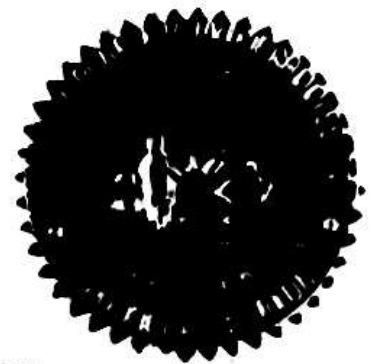


BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

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In the Matter of : DOCKET NO. 961153-TL
: Petition for numbering :
: plan area relief for 904 :
: area code by BellSouth :
: Telecommunications, Inc. :



PROCEEDINGS: AGENDA CONFERENCE
ITEM NO. 6

BEFORE: CHAIRMAN JULIA L. JOHNSON
COMMISSIONER J. TERRY DEASON
COMMISSIONER SUSAN F. CLARK
COMMISSIONER DIANE K. KIESLING
COMMISSIONER JOE GARCIA

DATE: Tuesday, April 1, 1997

TIME: Commenced at 9:35 a.m.
Concluded at 10:10 a.m.

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

REPORTED BY: JOY KELLY, CSR, RPR
Chief, Bureau of Reporting

DOCUMENT NUMBER-DATE
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1 **PARTICIPATING:**

2 **JOHN MARKS**, representing the City of
3 Jacksonville.

4 **JEFF WAHLEN**, representing ALLTELL and
5 Nortwest.

6 **DAVID ERWIN**, representing St. Joseph and
7 Quincy Telephone Companies.

8 **REPRESENTATIVE AREALL**

9 **MONICA BARONE**, FPSC Division of Legal
10 Services.

11 **CHARLIE PELLEGRINI**, FPSC Division of Legal
12 Services.

13 **WILLIAM COX**, FPSC Division of Legal
14 Services.

15 **RALPH WIDELL**, FPSC Division of
16 Communications.

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P R O C E E D I N G S

(Hearing convened at 9:35 a m.)

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3 **CHAIRMAN JOHNSON:** This is a very
4 complicated issues and I will give the parties some
5 leeway in making their particular presentations. But
6 with that in mind, I understand that Representative
7 Arnall is here to speak on Item 6 or here to
8 participate in Item 6, and I thought that perhaps we
9 could take that out of order in order to accommodate
10 him and his busy schedule. If we could, then, proceed
11 to Item 6.

12 Staff.

13 **MR. PELLEGRINI:** Commissioners, in Item 6
14 Staff recommends in Issue A that the Commission reopen
15 the record in this proceeding for the limited purpose
16 of considering letters from the NANC, Bellcore and the
17 FCC. If the Commission decides to reopen the record
18 for this purpose, Staff recommends that the Commission
19 defer its decision on the ALLTEL Northeast motion for
20 reconsideration; that the parties be provided with an
21 opportunity for discovery relative to the letters;
22 that the Commission convene a hearing on April 16th
23 limited in scope to the letters, and following the
24 limited hearing on the same day that the Commission
25 make a bench decision on the motion for

1 reconsideration of Order Number PSC-97-1038-FOF-TL.

2 If the Commission decides not to reopen the
3 record as recommended in Issue A, Staff has provided
4 its recommendation on the motion for reconsideration,
5 and request for oral argument as well as
6 Jacksonville's motion for leave to participate and
7 request for oral argument in Issues 1 through 4.

8 And as the Chairman has noted,
9 Representative Arnall is present before the Commission
10 and wishes to address the Commission this morning.

11 COMMISSIONER CLARK: Thank you for that
12 presentation.

13 One question, Representative Arnall, before
14 we start. There is a procedural issue here and that
15 is the record is closed as Staff has stated at the
16 moment, and I need a little advice from counsel as to
17 how we proceed and what is the proper course of
18 action.

19 MR. VANDIVER: Commissioner, my
20 understanding is that you have had a hearing. That
21 hearing has taken place and that record is closed.

22 We find ourselves at a peculiar place along
23 this road. My understanding of the Staff
24 recommendation is that they believe that there is new
25 evidence that should be considered by the Commission.

