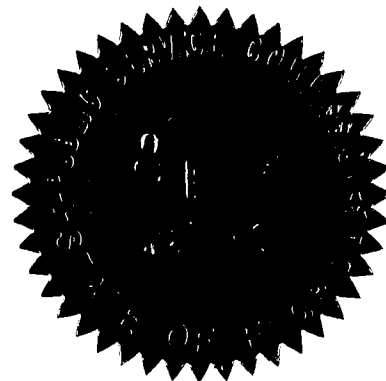


FLORIDA PUBLIC SERVICE COMMISSION

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DRAFT EX PARTE COMMENTS IN RESPONSE
TO FCC NOTICE OF PROPOSED RULEMAKING
RELATING TO THE PROMOTION OF COMPETITIVE
NETWORKS IN LOCAL TELECOMMUNICATIONS
MARKETS AND NOTICE OF PROPOSED RULEMAKING
RELATING TO EXCLUSIVE CONTRACTS FOR
PROVISION OF VIDEO SERVICES IN MULTIPLE
DWELLING UNITS AND OTHER REAL ESTATE
DEVELOPMENTS



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PROCEEDINGS: INTERNAL AFFAIRS AGENDA
ITEM NO. 2

BEFORE: CHAIRMAN LISA POLAK EDGAR
COMMISSIONER MATTHEW M. CARTER, II
COMMISSIONER KATRINA J. McMURRIAN
COMMISSIONER NANCY ARGENZIANO
COMMISSIONER NATHAN A. SKOP

DATE: Tuesday, October 23, 2007

PLACE: Betty Easley Conference Center
Room 140
4075 Esplanade Way
Tallahassee, Florida

DOCUMENT NUMBER-DATE

FLORIDA PUBLIC SERVICE COMMISSION 09744 OCT 25 6

FPSC-COMMISSION CLERK

P R O C E E D I N G S

CHAIRMAN EDGAR: And we are on Item 2.

MR. SHAFER: Thank you, Chairman.

Good afternoon, Commissioners. Greg Shafer with Commission staff.

Staff is seeking approval of the draft ex parte comments contained in Attachment 2 related to the issue of exclusive contracts for communications services in multidwelling unit environments which include residential developments and the impact of Florida's carrier-of-last-resort obligation as it relates to the MDU setting.

The FCC has two pending proceedings considering related issues. One proceeding relates to the provision of competitive telecommunications services in MDU settings, the other proceeding considers whether exclusive contracts for the provision of video services in an MDU environment should be continued. Staff believes it is relevant to share the experience, the Florida experience on these matters in both proceedings as the existence of exclusive contracts for video and data services as well as telecommunications services has been at the heart of recent litigation before this Commission.

The comment and reply periods for each proceeding have passed, but the FCC has not yet issued a decision in either proceeding. The comments are therefore styled as ex parte comments. It should be noted that the day after this

1 item was refiled, the trade press reported that an order in the
2 video proceeding was being circulated. However, to date no
3 order has been issued.

4 Staff did make some minor typographical corrections
5 between the version that was filed this time and the previous
6 Internal Affairs, but those are the only differences, and we
7 are available for questions.

8 CHAIRMAN EDGAR: Thank you, Greg.

9 And I do have one person signed up to speak on this
10 item, Beth Keating.

11 Beth. Oh, there you are.

12 MS. KEATING: Thank you, Madam Chair, Commissioners.

13 I'm here today on behalf of FCTA, and let me just
14 first start out and thank staff. We had some questions about
15 the comments, and they took the time to sit down and walk us
16 through those and I really appreciate that. And generally FCTA
17 doesn't have, take issue at all with the idea of and a desire
18 to advise the FCC about the Florida experience and what has
19 been going on with regard to COLR and Florida exclusive
20 contracts in the MDU. But there are a few statements within
21 the comments that we think make presupposed findings that the
22 Commission has not yet made in Commission proceedings, and also
23 are statements that are too broadly worded and make statements
24 about the market that really may not be accurate at all.

25 For instance, if you don't mind, if I could direct

1 your attention to Page 5. In that first paragraph there is a
2 statement in the comments that says that FCTA takes no position
3 on whether exclusive contracts for video data and video voice
4 services are appropriate. And then -- but that last sentence,
5 the differences have created negotiating imbalances and
6 ultimately may limit consumer choice for telecommunications
7 services, video and data services in contravention of the goal
8 of promoting competition in the local telecommunications
9 markets. That does seem to make a finding. And, as worded, it
10 seems unclear as to what is meant there by negotiating
11 imbalance. And we just suggest that perhaps that sentence
12 really isn't necessary in order to know the intent of the
13 comments and we suggest that perhaps that be deleted.

14 Likewise, over on Page 6, that very first full
15 sentence that says cable providers have no obligation to serve
16 is analogous to the carrier of last resort obligation. As
17 worded, we just don't think that's accurate. Actually, cable
18 operators do have obligations in their franchise agreements
19 that are quite analogous to the COLR obligation. And just as
20 worded that that is simply inaccurate and we would ask that
21 that be either reworded or stricken. And, again, looking back
22 at the text of the rest of the comments, it really doesn't seem
23 to add to the comments themselves.

24 And then our last suggested change also is here on
25 Page 6, and you will notice there is a paragraph that begins at

1 the bottom, without commenting on the merits, and then the
2 remainder of that paragraph seems to be deal with that. It
3 comments on the merits. And, again, we think that some of the
4 statements that are contained in that paragraph do sort of go
5 beyond findings that the Commission may have actually made in
6 the proceeding, but it's seeking to advise the FCC about. And
7 we would ask that some consideration be given to significantly
8 restructuring that paragraph or simply deleting it.

9 Again, if it is the desire to advise the FCC of the
10 Florida experience, we think that it's entirely sufficient to
11 send the orders that the Commission has that staff has attached
12 to these comments. I appreciate your consideration.

13 CHAIRMAN EDGAR: Thank you.

14 Any questions for Ms. Keating at this point?

15 COMMISSIONER McMURRIAN: Just to clarify, Ms.
16 Keating, you mean through the end of the second observation, I
17 guess, the two paragraphs after the without commenting on the
18 merits, the two paragraphs after that?

19 MS. KEATING: Yes, from the without commenting all
20 the way through providers on Page 7.

21 COMMISSIONER McMURRIAN: Thank you.

22 CHAIRMAN EDGAR: Commissioners, any other questions?

23 I know, Greg, I had a little bit of a problem on my
24 first reading of this, and then on my second and third, as
25 well, with the statement that is at the beginning of that

1 paragraph that would be under observations at the bottom of
2 Page 6. The statement in the draft being that the market is
3 developing in an asymmetrical manner as a result of, and it
4 just seemed to me to be a little sweeping when we were using
5 two or three -- you know, only citing two or three examples
6 that this Commission has reviewed and considered. And so that
7 just seemed a little board for just the couple of examples that
8 have come before us and a little bit of a judgment statement,
9 it seemed like to me.

10 But, Commissioners, other comments or questions on
11 the draft and the suggested modifications that Ms. Keating has
12 made?

