 Services, do hereby certify that the foregoing proceeding was  
8 heard at the time and place herein stated.

9             IT IS FURTHER CERTIFIED that I stenographically  
10 reported the said proceedings; that the same has been  
11 transcribed under my direct supervision; and that this  
12 transcript constitutes a true transcription of my notes of said  
13 proceedings.

14             I FURTHER CERTIFY that I am not a relative, employee,  
15 attorney or counsel of any of the parties, nor am I a relative  
16 or employee of any of the parties' attorney or counsel  
17 connected with the action, nor am I financially interested in  
18 the action.

19             DATED THIS 10TH DAY OF SEPTEMBER, 2002.

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