1 I believe it is within your discretion upon
2 hearing that there is other evidence to open that
3 record to be fully informed.

4 Generally, we do not do this, and, again,
5 this is because my understanding is that new
6 information has come out. Normally at this stage of
7 the process we would not hear from anyone, save Staff.

8 I do need to advise you that a precedent
9 that was established when Commissioner Clark was
10 Chairman, and that involved two situations. One,
11 curiously enough, involving the 954 area code where
12 Representative Sanderson came to this Commission to
13 speak and appeared before you at exactly this stage of
14 the proceedings.

15 I had a conversation with Representative
16 Sanderson and she elected not to speak. However, in
17 the course of talking to Representative Sanderson, I
18 did tell her what Susan Clark told me; and that is, "I
19 will not prevent a sitting member of the legislature
20 from addressing this Commission." And Representative
21 Sanderson and later Senator Kurth both elected, when
22 provided that opportunity, not to speak.

23 COMMISSIONER CLARK: Rob, I think what you
24 need to say is that my decision was that they would
25 have the opportunity to speak, but then we would have

1 to delay processing it to give other parties the
2 chance to respond.

3 **MR. VANDIVER:** There's no question about
4 that. I've spoken to Representative Arnall and he
5 understands that you all could not make the decision
6 today.

7 **CHAIRMAN JOHNSON:** Okay. So if we allow
8 Representative Arnall the opportunity to speak, we'd
9 have to delay and give the parties, what, ten days to
10 comment on any of the statements that he made?

11 **MR. VANDIVER:** Yes, ma'am. Considering the
12 peculiar posture of this case, it would seem to me
13 that two tracks be available to you. And, again, I'm
14 assuming that you intend to follow Commissioner
15 Clark's precedent. But were Representative Arnall to
16 speak today, we could put that as an ex parte
17 communication, we could transcribe it, provide it to
18 all the parties, give them an opportunity to respond
19 to same, and go forward. And that would be an
20 ex parte communication in the record.

21 The other track available to you, it seems
22 to me, is to reopen the record as the Staff has
23 suggested to you. If you chose that route, you could,
24 of course, defer everything to the 16th to hear the
25 evidence at that time.

1 I also believe that it would be possible to
2 hear a very limited presentation from the parties
3 today, and although it would not -- if you chose to
4 reopen the record, we would then put that out for all
5 parties to again respond to. And we would limit the
6 16th hearing to such subject matter as the new
7 evidence and any responses to what you say or may not
8 have heard today.

9 And, again, to the extent that today's
10 presentations will be ex parte, I do not believe you
11 could rely upon them in reaching your decision.

12 COMMISSIONER GARCIA: All right. So what
13 you're saying, Rob, is if we approve Issue A, then we
14 can listen to -- or Mr. Pellegrini, you can go ahead
15 and answer -- we can listen to anyone who wishes to
16 testify today. We can open up for discovery and then
17 on the 16th, we make a bench decision with all this
18 new information that is before us. And then on the
19 16th, you said, if I'm mistaken, we make the
20 decision?

21 MR. PELLEGRINI: Yes, Commissioner.

22 Because of the ten-day notice requirement
23 concerning ex parte communications, comment today by
24 the parties relative to Representative Arnall's
25 remarks may be inappropriate and it may be more

1 appropriate -- it may be appropriate, that is, to
2 delay the responses until the 16th.

3 COMMISSIONER GARCIA: Either way, though,
4 it's part of the record, correct? And we can allow
5 them to speak today if we approve Issue A, correct?

6 MR. VANDIVER: Yes, but I believe the
7 Commission needs to collectively make that decision if
8 you do wish to reopen the record.

9 COMMISSIONER GARCIA: Correct.

10 CHAIRMAN JOHNSON: As to the issue of
11 Representative Arnall speaking, and I understand in
12 the past the Chairman had made that decision.

13 MR. VANDIVER: Yes, ma'am. That's what I
14 was told by Chairman Clark at the time. And, again, I
15 agree with Chairman Clark that it would delay the
16 proceedings.