13 Commissioner McMurrrian.

14 COMMISSIONER McMURRIAN: I agree that I thought some
15 of the comments were a little sweeping, as well. Without
16 saying whether I agree with some of them or, you know, not
17 others, I did think it was kind of odd to say we are not
18 commenting on the merits, but here are our observations
19 regardless of that. It did sound like we were going a little
20 bit beyond saying we are not commenting on the merits. So I
21 think those concerns are valid, but I would like to hear the
22 others thoughts on that.

23 CHAIRMAN EDGAR: Do you have other suggestions?

24 COMMISSIONER McMURRIAN: I did. My usual. I did not
25 do a type-and-strike everyone will be glad to hear.

1 COMMISSIONER CARTER: I'm disappointed.

2 COMMISSIONER McMURRIAN: But certain ones I think are
3 important to point out. Some are little small things, like,
4 you know, to try to make it worded a little better. But the
5 main thing would be to maybe add some headings, like an
6 introduction heading for the first two paragraphs. After the
7 first two paragraphs maybe a heading that says federal and
8 Florida law sort of direct, because it does talk about the Act
9 as well as Florida law, and then maybe adding some footnotes
10 after each of those sentences to where exactly in our statutes
11 those are.

12 And I have all of this. I will give it to staff when
13 we are done if everyone agrees with them. But maybe adding
14 some footnotes so they can see exactly where, in case they want
15 to do that kind of added analysis, and at this point I'm not
16 sure.

17 And then before the top of Page 5, that is where we
18 start talking about our experience with exclusive contracts, so
19 I would maybe put a heading there, FPSC's experience with
20 exclusive contracts. And after --

21 COMMISSIONER CARTER: Excuse me.

22 COMMISSIONER McMURRIAN: I'm sorry.

23 COMMISSIONER CARTER: Your language about FPSC
24 exclusive experience with the contracts, we have only had two,
25 so wouldn't it be limited experience?

1 COMMISSIONER McMURRIAN: That would be fine with me.
2 In fact, it could just be FPSC's discussion of cases or
3 something like that, or FPSC's experience to date. That would
4 be good, or limited experience.

5 COMMISSIONER CARTER: Because, I mean, we have only
6 done two, and one is yea and one is nay. That's just a
7 shorthand version of it.

8 MR. SHAFER: I would make the observation that there
9 have been a number of -- both BellSouth and Embarq have
10 notified the Commission of a number of situations where the
11 automatic provisions that are laid out in the statute have been
12 revoked. I think through June it was something in the number
13 of 65; so kind of from the author's perspective, that was a
14 broader experience than maybe what you all were aware of.

15 COMMISSIONER CARTER: Excuse me, Madam Chairman.

16 CHAIRMAN EDGAR: Commissioner Carter.

17 MR. SHAFER: And I certainly don't have any
18 problems --

19 COMMISSIONER CARTER: But the automatic provisions
20 don't require us to do anything.

21 MR. SHAFER: Exactly.

22 CHAIRMAN EDGAR: Commissioner Argenziano.

23 COMMISSIONER ARGENZIANO: I thought the whole purpose
24 of this was to give our observations, send our observations.
25 And to be honest with you, what the staff wrote on Page 5 is my

1 observation that I have witnessed since I have been here. I
2 think it is correct. And without getting into any particular
3 cases, I won't do that, but that puts it quite perfectly as I
4 have seen it. So I'm not sure why we would want to limit what
5 our observations have been in sending this to the feds.

6 CHAIRMAN EDGAR: And that is an interesting point,
7 Commissioner, because I think that was not my understanding of
8 this document when I first saw the list of things that would be
9 coming to us. It was not that we would be sharing
10 observations, it was that we were going to be sharing more of
11 a -- rather than a subjective, more of an objective description
12 of what had come before the Commission and what action we had
13 taken. And, you know, we have sent comments both ways. I
14 mean, as more observations, comments, taking a position, and
15 everything kind of in that area, or more along the lines of
16 this order held this and this order held that.

17 I thought this was going to be -- that the comments
18 would be more as has been described as the actions of the
19 Commission. But if it is the will of the body to go into, my
20 word, a little more subjective, commenting, observing then that
21 certainly is something that we can do, as well. And I guess it
22 is just which approach -- not to make it sound too black and
23 white, but which approach is what the will of the body is more
24 comfortable with.

25 COMMISSIONER ARGENZIANO: Well, Madam Chair, if I can

1 take a step back. If somebody could fill me in on why we are
2 sending this to begin with, and that would help me better
3 understand what it needs to contain.

4 MR. SHAFER: I think the genesis, if you will, was
5 that the FCC has proceedings that are open that are looking at
6 a range of issues among which are the impact of exclusive
7 contracts.

8 COMMISSIONER ARGENZIANO: Are they asking us for this
9 information, or is that something normally --

10 MR. SHAFER: They are asking for comment on --

11 COMMISSIONER ARGENZIANO: From anybody who chooses.

12 MR. SHAFER: Right. It is a wide open process.

13 COMMISSIONER ARGENZIANO: And if I can go into detail
14 with the comment, what specific comments are they asking for?
15 Just what has come before us or our take on what has come
16 before us?

17 MR. SHAFER: Unfortunately, there is a wide range of
18 questions that they look at, which I don't recall all of them,
19 but certainly exclusive contracts were one of those things. It
20 was how does this impact the competitive playing field.

21 COMMISSIONER ARGENZIANO: You just answered my
22 question. If that's the case, then they want our take, or my
23 take as an individual Commissioner on what I have seen. And I
24 think the observations then need to be part of what we send.

25 COMMISSIONER SKOP: Madam Chair.

1 CHAIRMAN EDGAR: Commissioner Skop.

2 COMMISSIONER SKOP: Thank you, Madam Chair.

3 I had a couple of different observations with respect
4 to this. I think what piqued my interest in this whole thing
5 in some context with some past docketed matters that have come
6 before the Commission has been the FCC proposed legislation or
7 pending legislation that would address exclusivity of
8 agreements in multiunit and wherever they may go. I don't know
9 if it was limited so that, or they tended to expand, or that
10 would impart some sort of implicit type thing that could
11 spillover into other areas. But it would be interesting to see
12 what they do with that legislation that is pending, and we
13 don't have the vision of knowing what may come to fruition or
14 what may happen with that.

15 But with respect to the concerns of my colleagues, I
16 think I join in both sides. I concur with Commissioner
17 Argenziano that, you know, staff basically has laid out some of
18 the concerns that we have seen, we have in past matters have
19 articulated in the staff narrative. There has been two
20 petitions that have granted relief, and I believe one petition
21 denying relief. And I think the Commissioner has made it clear
22 that these petitions are addressed on a case-by-case basis
23 based on their individual fact patterns and there is no
24 precedential value on any given decision. So in that regard, I
25 kind of concur with what Commissioner Argenziano has said,

1 because, again, those are my concerns and I think staff kind of
2 lays it out.

3 But likewise, Chairman Edgar, Commissioner Carter,
4 and Commissioner McMurrian have also noted that some of the
5 language without commenting on the merits or, you know, our
6 observation or some of the other language that it appears that
7 we are not taking a position, but then we go back in and take a
8 position. So I think we need to straighten out that tension
9 there in terms of whatever we forward, but I do think that the
10 Commission's input into this rulemaking process with the FCC is
11 probably pretty important. Because, again, we have been faced
12 with several of these decisions that have come before us with
13 different varying fact patterns, and I think hopefully there
14 will be some federal legislation that will at least carve
15 something out or dictate something that will help resolve some
16 of these problems in the future.