17 CHAIRMAN JOHNSON: Well, as it relates to
18 that issue, as Chair, I would allow Representative
19 Arnall the opportunity to speak before the Commission,
20 understanding that there are some other procedural
21 issues that we may have to deal with. But allowing
22 him to speak, I think, would be appropriate then, and
23 then allowing the parties, if necessary, to respond.
24 We can do that through either forum, through the
25 ex parte forum or through opening the record to

1 address the limited issue of the NANC, Bellcore and
2 FCC letters.

3 **MR. VANDIVER:** Yes, ma'am. And having made
4 the decisions that you've just made, I do believe this
5 to be within your discretion. It's never -- there's
6 no case law on this to my knowledge. Again, it's a
7 peculiar thing where someone has come forward with new
8 evidence after the record has closed, and that's my
9 understanding of what the NANC letters are. I know
10 that you all haven't seen them.

11 **COMMISSIONER KIESLING:** I have a question
12 about the scope of the hearing on the 16th if we do
13 vote out Issue A.

14 **MR. VANDIVER:** Yes, ma'am.

15 **COMMISSIONER KIESLING:** And that question is
16 does that mean that we're going to have the authors of
17 these letters available as witnesses? How are we
18 going to deal with these letters?

19 **MR. PELLEGRINI:** Commissioner Kiesling, my
20 thought at the present time would be to conduct
21 deposition discovery of the writers of those letters
22 and then to admit that deposition testimony into the
23 record at the hearing, avoiding the need for live
24 witnesses at that time. That's our present thinking.

25 **COMMISSIONER KIESLING:** Okay. Thank you for

1 clarifying that.

2 **CHAIRMAN JOHNSON:** Would it be appropriate
3 then to vote on Issue A before we hear from any of
4 the -- hear from the representative or anyone else
5 that we might decide to hear from and that is the
6 question of opening the record.

7 **COMMISSIONER CLARK:** Then you can avoid, I
8 think, the ex parte concerns.

9 **MR. VANDIVER:** Yes, you can.

10 **COMMISSIONER GARCIA:** If we're reopening the
11 record --

12 **CHAIRMAN JOHNSON:** Then it's not an ex parte
13 concern.

14 **COMMISSIONER GARCIA:** Okay. But can those
15 who voted in the minority last time vote --

16 **COMMISSIONER CLARK:** Can we move this issue?

17 **COMMISSIONER GARCIA:** Yeah.

18 **CHAIRMAN JOHNSON:** If we can't, I can. But
19 I think -- what's the legal position on opening the
20 record? Can all of the Commissioners vote or does it
21 have to be someone in the majority?

22 **MR. VANDIVER:** My belief is that the law is
23 that on reconsideration only a Commissioner that voted
24 with the majority may move to reopen the record.

25 However, in this situation where there's

1 been an allegation of new evidence, it would only make
2 sense to me that any Commissioner could make that
3 initial motion. And that's my opinion. Of course,
4 there's plenty of lawyers in the room who would no
5 doubt disagree with that.

6 **COMMISSIONER KIESLING:** Well, I agree with
7 it, so I don't think we have a problem among the
8 Commissioners.

9 **MR. PELLEGRINI:** That's Staff's view of the
10 law, as well.

11 **COMMISSIONER CLARK:** I move Staff on Issue
12 A.

13 **COMMISSIONER GARCIA:** Second.

14 **CHAIRMAN JOHNSON:** There's a motion and
15 second on Issue A. All those in favor signify by
16 saying aye. Aye.

17 **COMMISSIONER CLARK:** Aye.

18 **COMMISSIONER GARCIA:** Aye.

19 **CHAIRMAN JOHNSON:** Opposed.

20 **COMMISSIONER KIESLING:** Nay.

21 **COMMISSIONER DEASON:** Nay.

22 **CHAIRMAN JOHNSON:** The motion passes on a
23 3-2 vote. Now, the record will be reopened.

24 **MR. VANDIVER:** Yes, ma'am.

25 **CHAIRMAN JOHNSON:** We've at least determined

1 that we will allow Representative Arnall the
2 opportunity to speak.

3 MR. VANDIVER: Yes, ma'am.

4 CHAIRMAN JOHNSON: There are other issues.
5 Are those issues still relevant or what do we do? I
6 know you had suggested that we defer the motions for
7 reconsideration until after we have the one-day
8 hearing.

9 MR. PELLEGRINI: Yes. Now it would be
10 appropriate, having reopened the record, to permit
11 parties to examine the documents in question, that is,
12 the communications, and then to consider them at the
13 April 16th hearing in the course of reconsideration.

14 COMMISSIONER CLARK: Does Staff have the
15 letters for us to look at?

16 MR. GREER: We'll get you copies?

17 COMMISSIONER CLARK: You don't have them
18 now?

19 MR. GREER: Yes, I do. I mean there's about
20 six or seven.

21 COMMISSIONER CLARK: Oh, all right. That's
22 all right.

23 CHAIRMAN JOHNSON: As it relates to the
24 other issues, I think the first, Issue 1, was a
25 request for oral argument on a motion for

1 reconsideration. Now, how do we handle that because
2 the motion for reconsideration has been deferred?

3 **MR. PELLEGRINI:** I would suggest that the
4 Commission defer consideration of Issues 1 through 4
5 until the April 16th hearing.

6 **CHAIRMAN JOHNSON:** Okay.

7 **MR. PELLEGRINI:** All you need to do today is
8 what you have done so far, that is, to vote to reopen
9 the record the record and to take the testimony of
10 Representative Arnall and of any parties who may wish
11 to respond today.

12 **CHAIRMAN JOHNSON:** There are a couple of
13 other issues, though. The Jacksonville issue.

14 **MR. PELLEGRINI:** Yes.

15 **CHAIRMAN JOHNSON:** That one we would have to
16 entertain today, would we not?

17 **MR. PELLEGRINI:** I think not, necessarily,
18 Commissioner.

19 **CHAIRMAN JOHNSON:** Okay. Very well. And
20 then to the extent that Representative Arnall makes
21 his presentation, if there is a need to respond, that
22 can be done on the hearing on April 16th?

23 **MR. PELLEGRINI:** Correct.

24 **COMMISSIONER GARCIA:** Well, I would assume,
25 Chairman, that maybe this would be a good opportunity

1 since we have some of the parties here to go ahead and
2 listen to them since the record is open. And on the
3 16th if there's someone else who wants to speak to us,
4 that's fine. But if we have parties before us, such
5 as the City of Jacksonville, since we have an open
6 record, this might be the proper time as long as it's
7 within this short --

8 **COMMISSIONER DEASON:** Let me ask a question
9 at this point. I mean, I thought that we acted upon
10 our Staff's recommendation that the record should be
11 reopened. I disagree with that, but the majority
12 rules. I accept that. We've reopened the record.
13 But I understand that motion and the action that was
14 taken was to reopen the record for the limited purpose
15 of considering these letters, which I have not seen.
16 Are we reopening the record to have another hearing on
17 any and everything that may pertain to this docket?

18 **MR. PELLEGRINI:** No, Commissioner. What you
19 voted, I believe, is to consider the letters, the
20 Bellicore, FCC and NANC letters, as well as the
21 comments that Representative Arnall will make today
22 and the response of any parties to those remarks. I
23 think today if Representative Arnall is permitted to
24 address the Commission, parties who wish to should
25 also be permitted to address those remarks. However,

1 some of the parties, if not all of the parties, may
2 wish to delay their remarks until they have had an
3 opportunity to consider the Representative's remarks
4 and respond at some point in the future, that is,
5 between now and April 16th or at the hearing on April
6 16th.

7 **COMMISSIONER DEASON:** Well, are we then
8 reopening the record, or are you saying we are
9 reopening the record and that persons can now
10 intervene and new issues can be raised and we're going
11 to have another full-blown hearing?

12 **MR. VANDIVER:** I believe it to be within you
13 all's discretion as you are reopening the record as to
14 which issues you may or may not wish to address.

15 **CHAIRMAN JOHNSON:** I think it was pretty
16 clear, at least in Staff's Issue A, that we reopen the
17 record for the limited purpose of taking information
18 on the FCC, NANC and Bellcore letters. And that we
19 were not reopening the proceeding to add additional
20 parties and to open all fact-finding up on all and
21 every conceivable issue. We're not doing that.

22 **MR. VANDIVER:** The only wrinkle being
23 Representative Arnall's presence here today.