17 COMMISSIONER ARGENZIANO: Let me, if I can. I guess
18 on Page 6, when Ms. Keating spoke of the last paragraph there,
19 the market for video data and telecommunications services
20 developing in an asymmetrical manner with regard to entry as a
21 result of these exclusive contracts, that is exactly what --

22 COMMISSIONER SKOP: I agree with that wholeheartedly.

23 COMMISSIONER ARGENZIANO: So changing that then
24 changes what I have found to be some of the cases. And the
25 same issue with, you know, I don't know if it is even addressed

1 if this is going to take place and this is what we are going to
2 look at down the road, perhaps the relieving of the
3 telecommunications company of the COLR should be something that
4 is looked at also. An observation. There is a lot of
5 different things. I'm just worried about if you change the
6 wording, I don't want to change the message of what I think I
7 have seen as part of the problem.

8 COMMISSIONER SKOP: And just to add to that, I agree
9 with the message, but I'm sensitive to without commenting on
10 the merits. But, again, I think that is distinguishing prior
11 cases that the Commission has looked at without getting into
12 the details of those and just making a general observation.
13 And I do think that that is kind of what the Commission has
14 probably seen. So, I mean, to strike the language that
15 Commissioner Argenziano is so passionate about, I think, would
16 kind of take the meat and substance out of the message that is
17 trying to be communicated to the FCC.

18 COMMISSIONER CARTER: Madam Chair.

19 CHAIRMAN EDGAR: Commissioner Carter.

20 COMMISSIONER CARTER: I think that I probably
21 interrupted my colleague, Commissioner McMurrian, which
22 probably happens a little more frequently than I think it
23 should, probably, as she was saying, about the experience, then
24 we could probably put a heading that said observations, because
25 that allows the Commissioners to give their perspective on

1 their observations as they see things going. And I think that
2 will -- at least it will be succinct and they will understand
3 exactly what we have seen in terms of from an experience
4 standpoint versus what we have observed in the context of what
5 we think things may play out. Because, after all, we have only
6 had two rulings.

7 UNIDENTIFIED SPEAKER: Three.

8 COMMISSIONER CARTER: Unless I have misread, staff
9 they said we had two rulings.

10 MR. SHAFER: I think there have been three.

11 COMMISSIONER CARTER: Three?

12 MR. SHAFER: One for Embarq and two for AT&T.

13 COMMISSIONER CARTER: Okay. So as of this date on
14 your memo -- all right, so there have been three. But the
15 majority of them that have come -- have not even come before us
16 because they have been automatic.

17 MR. SHAFER: Correct.

18 COMMISSIONER CARTER: So I think that in the context
19 of saying what is the experience is one thing, so it wouldn't
20 lead them to believe that we have done a mountain of them. But
21 from the standpoint of the observations, each one of us can use
22 our common sense and our experience in terms of how we see
23 these issues shaking out in the future, because who knows,
24 maybe this is just the beginning.

25 MR. SHAFER: If I may just try to add a little

1 clarity to where we were coming from in that.

2 COMMISSIONER CARTER: We're beyond clarity.

3 (Laughter.)

4 MR. SHAFER: Our intent was to focus on what the
5 Commission had decided and what they had looked at, and to the
6 extent that some of the language got far afield to being more
7 observational rather than decision-oriented, that is a mistake
8 on our part. The attempt was to try to just narrow it to what
9 had been decided, to put that in front of the FCC as a way to
10 say, look, this is our experience to date, and there is some
11 tension that has been created in the marketplace, and this is
12 how it has played out here, sort of end of story.

13 COMMISSIONER CARTER: Can I address this?

14 CHAIRMAN EDGAR: Commissioner Carter.

15 COMMISSIONER CARTER: Since you are on that point
16 before I have one of my over-50 moments and forget it, because
17 I think that this gives a flavor to -- by giving an
18 observation, it gives a flavor to it. Because the comments
19 that they are asking for, I think you said that the time for
20 parties have gone so that our comments in terms of what we see
21 from an experience standpoint as well as our observations gives
22 them a flavor for what we think is on the horizon. It may give
23 them even more because of your response to Commissioner
24 Argenziano's questions initially was such to where you said
25 based upon the way you see it is that maybe experience and

1 observation would be appropriate. I didn't see a limitation on
2 the nature of the questions, so that's the way I understood
3 what you were saying.

4 COMMISSIONER ARGENZIANO: I don't see why they would
5 want anything other from us. Just tell us what has happened,
6 don't give us your observations doesn't give them any input
7 from us. And to me, if that is what they are asking for, then
8 we have a chance, the opportunity to tell them what we have
9 observed. And I think that that's important. It's not just
10 the decisions that we have made, because here are the decisions
11 and here are our observations in those decisions, rulings, and
12 makings that we have, and that perhaps will help them in making
13 up their minds up of what they are going to do.

14 MR. COOKE: Madam Chairman, not to complicate
15 factors, but --

16 COMMISSIONER ARGENZIANO: Why not?

17 MR. COOKE: One of the reasons it has been difficult
18 to do this is we do want to avoid -- there are still two open
19 dockets, and we want to avoid making comments on the merits of
20 those pending dockets.

21 COMMISSIONER ARGENZIANO: With all due respect, it
22 has nothing to do with that. It has to do with what's
23 happening within these type of cases that come before us. They
24 are having rulemaking. They are making rules now. And in
25 order for them to make these rules, they need to know how these

1 things are coming about and what is really happening. And what
2 I'm reading from staff sounds like what I have seen before me,
3 and I think it would go a great distance in understanding that
4 we can't be specific.

5 MR. COOKE: I'm not uncomfortable with what we have
6 drafted. I'm just worried about are we going to do additional
7 things in trying to have the opportunity to assess whether it's
8 crossing the line into the merits of something that may come
9 before us. I'm comfortable with -- and I spent a lot of time
10 with staff on this issue, we had a lot of discussions about it,
11 and we tried to create generic language that would not cross
12 that line. I just worry that in an open forum when we start
13 trying to craft language, it's hard for me to make sure that we
14 are not -- we can try to do that, but it's hard for me to
15 guarantee that we are not going to step over the line. That's
16 all I am worried about.

17 COMMISSIONER ARGENZIANO: Question. Do we have an
18 obligation to respond to their request?

19 MR. COOKE: They didn't specifically request us. We
20 are responding to basically a rulemaking, as you put it, or
21 some type of proceeding. I don't believe that the FCC -- did
22 they call us up and ask us to submit comments?

23 MR. SHAFER: No, no.

24 MR. COOKE: They didn't do that.

25 COMMISSIONER ARGENZIANO: So they could take them and

1 throw them out the window anyway. (Laughter.)

2 CHAIRMAN EDGAR: Which is not a completely unlikely
3 scenario.

4 COMMISSIONER ARGENZIANO: But they can't say that we
5 didn't give them our input.

6 MR. COOKE: Staff felt that it was valuable and I
7 think it is valuable to try to, you know, express our
8 experience, our observations on this. But we are trying to
9 balance that against the fact that we have, you know, one is
10 technically about to close, but we still have another docket
11 that is open that will come before this Commission. We have to
12 be careful about that.

13 CHAIRMAN EDGAR: And if I may, I always appreciate
14 the opportunity to talk about the Florida experience. And I
15 think it is important for Florida to weigh in as a large,
16 growing, forward moving state on issues where we can, quite
17 frankly, have an impact. I am not convinced that this is one
18 of them at this stage of where this particular issue is
19 procedurally at the FCC.

20 I am not comfortable, Commissioner Argenziano,
21 recognizing and respecting the comments you have made about
22 your observations, I'm not sure that as only one of five, that
23 I'm ready to, quite frankly, put in writing conclusions about
24 my observations, because I am just not there yet in my own
25 thought process. You know, again, as we have pointed out, we

1 have had three factual situations come before us. Some
2 similarities, but some differences. I recognize that we do
3 have a few open dockets. I would not be surprised if we were
4 to have more in the foreseeable future, and so I am just not
5 comfortable going -- what I see here as a little further in an
6 instance where I am not, in my own individual opinion, quite
7 convinced that it is meaningful or going to make a significant
8 difference.

9 And so with that, candidly, as I said earlier, the
10 will of the body and I will respect it, but I would ask to not
11 sign onto that.

12 COMMISSIONER CARTER: Let me ask you a question, if I
13 may, Madam Chairman.

14 CHAIRMAN EDGAR: Commissioner Carter.

15 COMMISSIONER CARTER: Procedurally, where is the FCC
16 in the process? Are we just making much to-do about nothing?
17 I mean, has the cattle already left the field and we are just
18 closing the gate? I mean, are we just whistling past the
19 graveyard? What are we doing here?

20 MS. MILLER: The FCC has two proceedings that are
21 open. And one of them it is possible that it will be on their
22 October 31 agenda. We have seen some clips that said that
23 Chairman Martin is saying some things on it and something may
24 be circulating. The other docket has been open awhile and
25 nothing that we have seen on that has been (inaudible).

1 COMMISSIONER ARGENZIANO: I don't know, maybe this is
2 just me, but don't you think we have -- and it may be early,
3 don't you think we have a responsibility to give input before
4 they make rules that will affect the people of our state, being
5 that we are the Florida Public Service Commission? I'm not
6 sure where we are with that. Maybe it needs to be drafted
7 tightly, that says, here, here is what we have. We haven't had
8 extensive, you know, dealings with this, but here is where we
9 have it. And like I said, I'm not even sure that they will
10 even take our suggestions, but darn us and shame on us if we
11 don't. I am just --

12 MR. COOKE: It is not improper by any means, and I
13 think that, yes, you could argue that, you know, it is
14 important for the FCC to know the Commission's thoughts upon
15 this issue. But this issue that the FCC is looking at is not
16 our issue, per se. It is not the COLR. It's what are the
17 effects, in general, of exclusive contracts. And as long as we
18 are focused on that, I'm pretty comfortable. But it gets very
19 hard to keep away from --

20 COMMISSIONER ARGENZIANO: But at the same time, if we
21 are going to see these before us more often, which to me seems
22 like there may be a pattern developing, then we are going to
23 have to deal with that, even the COLR issue, because then it
24 becomes an issue of fairness to each individual Commissioner.
25 But in regards to them dealing with, you know, the exclusive

1 contract issue, I think now is our chance to get in. And, you
2 know, whatever they do after that is up to them, but now is our
3 chance to speak or forever keep quiet.

4 CHAIRMAN EDGAR: We don't ever always keep quiet.

5 MR. COOKE: I agree.

6 CHAIRMAN EDGAR: Commissioner Skop.

7 COMMISSIONER SKOP: Thank you, Madam Chair. I had
8 just three quick observations. I know Commissioner McMurrian
9 has some other thoughts that I think she wants to express.

10 That was the same concern that I had that
11 Commissioner Carter expressed is what is the deadline for
12 providing comments such that they're not superfluous? And I do
13 think that, as Commissioner Argenziano has articulated, that we
14 do have a window of opportunity there, and perhaps federal
15 legislation in this area would prevent some of the
16 controversies or docketed matters that are seeming to come
17 before us as a result of the statutory tension within the
18 state.

19 So I do think it is important to provide comments,
20 and I would kind of suggest that if we are about to lose the
21 window of opportunity and we don't have time to make the proper
22 modifications, perhaps if it's the will of the body perhaps we
23 could amend this on the fly to make everyone happy, or we can
24 just go with what we have. But, again, you know, I'm concerned
25 about having a vested input into a process which might

1 encourage the Federal Communications Commission to act in this
2 area, because there certainly seems to be some situations where
3 perhaps additional action by the FCC might mitigate some of the
4 docketed matters that are coming at least before our Commission
5 and perhaps in other states regarding these issues.

6 CHAIRMAN EDGAR: Can I ask for a point of
7 clarification? I thought Greg said this, and Cindy, that what
8 our staff had been reading was that the FCC may be taking
9 action regarding multidwelling units, multitenant units.

10 MR. SHAFER: On the video, exclusive contract for
11 video docket, there are two dockets that we had initially
12 identified as filing with the comments, and the clips indicated
13 last week that they were circulating an order at the FCC on the
14 video, exclusive contracts on the video in a MDU environment.
15 So that one --

16 CHAIRMAN EDGAR: But that is different from the COLR
17 issue that had been before us.

18 MR. SHAFER: It is different from the COLR issue in
19 the sense that their concern there is how the exclusive
20 contracts are impacting the marketplace. It happens to be
21 complicated in Florida because of the carrier-of-last-resort
22 obligation. And, you know, the notion was that we would simply
23 inform the FCC that in our state we are having this tension
24 between the exclusive contract situation and the
25 carrier-of-last-resort obligation. And, you know, here are our

1 orders that kind of explain the process that we have gone
2 through in our state, and that, you know, by way of saying, you
3 know, whether exclusive contracts are good, bad, or
4 indifferent, they are a factor in how the market plays out, and
5 this is how it is happening in Florida.

6 MR. COOKE: In my own perspective, Florida is unique
7 in the sense that we are the only ones with the good cause
8 exception.

9 MR. SHAFER: That's correct.

10 MR. COOKE: So in terms of the overall impact on FCC,
11 I just point that out as to how much they're going to look at
12 that from us.

13 CHAIRMAN EDGAR: Commissioner McMurrrian.

14 COMMISSIONER McMURRIAN: I have some of the same
15 problems as far as -- as I said earlier, I may agree with some
16 of these statements. I guess the way I saw it is maybe the
17 easiest way to share the information with the FCC is to sort of
18 forward something that forwarded our orders and sort of let
19 them speak for us instead of trying to make the observations
20 and hammer those out.

21 If we need to hammer those out, you know, I think we
22 have got something to work with. Maybe we need to do some
23 wordsmithing. I have already said in some of the proceedings
24 so it is not a surprise, I'm not a fan of the exclusive
25 contracts. And I do agree with some of these statements, but,

1 again, because of sort of the internal schizophrenia, I would
2 call it, as saying that we are not going to comment, but yet
3 here are our observations, that kind of bugs me, I guess.