24 **CHAIRMAN JOHNSON:** Right. And the way that
25 that could be addressed would be the parties would

1 have an opportunity to whatever comment that he
2 made -- it's being transcribed -- they can provide any
3 comments at our hearing.

4 **COMMISSIONER CLARK:** I concur with that
5 description of how we're proceeding.

6 **MR. VANDIVER:** And I believe that action to
7 be within your discretion. As I said, I do not have
8 case law on this point. That is my belief.

9 **CHAIRMAN JOHNSON:** And then the other issues
10 would be deferred until April 16th or do we vote those
11 today?

12 **COMMISSIONER KIESLING:** No, they are being
13 deferred.

14 **COMMISSIONER CLARK:** Right.

15 **COMMISSIONER KIESLING:** Issues 1 through 4
16 would be deferred and would be voted on as part of the
17 bench decision at the end of the April 16th hearing,
18 if I understood that.

19 **CHAIRMAN JOHNSON:** Well, that's what I
20 understood, there was only one wrinkle with
21 Jacksonville, and I guess they're requesting the
22 opportunity to participate, but I guess we could take
23 that up on the 16th. They aren't just requesting
24 argument on the motion; they are requesting an
25 opportunity to participate.

1 **MR. PELLEGRINI:** Jacksonville, the City of
2 Jacksonville? That's correct.

3 **CHAIRMAN JOHNSON:** Take that up on the 16th,
4 too?

5 **MR. PELLEGRINI:** Yes.

6 **CHAIRMAN JOHNSON:** Okay.

7 **MR. PELLEGRINI:** And I would caution,
8 Chairman Johnson, that if parties are permitted to
9 address the Commission this morning for the limited
10 purpose discussed that only parties of present record
11 be permitted that opportunity.

12 **CHAIRMAN JOHNSON:** Exactly. And that's kind
13 of where I was going. You had suggested that maybe we
14 let the parties participate. Then we'd have to deal
15 with -- Jacksonville is not a party, and I was
16 wondering if we had to deal with that issue today.
17 But we can reserve all of that and take all of the
18 comments.

19 **MR. PELLEGRINI:** I think it would be
20 appropriate for you to take up the Jacksonville
21 petition today if you chose in light of that.

22 My recommendation is that you defer that
23 decision until the 16th.

24 **CHAIRMAN JOHNSON:** Okay.

25 **MR. PELLEGRINI:** One further comment

1 concerning the evidence that would be introduced to
2 the record upon reopening. On the 16th it would be
3 the Commission's duty, I suppose, to consider the
4 materiality of that evidence after it has been
5 examined by the parties and properly introduced into
6 the record to determine at that time whether or not
7 it's material enough evidence to have caused the
8 Commission to make a different decision -- to have
9 made a different decision had that information been
10 available in the first place.

11 **CHAIRMAN JOHNSON:** Sure. Sure. Very well.

12 And with that, Representative Arnall.

13 **MR. ERWIN:** Excuse me, Madam Chairman, I'd
14 like to object to this procedure if I could do so.

15 Either this is going to be an ex parte
16 communication to the Commission, which we'll have ten
17 days to respond to and which won't be a part of this
18 evidentiary hearing, or this is going to be sworn
19 testimony and we'll have a opportunity to cross
20 examine if you're going to consider this in any way at
21 the hearing that is held on the 16th. You're having a
22 hybrid kind of thing. It's very confusing as far as
23 the record is concerned in this case.

24 **CHAIRMAN JOHNSON:** Fair enough. Now with
25 respect to your objection, are you objecting

1 because -- we said you have an opportunity to respond
2 to this particular communication, but are you
3 objecting to the form or --

4 **MR. ERWIN:** An opportunity to respond is
5 entirely different than an opportunity to cross
6 examine the witness. And if we are going to simply
7 respond, and you are going to treat this as an
8 ex parte communication like the other things, then I
9 don't think you should hear anything that is said by
10 Representative Arnall at the hearing on the 16th nor
11 should it be part of the record.

12 **CHAIRMAN JOHNSON:** I see what you're saying.
13 And perhaps that is confusing. You're suggesting that
14 whatever we do on the 16th as a part of sworn
15 testimony should not include Representative Arnall's
16 comments.