4 And I thought maybe the easiest thing to do, and
5 since we are running up against the time frame and because we
6 don't want to talk about ongoing matters that may come before
7 us and in any way sort of suggest that we might be making
8 judgment calls on those, that it might be easiest to take out
9 those observations. But I hear what the other Commissioners
10 are saying. I do think that they could be helpful at the FCC
11 at least at some stage even if not at this one. So I'm kind of
12 torn and can really -- this is probably not helpful to say, but
13 really go either way. Either we do sit through and try to
14 hammer out exactly what we do feel comfortable saying, but it
15 may not be the same for all five of us. We may have a little
16 bit different reasons why we voted for or against those items
17 with respect to the exclusive contract. And, again, I won't
18 get into the details of those dockets, but -- I'm not sure if
19 that helps.

20 MR. SHAFER: If I may, staff prepared some language
21 that is a modification of a couple of the sentences that
22 Ms. Keating had identified as being maybe a little -- going a
23 little farther than certainly her clients were comfortable
24 with, and I can provide that. It doesn't take the sentences
25 out altogether, but I think it goes in a direction that

1 maintains the flavor of the observation without, you know,
2 trying to be more neutral about the observation. And to the
3 extent that the concluding paragraphs that the Commissioners
4 would be uncomfortable including those, we could certainly live
5 with that, just to get the information in front of the FCC.

6 CHAIRMAN EDGAR: Commissioner Skop.

7 COMMISSIONER SKOP: Thank you, Madam Chair.

8 I've had the opportunity to look at the proposed
9 language, and certainly I think I could live with both of
10 those, at least the Page 6 proposed language. I don't have any
11 problem at all with that. Page 5, a little bit more of the
12 middle of the road, to the extent that, you know, again, I
13 think there are some statements in there that need to be made,
14 but certainly striking the language in question doesn't really
15 take away from, I think, what's being said. But, you know, I
16 think there is probably a little bit of a difference of opinion
17 here.

18 COMMISSIONER ARGENZIANO: I have one.

19 COMMISSIONER SKOP: And I think that, you know,
20 General Counsel certainly articulated for us that he's
21 comfortable with the staff's proposed language as it is.
22 Commissioners have expressed their comfort with it. I have
23 some comfort with it. I think that at this juncture, you know,
24 we're probably faced with two choices: Either put a motion on
25 the table, which I am willing to do to approve the staff

1 recommendation given the proposed language and see if it passes
2 or fails, or an alternate motion to recycle it and try to hash
3 out some acceptable language that we could adopt by a majority
4 vote.

5 MS. MILLER: And if I could, that is an area that I
6 probably need to mention that at least in this one docket we
7 may run too late on it. There is a second docket it could be
8 filed in. But that does run that potential.

9 COMMISSIONER SKOP: And, Madam Chair, in that regard,
10 if we are going to lose a window of opportunity, I would rather
11 opine than not opine. And if it comes to, I guess, bringing a
12 motion, you know, I don't want to disrespect my colleagues in
13 any manner, but I'm willing to float that motion, even if it
14 fails, just to kind of help us move forward with this in terms
15 of what might be the best procedural posture to resolve this
16 issue and move on to the next one.

17 COMMISSIONER ARGENZIANO: If I may, I don't think I
18 have a problem with the suggested change on Page 6 that staff
19 has come up with, because I think it's keeping within the
20 context of what we meant, what you meant, and I think that
21 helps the concern that Ms. Keating had. But on Page 5, I have
22 a problem with striking that language because it changes the
23 intent entirely of what we were trying to send. I would say
24 the observation, not the intent, the observation.

25 CHAIRMAN EDGAR: And, Greg, if you would, realizing

1 that you have passed out something that some of us have seen
2 and some of us haven't, and that to my knowledge those who have
3 expressed an interest in this may not have had the opportunity
4 to see this, would you please read it for us?

5 MR. SHAFER: The first change would be on Page 5 in
6 the second paragraph, the last sentence, which currently reads,
7 "These difference have created negotiating imbalances and
8 ultimately may limit consumer choice for telecommunications
9 services and video and data services in contravention of the
10 goal of promoting competition in local telecommunications
11 markets."

12 And the suggested change would be to truncate the
13 sentence before the phrasing that begins with the word video so
14 that it reads, "These differences have created negotiating
15 imbalances and ultimately may limit consumer choice for
16 telecommunications services."

17 COMMISSIONER ARGENZIANO: Which, Madam Chair, in
18 changing that, to me, you change my observation of the
19 limitations on all of those services. That seemed to be part
20 of my observations, and that just limits it to
21 telecommunications service, which is not what has been before
22 me. So to change that, to me, just makes no sense. As I said
23 the, second one, I think, says the same thing that we have
24 observed, or I have observed, and I think staff did a good job,
25 I think. And I don't know if Ms. Keating has had a chance to

1 look at that, if that solves her problem on the obligations of
2 the cable companies.

3 CHAIRMAN EDGAR: Commissioner McMurrin.

4 COMMISSIONER McMURRIAN: I had a similar -- I also
5 think that if we're going to talk about negotiating imbalances
6 that may limit consumer choice, I also agree with Commissioner
7 Argenziano, it might also limit -- and it says only may limit
8 consumer choice for telecom, video, and data. I guess if we
9 left the video and data, I think I would feel comfortable
10 striking the rest of it. Because if we are going to talk about
11 it may limit video and data, then that's not in contravention
12 of promoting competition in local telecom markets. I don't
13 think the connection between video and data and then promoting
14 telecom competition is not necessarily there.

15 So, if it were me, I would include video and data,
16 but maybe strike the rest because it doesn't seem to line up
17 with all three of those services. If that makes any sense.
18 And I would be glad to hear comments from the affected parties,
19 as well, but it does seem like if you are going to talk about
20 exclusive contracts and someone is locked out of any of those
21 three, that it's going to possibly limit consumer choice for
22 any of those three.

23 COMMISSIONER SKOP: Madam Chair.

24 CHAIRMAN EDGAR: Yes.

25 COMMISSIONER SKOP: Again, if it would be

1 appropriate, or at the appropriate time I'd be willing to float
2 a draft motion to see if we can move forward with this in some
3 manner that would make a compromise.

4 CHAIRMAN EDGAR: Commissioner Carter.

5 COMMISSIONER CARTER: Just procedurally, I wanted to
6 go back. You said that there were two dockets open?

7 MS. MILLER: Right.

8 COMMISSIONER CARTER: You said we missed the window
9 on one and not on the other?

10 MS. MILLER: No.

11 COMMISSIONER CARTER: What did you say? I wanted to
12 make sure I heard you correctly.

13 MS. MILLER: We have not missed a window on either of
14 them. But there is a chance that the item will come up on
15 their October 31 agenda, and, therefore, we want to file right
16 away. They have a thing they call a sunshine period that kicks
17 in when you are not allowed to file after a certain point, so
18 we would want to file right away if we wanted to get into both
19 dockets.

20 COMMISSIONER CARTER: A follow up, Madam Chair?

21 CHAIRMAN EDGAR: Yes, sir.

22 COMMISSIONER CARTER: Am I to understand then that we
23 will be filing the same documentation for both?

24 MS. MILLER: That's correct.

25 COMMISSIONER CARTER: Okay. That is a different

1 flavor on it then. Okay. I'm comfortable with moving forward
2 if my colleagues are comfortable with moving forward with the
3 modifications.

4 CHAIRMAN EDGAR: Commissioner McMurrin.

5 COMMISSIONER McMURRIAN: I have one other idea with
6 regard to the meat which we are discussing now.

7 COMMISSIONER CARTER: Before you go there,
8 Commissioner, because I know that you and Commissioner
9 Argenziano were talking about this, about this modification of
10 the sentence on Page 5, because I was really locked into the
11 procedural aspects of it, and I didn't mean to cut you guys off
12 on that, but was there a meeting of the minds on that about the
13 language that I think, Commissioner, you were saying that you
14 wanted the rest, and Commissioner McMurrin was saying that if
15 you would just end this sentence after the year-end date of
16 service, is that correct?

17 COMMISSIONER McMURRIAN: That's what I was
18 suggesting. But I would be willing to hear any comments on
19 that from others, too, before we -- and I realize that doesn't
20 resolve the bigger question of whether or not we make
21 substantive comments or not. I'm not sure if we have even
22 resolved that, but along that line, that was the other thing I
23 wanted to say was that possibly if we get these two paragraphs
24 like we like them, these two that staff has handed out, perhaps
25 even maybe striking the stuff at the bottom of Page 6 and the

1 top of Page 7, and limiting it to what -- if we can get this
2 hashed out, maybe not going into these last two large
3 paragraphs of observations on exclusive contracts. But, again,
4 that's just another suggestion, and I'm probably muddying it
5 worse.

6 CHAIRMAN EDGAR: Commissioner Skop.

7 COMMISSIONER SKOP: Thank you, Madam Chair.

8 Again, I think that the tension at least before
9 floating the motion, or the reservation I would have would be
10 where -- you know, I think we know where Commissioner McMurrian
11 is on the proposed amendment to Page 5. My view is I think
12 the -- you know, if you truncate it, I'm not so sure that you
13 are not losing some meaning there, but I would like to kind of
14 see what Commissioner Argenziano might have to say with respect
15 to the importance of that last clause in contravention of if it
16 were truncated versus whether it would be something she might
17 be able to live with to the extent that maybe I can craft a
18 motion that might be adopted.

19 COMMISSIONER ARGENZIANO: Well, I think that the
20 important statement there to me, the important observation I
21 would have there is that the difference is as it is first
22 stated here creates imbalances and ultimately may limit -- and
23 the word may is in there, so that helps -- consumer choice with
24 telecommunications service. Adding the video and data services
25 back in I think pretty much gets to the gist of it. I don't

1 think you have to really have the other part of that. It would
2 be nice to have it in there, but if that makes people feel more
3 comfortable, I have no problem with that saying it is in
4 contravention of the goal. I think everybody knows the goal of
5 competition is there, but by limiting, you know, taking out the
6 video and data services is just not the observation I have
7 seen, so it wouldn't be correct in my view.

8 So truncating that is not really a problem. I think
9 you really know ultimately that the goal is competition. So
10 unless you see something else there, or someone else sees
11 something else there that I don't, I think I could live with
12 that. I think that would be fair. On Number 6, I don't see a
13 problem with it at all.

14 COMMISSIONER SKOP: Madam Chair.

15 CHAIRMAN EDGAR: Commissioner Skop.

16 COMMISSIONER SKOP: With that insight -- and, again,
17 this may fail, but I would like to offer the motion to accept
18 staff's proposed language subject to incorporation of the
19 revised language for Page 5, limiting it or revising that to
20 put a period after the end of -- or to reincorporate the video
21 and data services, period, and strike the remaining text while
22 also adopting the proposed changes for Page 6 as articulated on
23 this sheet.

24 CHAIRMAN EDGAR: And just for clarity for me, that
25 would be incorporating the change that Greg has offered at the

1 top of Page 6, but no change to the bottom of Page 6 or Page 7,
2 correct?

3 COMMISSIONER SKOP: Correct; yes, ma'am.

4 CHAIRMAN EDGAR: Commissioner Carter.

5 COMMISSIONER CARTER: Well, that was going to be my
6 question. Because from listening to Commissioner McMurrin,
7 she was saying that that would eliminate the need or the
8 necessity for the paragraph beginning at the bottom of Page
9 6 and concluding on Page 7.

10 Did I hear you correctly, Commissioner?

11 COMMISSIONER McMURRIAN: I was proposing that
12 because, frankly, I thought there's some slight differences in
13 these last two observation paragraphs and what we have said.
14 And instead of going through and trying to hammer out exactly
15 how we would all feel comfortable voting on those two
16 observation paragraphs, perhaps we have said what we need to
17 say with these two changes, and address the concerns we have
18 heard from FCTA without -- frankly, without trying to hammer
19 out language.

20 COMMISSIONER CARTER: Well, I think that what you are
21 saying with the revisions the staff has presented to us and
22 what you and Commissioner Argenziano have said in terms of
23 crafting on Page 5 and the language for Page 6, it succinctly
24 says what we need to say, so it would eliminate the need for
25 that. I mean, I'm comfortable. If that's the spirit of the

1 motion, I can second that if we take that out, because I think
2 it is redundant at best and confusing at worst.

3 COMMISSIONER ARGENZIANO: I differ a little bit on
4 that, with all due respect. I think that what I'm reading at
5 the bottom of Page 6 is more specific and that the added
6 language here that starts midway in the paragraph, "A cable
7 provider with an economically viable exclusive contract to
8 provide video and data services in a multitenant environment or
9 a development may lack the incentive or ability to offer a
10 voice product as a part of its service package," is exactly
11 what I have seen, so I think that is more specific and to the
12 point as the real problems that states may face, and
13 particularly Florida is going to face if the cable provider is
14 not going to have an incentive to provide the phone service.
15 To me it is very important that they understand that.

16 COMMISSIONER CARTER: That's one sentence, though.
17 That is one sentence.

18 COMMISSIONER ARGENZIANO: Well, let me read this, if
19 I may, Madam Chair. On the top of Page 7, the use of exclusive
20 contracts in multitenant environments in residential
21 communities potentially limits consumer's choice and in the
22 process limits competition. I don't see what is wrong with
23 that statement at all. That is exactly what we are faced with,
24 and I can't see anybody taking it any other way.

25 If I am Developer A, and I have an exclusive

1 contract, then I have exactly done what that says. So I don't
2 think we are doing anything but telling the exact truth in what
3 our situation is, and I think if we send any bull up to them
4 it's not going to do us any good or even benefit us not to make
5 sure that we are specific. And we are not saying this
6 particular company or that particular company, this is what we
7 have, and I think that is all we are saying.

8 COMMISSIONER CARTER: I wanted to kind of finish with
9 it, because what you did is you pulled the second sentence out
10 of the paragraph beginning on Page 6, and you mentioned the
11 first sentence on Paragraph 7. What I was trying to do is
12 get -- I mean, I think we are close to landing the helicopter
13 here, but I wanted to kind of make sure that we are all on the
14 same page. So what I'm saying is that this sentence that
15 begins with A, which is the second sentence on Page 6, and the
16 sentence that begins with the words limit competition on Page
17 7.