17 **MR. ERWIN:** That's correct. Unless we have
18 an opportunity to cross examine as we will have with
19 regard to the writers of the letters from NANC and the
20 FCC, and so forth.

21 **CHAIRMAN JOHNSON:** I don't think you're too
22 far off from what Staff is suggesting. I understood
23 them to --

24 **MR. ERWIN:** I just want this clear. I don't
25 want any kind of confusing sort of issues hanging out

1 there.

2 **CHAIRMAN JOHNSON:** I agree. Staff.

3 **MR. PELLEGRINI:** I think what we're saying
4 is that if Representative Arnall's comments this
5 morning -- if the parties are given an opportunity to
6 address those comments, now or on April the 16th, then
7 the Commission can consider all of that testimony and
8 give it the weight it deserves.

9 **COMMISSIONER KIESLING:** Well, that's where
10 I'm getting confused. It's either sworn testimony, in
11 which case it's subject to cross examination, or it's
12 comments that are not meant to be part of the
13 evidence.

14 **CHAIRMAN JOHNSON:** And I think we want to
15 keep it as comments not meant to be part of the
16 evidence, more of an ex parte type comments, giving
17 the parties an opportunity to respond as they would in
18 any other ex parte situation.

19 **MR. PELLEGRINI:** Well, ex parte
20 communications typically are not sworn testimony in
21 the first place.

22 **CHAIRMAN JOHNSON:** Right.

23 **COMMISSIONER KIESLING:** Exactly.

24 **CHAIRMAN JOHNSON:** That's what we're trying
25 to accomplish here.

1 **MR. PELLEGRINI:** But they can be properly
2 considered by the Commission after they are admitted
3 into the public record and responded to.

4 **COMMISSIONER GARCIA:** That's the point
5 you're trying to make, correct, Mr. Erwin?

6 **MR. ERWIN:** That's correct.

7 **COMMISSIONER GARCIA:** Well, I think that's
8 what the Chairman ruled, so maybe we should move on.
9 And I think you made a very good point, Mr. Erwin. Is
10 that how you understood it, Madam Chairman?

11 **CHAIRMAN JOHNSON:** Yes. Representative
12 Arnall.

13 **MR. MARKS:** Commissioner, could I get one
14 clarification?

15 **COMMISSIONER GARCIA:** You thought things
16 were tough over at the legislature.

17 **CHAIRMAN JOHNSON:** Who's speaking?

18 **MR. MARKS:** With regards to --

19 **COMMISSIONER CLARK:** Who are you? (Laughter)

20 **MR. MARKS:** I'm John Marks with the law firm
21 of Katz, Kutter, Haigler here in Tallahassee, and I
22 filed the motion for leave to allow the City of
23 Jacksonville to participate. And that's my question
24 as to whether or not or when that issue would be
25 addressed, that is, Jacksonville's ability to

1 participate in this proceeding? That issue of when it
2 will be allowed -- when you will address that issue as
3 to whether or not Jacksonville will be allowed to
4 participate in the proceeding.

5 **CHAIRMAN JOHNSON:** Currently, Mr. Marks,
6 that's stated as Issues 2 and 3, and it was my
7 understanding that we were going to rule on those on
8 the 16th.

9 **MR. MARKS:** Okay.

10 **CHAIRMAN JOHNSON:** But, I mean, it's within
11 our discretion if the Commissioners would like to do
12 something otherwise.

13 **COMMISSIONER KIESLING:** Well, I'm confused
14 about what it is that the City of Jacksonville filed
15 from reading this rec, and that's why I probably need
16 a little clarification.

17 Did the City of Jacksonville file any kind
18 of a motion or petition to intervene or anything like
19 that? Or did you simply file something that said you
20 want to participate in ALLTEL's motion for
21 reconsideration?

22 **MR. MARKS:** I think it's more in the form of
23 the latter, Commissioner Kiesling. The City of
24 Jacksonville did not file a petition to intervene five
25 days before the technical hearing on December 9th,

1 1996, but it believes that it has the opportunity to
2 participate in these proceedings at this stage of the
3 game, notwithstanding that lack of intervention at
4 that point in time, in December.