18 COMMISSIONER ARGENZIANO: I'm actually saying,
19 Commissioner, that the language that staff has provided I think
20 is perfectly fine. I think it just says what we are faced
21 with. I don't think it is being specific to any one company or
22 anything else. I think it is darn straight to the point, and
23 that is what we are supposed to be doing. Not the pussyfoot --
24 let's not pussyfoot around, let's tell them what we see. And
25 that is my observation only, but that's what I see in front of

1 me, and I think staff really did a good job in trying to keep
2 it narrow by not, I mean, being specific to one company, or
3 developer, or anything else. I think this is what we have got,
4 and I think if that's what we have in front of us and we all
5 agree on that, then that's probably what we should send them.

6 COMMISSIONER SKOP: Madam Chair.

7 CHAIRMAN EDGAR: Commissioner Skop.

8 COMMISSIONER SKOP: Thank you, Madam Chair. And I
9 tend to agree, because I think those words exactly get to the
10 heart of the matter. And bringing it home to the proposed
11 rulemaking at the FCC, I know they are looking at multitenant
12 type environments, and I'm not so sure what that means, condos,
13 townhouses, or apartment buildings. I mean, I don't really
14 have visibility to that, but I think the context is that
15 consumers in the multitenant environment may be getting -- you
16 know, assume for the sake of discussion they are renters and
17 not buyers. They are stuck with whatever, you know, they have.
18 And some people may not have a choice where they choose to
19 rent, so they may have to be stuck with it. So it may be, you
20 know, for all purposes perhaps anticompetitive or whatever the
21 FCC deems it to be.

22 But in another context where we talk about
23 developments, consumers may have a choice whether to buy or not
24 to buy, and then, you know, but I think the lay of the land is
25 analogous to what staff, I think, has done a very thoughtful

1 job articulating, and it's not easy to do, given the way you
2 probably need to navigate around pending matters and past
3 matters that the Commission has adjudicated which are very
4 factual and specific in their own regard. So, I mean, I do
5 think those words are very, very important; and I think the
6 motion that I would like to bring, again, and it may fail, but,
7 again, I'm trying to help move us forward.

8 COMMISSIONER ARGENZIANO: Don't be so negative.

9 COMMISSIONER CARTER: Madam chair.

10 COMMISSIONER SKOP: But also, too, I need to correct
11 something that I previously said on Page 5. It's the first
12 paragraph, last sentence, where that text would be
13 incorporated, it is not the second paragraph where it says --
14 the first paragraph on -- or it is my Page 5, unless I have a
15 different copy, so I need to correct that typo.

16 So, basically it would be, the motion would be to
17 adopt staff's proposed language subject to amending it pursuant
18 to Page 5, first paragraph, last sentence, readding the words
19 video and data services, period, and then adopt the language
20 proposed for Page 6 as is and keeping everything else the same.

21 COMMISSIONER CARTER: Before we second, Madam Chair,
22 if you can just give me a couple of minutes and let me look
23 over my notes, because I think we are close, but I just need to
24 find myself some comfort. So, if appropriate, could we just
25 take a quick --

1 CHAIRMAN EDGAR: Before we do that, Commissioner
2 McMurrin, do you want to make a few other comments or
3 suggestions?

4 COMMISSIONER McMURRIAN: Yes.

5 There are a couple of paragraphs I was going to
6 suggest moving around, but before that, as I was reading -- it
7 is really not that bad. It was whenever I was trying to put --

8 (Laughter.)

9 COMMISSIONER McMURRIAN: Whenever I was trying to put
10 headers on there I thought there were some things that really
11 came more under the category of our experience where we are
12 talking about our orders and things, and that would be the
13 paragraph on Page 6, that large paragraph that says, "Since
14 July 1," and it talks about some of the experiences we have had
15 there. It seems like that paragraph would go under the FPSC's
16 experience part, as well as the last paragraph which talks
17 about the orders we would send to them which would be attached.
18 And I would suggest those would be good to have on that same
19 area. And then the conclusion part would start on Page 5 in
20 that first paragraph, the middle of it where it says the FPSC
21 takes no position. That seems like that is where we start
22 talking about making observations and taking positions. Does
23 that make any sense?

24 COMMISSIONER ARGENZIANO: I have a problem with -- I
25 guess, we could say that at this time we take no position.

1 COMMISSIONER McMURRIAN: Yes.

2 COMMISSIONER ARGENZIANO: I think that would be more
3 appropriate.

4 COMMISSIONER CARTER: I'm cool with that.

5 COMMISSIONER McMURRIAN: As I was looking over the --

6 COMMISSIONER SKOP: Do we have a laptop so we can
7 change a line in the document and we can all bless here?

8 (Laughter.)

9 COMMISSIONER McMURRIAN: So that was just trying to
10 make it flow and get to the positions all in the position part
11 to the extent we have those. In the second paragraph under the
12 without commenting on the merits, the top of Page 7, when I
13 reread this paragraph, I guess the part that sort of sticks out
14 to me is where it says it potentially limits consumer choice
15 and then in the process limits competition. Perhaps if we just
16 leave the "potentially limits consumer choice and competition,"
17 and then you have the may concept or potentially limits
18 consumer choice and competition. With the "and in the process
19 limits competition" makes it sound like we are saying for sure
20 it does, and if we are going to be consistent with what we said
21 earlier, I think we have left some wiggle room there. But
22 that's another suggestion.

23 COMMISSIONER ARGENZIANO: What you are saying,
24 Commissioner, is that rewording it as, "And residential
25 communities potentially limits consumer choice and

1 competition."

2 COMMISSIONER McMURRIAN: Competition. Because I am
3 afraid the way it is worded, it says, "And in the process," it
4 is sort of saying for certain it limits competition, and you
5 lose the potentially part.

6 COMMISSIONER ARGENZIANO: Yes. I think it conveys
7 the same thought, so I'm fine with that.

8 COMMISSIONER SKOP: Madam Chair, does staff have the
9 ability to incorporate some of these on the fly so that we can
10 get a document to see, because I know that -- I think we're
11 close.

12 COMMISSIONER CARTER: I think we're there. I
13 followed that. That really dulled my heartburn, and I'm
14 prepared to second the motion with those corrections.

15 COMMISSIONER ARGENZIANO: Read them one more time.

16 COMMISSIONER SKOP: Something to incorporate
17 Commissioner McMurrrian's --

18 (Simultaneous conversation.)

19 CHAIRMAN EDGAR: Let me tell you where I think we
20 are, and, as always, jump right in. I think that we're all
21 clear as to the suggested change that have been made. What we
22 can do, though, is ask Katrina to get with our staff as far as
23 if there is some agreement as to a little reordering of
24 paragraphs and maybe some headings or subheadings. I
25 appreciate the deference, but I'm going to decline to sign onto

1 this as this is transmitted, and would just ask our staff to
2 make it clear that it is not from the full Commission. I just
3 have a little philosophical difference with the direction we
4 are going.