5 **COMMISSIONER KIESLING:** And on what basis do
6 you assert a right to participate in these proceedings
7 after the fact?

8 **MR. MARKS:** Under Section 120.52-12(c) of
9 the Administrative Procedures Act.

10 **COMMISSIONER CLARK:** What does that say?

11 **MR. MARKS:** It says, "Any person, any other
12 person" -- it defines at that point in time parties
13 under the Administrative Procedures Act, and it says,
14 "Any person allowed by the Agency to intervene or
15 participate in the proceedings as a party." And it's
16 defining that as a party. It goes on to say, "An
17 agency may by rule authorize limited forms of
18 participation in agency proceedings for persons who
19 are not eligible to become parties." And we believe
20 under the circumstances that allows Jacksonville to
21 participate in these proceedings.

22 Now, the method of or how you allow us to
23 participate may be limited in some fashion or form,
24 but that's yet to be seen. But we believe that that
25 particular section of the APA does allow you, gives

1 you the discretion, and gives you the authority to
2 allow Jacksonville to participate.

3 **COMMISSIONER KIESLING:** Do we have a rule on
4 that?

5 **MR. MARKS:** No, you do not. But we believe
6 that the APA under the circumstances would govern that
7 method of participation.

8 I could go on, Commissioners, but I realize
9 at this point --

10 **CHAIRMAN JOHNSON:** No, I believe --

11 **MR. MARKS:** I could go on with what I wanted
12 to provide you in terms of Jacksonville's position on
13 this matter, but I don't want to violate any of your
14 procedures at this point in time. But I was
15 responding to Commissioner Kiesling's question. And
16 there is more that I would like to add in terms of
17 Jacksonville's ability to participate or desire to
18 participate in this proceeding, which I think we could
19 convince you that we are -- we should be allowed to
20 participate in this proceeding.

21 **CHAIRMAN JOHNSON:** And my only concern,
22 Mr. Marks, is that we were suggesting that these
23 issues -- that we take up the Issues 1 through 4 at
24 the technical hearing.

25 **MR. MARKS:** Beg your pardon? At the next

1 hearing?

2 **CHAIRMAN JOHNSON:** On the 16th.

3 **MR. HARRIS:** On the 16th.

4 **COMMISSIONER CLARK:** Well, let me ask a
5 question. Isn't there an opportunity for the
6 Prehearing Officer in this case -- let me just make
7 sure it's not me -- can rule on that motion?

8 It seems to me that, quite frankly,
9 Representative Arnall, the communications from elected
10 officers has always been a problem in these
11 proceedings. And my concern was that we're a
12 legislative body and we're setting public policy, and
13 in my mind I made a distinction, when an elected
14 official, state officer or, I guess I drew the line at
15 a state-elected officer, was trying to communicate
16 with us and give us their comments. I don't think we
17 can treat it as evidence unless you choose to be a
18 witness and undergo cross examination. But I think
19 it's too late at this point. And it is somewhat
20 unique. I would treat it like an ex parte
21 communication, but I don't think it's ex parte because
22 here we all are, the parties are here. I think
23 Representative Arnall can make his comments, you can
24 respond today and you can also have ten days to
25 respond in writing, and I think you should have the

1 opportunity to bring it up on the 16th. I think as
2 far as opening the record for further evidentiary
3 proceeding it should be limited to the letters and
4 that evidence brought forth in those letters. So,
5 Madam Chair, I concur with the procedure you're about
6 to embark on.

7 **COMMISSIONER DEASON:** Let me say that I
8 agree with those comments. The reason I raised the
9 question was I got the impression that perhaps -- I
10 say perhaps -- we were object to reopen the record
11 beyond what I understood the motion to be and that
12 would be the limited purpose for the letters as
13 described by Staff. And I want to clarify that.

14 **CHAIRMAN JOHNSON:** With those
15 clarifications, we'll try it one more time.
16 Representative Arnall.

17 **REPRESENTATIVE ARNALL:** Thank you, Madam
18 Chair, and Commissioners. It's a honor to be here.
19 And I really now know enough to be quiet.

20 To the extent that basically you have done
21 procedurally what I would have asked you to do, I
22 speak from the standpoint of being a representative
23 from southeast Duval County and northeast St. Johns
24 County which, obviously, is affected by your
25 decisions. It's important to us that you reopen this

1 case. And as I understand, you procedurally have done
2 that to consider this new information.

3 That literally is why I'm here. There's
4 nothing else I would like to add. Even though as more
5 or less a field trip from the standpoint of being the
6 Chairman of Utilities and Communications, I'm vastly
7 interested in how you work this process and see that
8 it is eminently fair.

9 I appreciate also your long history of
10 inclusiveness and that is demonstrated by your actions
11 today, so thank you.

12 And with your leave, I will go back and vote
13 in the session and some people would say it would
14 probably be better served to be over here not voting,
15 but I do appreciate the opportunity to speak in front
16 of you today. Thank you.

17 **CHAIRMAN JOHNSON:** Thank you very much. And
18 with that do we have any other issues? Are we going
19 to defer the other --

20 **MR. PELLEGRINI:** Yes.

21 **COMMISSIONER KIESLING:** Well, I'm confused.
22 May I just ask one thing? What I think you just said
23 was that the parties could respond to Senator Arnall's
24 (sic) comments today, or in ten days in writing. So I
25 guess it seems to me we need to find out if they want

1 to respond to it today.

2 **CHAIRMAN JOHNSON:** Would any one of the
3 parties like to have an opportunity to respond to the
4 comments made by the representative?

5 **MR. WAILEN:** ALLTEL and Northeast have no
6 comments on that.

7 **MR. ERWIN:** St. Joseph and Quincy have no
8 comments at this point. I may respond in ten days,
9 but I'm not certain there's really anything to respond
10 to. Thank you.

11 **MR. MARKS:** And, Commissioner, I understand
12 that Jacksonville's petition to participate will be
13 addressed on the 16th or there was some indication
14 that it may be addressed by the Prehearing Officer,
15 and I just want to make it clear on that, get
16 clarified on that.

17 **CHAIRMAN JOHNSON:** Yes, Mr. Marks, it will
18 be addressed at a later date, and we'll make sure that
19 either through my office or the prehearing officer's
20 office that you're informed as to when and how it's
21 going to be ruled upon.

22 **MR. MARKS:** Thank you.

23 **CHAIRMAN JOHNSON:** Thank you.

24 **Staff?**

25 **MR. PELLEGRINI:** The only thing I would add

1 at this point is that we surely will have available
2 packets of the letters in question if each of the
3 Commissioners would like to receive them at this time.

4 **CHAIRMAN JOHNSON:** If you could deliver
5 those to our offices, that would be helpful. Thank
6 you.

7 And the parties already have all of the
8 letters?

9 **MR. PELLEGRINI:** I'm not certain, but I'll
10 look into that.

11 **CHAIRMAN JOHNSON:** Make sure they also.
12 Very well.

13 **COMMISSIONER CLARK:** I think the Chairman
14 was asking you if you have the letters already.

15 **MR. WAHLEN:** Yes, we have the letters and
16 we're working with the other parties to make sure that
17 we have a productive hearing.

18 **CHAIRMAN JOHNSON:** Very good. Thank you
19 very much.

20 (Thereupon, the hearing concluded at
21 10:10 a.m.)

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1 STATE OF FLORIDA)
2 COUNTY OF LEON)


CERTIFICATE OF REPORTER

3 I, JOY KELLY, CSR, RPR, Chief, Bureau of
4 Reporting, Official Commission Reporter,

5 DO HEREBY CERTIFY that Item No. 6, of the
6 April 1, 1997 Agenda Conference, Docket No. 961153-TL
7 was heard by the Florida Public Service Commission at
8 the time and place herein stated; it is further

9 CERTIFIED that I stenographically reported
10 the said proceedings; that the same has been
11 transcribed under my direct supervision; and that this
12 transcript, consisting of 29 pages, constitutes a true
13 transcription of my notes of said proceedings.

14 DATED this 1st day of April, 1996.

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JOY KELLY, CSR, RPR
Chief, Bureau of Reporting
Official Commission Reporter
(904) 413-6732