5 I am not ready to make broad sweeping statements. I
6 also tend to agree personally with the less is more on
7 submitting comments from an agency to an agency, and to me
8 where we are does not rise to that level. But I absolutely
9 respect the four of you to have a difference of opinion on that
10 and to comment away. So I will decline. But if the four of
11 you come to comfort with the document, you certainly may --

12 COMMISSIONER CARTER: We're having so much fun.

13 CHAIRMAN EDGAR: Not really, because I just
14 personally do not agree. But that's fine.

15 COMMISSIONER ARGENZIANO: We are each entitled to our
16 own opinions. But I would make one suggestion if we are saying
17 that it is not the full Commission. If the four of us do
18 agree, I would like it to say the majority of the Commission,
19 so it is not just one person, it tell how many people of the
20 Commission.

21 CHAIRMAN EDGAR: Each of your names will be listed.

22 COMMISSIONER ARGENZIANO: That would be great.

23 COMMISSIONER SKOP: Madam Chair, if I may.

24 CHAIRMAN EDGAR: Yes.

25 COMMISSIONER SKOP: I think in terms of -- I'm pretty

1 sure, subject to Commissioner McMurrrian's comments being able
2 to be easily incorporated, that if staff had access to this
3 data file that we could get a working copy so that we wouldn't
4 have to rely on articulating all the changes in a motion, and
5 we could just have the final copy and just bless it within the
6 next ten minutes, if we could come to an agreement.

7 Do you have that? It's just formatting changes,
8 right?

9 COMMISSIONER McMURRIAN: Those are the ones I have
10 pointed out, Chairman.

11 COMMISSIONER ARGENZIANO: I don't think it is that
12 difficult.

13 COMMISSIONER McMURRIAN: I don't think it is, either.

14 COMMISSIONER ARGENZIANO: Why don't we just go over
15 that one more time, if Commissioner McMurrrian wouldn't mind,
16 and I think that would help us.

17 COMMISSIONER SKOP: Okay. That's fine.

18 COMMISSIONER McMURRIAN: And as we get done with all
19 the changes, we can say so moved. Yes, I think that's good.

20 COMMISSIONER SKOP: Is staff ready for this?

21 COMMISSIONER McMURRIAN: And I'm going to hand them
22 my copy. Anything that they feel like that I've got marked on
23 here that's going to be on it, it's my little notes, which of
24 course they can ignore.

25 The first two paragraphs would be labeled

1 introduction. Before the "Under the '96 Act" paragraph, I
2 would propose a heading that says Federal and Florida law. And
3 then some footnotes to specific statute reference, several of
4 the sentences there, there is already a footnote one, and then
5 the next three sentences all reference certain parts of the
6 statute that I think we could be more specific with.

7 On the top of Page 5, a heading that says something,
8 either FPSC's limited experience with exclusive contracts or --

9 COMMISSIONER CARTER: Or just experience.

10 COMMISSIONER SKOP: Experience.

11 COMMISSIONER McMURRIAN: Experience. And then in the
12 middle of that paragraph following that where it starts, "The
13 FPSC takes no position at this time," we would include an at
14 this time before the beginning of that sentence, and that would
15 be the beginning of the conclusion section.

16 Right here, the FPSC takes no position.

17 COMMISSIONER SKOP: Okay.

18 COMMISSIONER McMURRIAN: Because I think that is
19 where we start taking positions, and then insert before that,
20 before we would actually have the conclusion on Page 6, the
21 large paragraph, and in the meddle of the page where it says,
22 "Since July 1, 2006," and it explains some of the experience we
23 have had.

24 And then the very last paragraph with the comment
25 that says that we will attach the orders that we have so far,

1 because I think that is also part of our experience.

2 MR. SHAFER: Can you please go through that last
3 little sequence one more time.

4 COMMISSIONER McMURRIAN: Okay. And I've got them
5 labeled on here where I think you can follow it, Greg.

6 But before the FPSC takes no position, that would be,
7 again, the beginning of the conclusion paragraph. We would
8 insert two paragraphs. The first paragraph to insert after
9 what is left of that paragraph would be on Page 6, the
10 paragraph that starts, "Since July 1."

11 MR. SHAFER: So that would continue to be part of the
12 conclusion?

13 COMMISSIONER McMURRIAN: No, it would be part of
14 Section 3 on our experience.

15 MR. SHAFER: Above the conclusion.

16 COMMISSIONER McMURRIAN: Above the conclusion.

17 MR. SHAFER: Got you.

18 COMMISSIONER McMURRIAN: And then the next paragraph
19 to add with that, I propose, anyway, would be to -- the
20 paragraph that talks about the attachments, and that we have
21 had two orders at this time, and the reason we made another
22 decision, and it talks about -- I think that goes along with
23 our experience.

24 And then the rest of it, I think, goes more to
25 observations and conclusions, or observations, I'm not sure.

1 But I would propose labeling that either conclusion, just as
2 conclusion of the comments, not necessarily conclusions of our
3 orders, if that makes any sense.

4 I have some other little things in here that are just
5 suggestions as far as commas, stuff like that. But to the
6 extent those don't change the meaning of anything, you are
7 welcome to use those, from my perspective. I'm not going to go
8 through those. Everyone is probably tired.

9 COMMISSIONER CARTER: Greg, did you get -- Madam
10 Chair, am I recognized?

11 CHAIRMAN EDGAR: Yes.

12 COMMISSIONER CARTER: Did you get the comment on as
13 currently iterated, the paragraph that begins on the bottom of
14 6 and goes to Page 7 where we changed that sentence, the end of
15 that sentence?

16 MR. SHAFER: Yes, where it limits consumer choice and
17 competition.

18 COMMISSIONER CARTER: Good.

19 MR. SHAFER: And strikes in the process.

20 COMMISSIONER CARTER: All right. It makes sense to
21 me. That's dangerous.

22 COMMISSIONER SKOP: We adopt the changed language on
23 Page 5 as noted (inaudible) video and data services and
24 incorporate the proposed language on Page 6.

25 COMMISSIONER ARGENZIANO: Right.

1 COMMISSIONER SKOP: Madam Chair, you wish to have
2 your name stricken also, as you mentioned?

3 CHAIRMAN EDGAR: Oh, yes. Okay.

4 So, I think we are clear, and the item that we have
5 before us is to approve comments. We have amended, modified,
6 and commented on the comments, and we will ask and direct our
7 staff to transmit those comments with it noted that they are
8 coming from the four of five Commissioners, and I decline the
9 opportunity to participate.

10 Is everybody clear?

11 COMMISSIONER CARTER: Do we need to carry the motion?

12 CHAIRMAN EDGAR: I think we're good.

13 COMMISSIONER CARTER: We're good.

14 CHAIRMAN EDGAR: Okay. And with that, we will move
15 on to Item 3.

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STATE OF FLORIDA)

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COUNTY OF LEON)

CERTIFICATE OF REPORTER

I, JANE FAUROT, RPR, Chief, Hearing Reporter Services Section, FPSC Division of Commission Clerk, do hereby certify that the foregoing proceeding was heard at the time and place herein stated.

IT IS FURTHER CERTIFIED that I transcribed said proceedings from a digital recording; and that this transcript constitutes a true transcription of said digital recording.

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

DATED THIS 25th day of October, 2007.



JANE FAUROT, RPR
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