

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In re: Proposed Rules : DOCKET NO. 980253-TX
25-4.300, F.A.C., Scope :
and Definitions; 25-4.301, :
F.A.C., Applicability of :
Fresh Look; and 25-4.302, :
F.A.C., Termination of LEC :
Contracts. :

PROCEEDINGS:

HEARING

BEFORE:

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

DATE:

Wednesday, May 12, 1999

TIME:

Commenced at 9:45 a.m.
Concluded at 12:20 p.m.

PLACE:

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

REPORTED BY:

MARY ALLEN NEEL, RPR

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DAVID V. DIMLICH, 2620 Southwest 27th Avenue, Miami, Florida 33133, appearing on behalf of Supra Telecommunications and Information Systems, Inc.

PETER M. DUNBAR, Pennington, Moore, Wilkinson, Bell & Dunbar, Post Office Box 10095, Tallahassee, Florida 32302-2095; LAURA L. GALLAGHER, 204 South Monroe Street, Suite 201, Tallahassee, Florida 32301; and CAROLYN MAREK, Time Warner Telecom, Inc. 233 Bramerton Court, Franklin, Tennessee 37069, appearing on behalf of Time Warner Telecom, Inc.

MICHAEL GOGGIN, 150 West Flagler Street, Miami, Florida 33130, and NED JOHNSTON, BellSouth Telecommunications, 701 Northpoint Parkway, Suite 400, West Palm Beach, Florida, appearing on behalf of BellSouth Telecommunications.

ANGELA B. GREEN, 125 South Gadsden Street, Tallahassee, Florida 32301, appearing on behalf of Florida Public Telecommunications Association.

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CHARLES J. REHWINKEL, 1313 Blair Stone Road, Tallahassee, Florida 32301, and BEN POAG, Sprint Florida, Inc., Post Office Box 2214, Tallahassee, Florida 32301, appearing on behalf of Sprint Corporation.

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MICHAEL R. ROMANO, Swidler Berlin Shereff
Friedman, 3000 K Street N.W., Suite 300, Washington,
D.C. 20007, and MICHAEL DUKE, KMC Telecom, Inc., 3025
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30069, appearing on behalf of KMC Telecom, Inc.

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of AT&T and TCG.

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

2 CHAIRMAN GARCIA: Good morning. Julia is
3 on a conference call, and Susan Clark is going to be a
4 little bit delayed, so we want to get this going.

5 Several incidents are going to be happening
6 today, so I want to warn you before they happen.
7 Charles Rehwinkel's alarm goes on periodically, on and
8 off, so you'll be hearing about that. And Pete
9 Dunbar, while he looks like he'll be moving in slow
10 motion, it's simply that the light above him is
11 broken. So we will -- at lunch, hopefully Meridian
12 Management will be here to fix it. Our attorneys have
13 agreed to sit and work under these perilous
14 conditions.

15 COMMISSIONER JACOBS: Is that Charles'
16 personal alarm? Because his car alarm went off --

17 CHAIRMAN GARCIA: Right. No, it's his car
18 alarm has been going off periodically, so we'll break
19 every time that happens.

20 We'll take appearances.

21 MS. BROWN: Could I read the notice first?

22 CHAIRMAN GARCIA: Oh, I'm sorry. Read the
23 notice, please. I'm sorry.

24 MS. BROWN: By notice issued April 2, 1999,
25 this time and place was set for a hearing, rule

1 hearing in In re: Proposed Rules 25-4.330, Florida
2 Administrative Code, 25-4.301 and 25-4.302. The
3 purpose of the hearing is set out in the notice.

4 CHAIRMAN GARCIA: All right. We'll take
5 appearances.

6 MR. DUNBAR: Mr. Chairman, Peter Dunbar
7 with the Pennington firm, 215 South Monroe,
8 Tallahassee, representing, Time Warner Telecom. Also
9 appearing on behalf of Time Warner Telecom, Laura L.
10 Gallagher, 204 South Monroe, Suite 201, Tallahassee.

11 MS. MAREK: Carolyn Marek with Time Warner
12 Telecom, Vice President of Regulatory Affairs for the
13 Southeast Region, 233 Bramerton Court, Franklin,
14 Tennessee 30769.

15 MR. ROMANO: Mr. Chairman, Mike Romano --

16 CHAIRMAN GARCIA: Mike, turn your mike on.

17 COMMISSIONER JACOBS: It's on.

18 MR. ROMANO: Michael Romano from Swidler,
19 Berlin, Shereff, Friedman, 3000 K Street, Washington,
20 D.C., 20007, appearing for KMC Telecom, Inc., and with
21 me, Michael Duke from KMC Telecom, Inc.

22 MR. DUKE: Michael Duke, KMC Telecom, 3025
23 Breckenridge Boulevard, Suite 170, Duluth, Georgia
24 30096.

25 MS. CASWELL: Kim Caswell, GTE, One Tampa

1 City Center, Tampa, Florida 33601.

2 MR. REHWINKEL: Charles J. Rehwinkel, 1313
3 Blair Stone Road, Tallahassee, Florida 32301,
4 appearing on behalf of Sprint Corporation.

5 MR. DIMLICH: David Dimlich, legal counsel
6 for Supra Telecom, 2620 Southwest 27th Avenue, Miami,
7 Florida.

8 CHAIRMAN GARCIA: I'm sorry. I didn't get
9 your name.

10 MR. DIMLICH: David Dimlich.

11 CHAIRMAN GARCIA: Dilnick?

12 MR. DIMLICH: Dimlich, D-i-m-l-i-c-h.

13 CHAIRMAN GARCIA: Okay.

14 MR. HORTON: Norman H. Horton, Jr.,
15 Messer, Caparello, and Self, 215 South Monroe Street,
16 Tallahassee, appearing on behalf of e.spire
17 Communications.

18 MS. KAUFMAN: Vicki Gordon Kaufman of the
19 McWhirter Reeves law firm, 117 South Gadsden Street,
20 Tallahassee, 32301. I'm appearing on behalf of the
21 Florida Competitive Carriers Association.

22 MR. GOGGIN: My name is Michael Goggin.
23 I'm here representing BellSouth Telecommunications.
24 My address is 150 West Flagler Street, Miami, Florida
25 33130. And with me today is Ned Johnston of

1 BellSouth. His address is 701 Northpoint Parkway,
2 Suite 400, West Palm Beach, Florida 33407.

3 MS. RULE: Marsha Rule with AT&T, 101
4 North Monroe Street, Suite 700, Tallahassee, also
5 representing TCG.

6 ANGELA GREEN with the Florida Public
7 Telecommunications Association, 125 South Gadsden,
8 Tallahassee, Florida 32301.

9 MS. BROWN: Martha Carter Brown,
10 representing the Florida Public Service Commission
11 Staff.

12 CHAIRMAN GARCIA: Okay. Martha, are there
13 any preliminary matters?

14 MS. BROWN: There are just a couple,
15 Mr. Chairman. The first thing I would like to address
16 is Staff's composite exhibit, which consists of two
17 volumes. One is the pleadings filed in the case and
18 the comments, and the second volume is Staff's data
19 request to the incumbent companies and their
20 responses.

21 I would like to have those marked and
22 admitted into the record at this time, if I could.

23 CHAIRMAN GARCIA: There being no objection,
24 show it admitted, and I guess that would be Exhibit 1.

25 (Exhibit 1 was marked for identification

1 and received in evidence.)

2 CHAIRMAN GARCIA: Okay.

3 MS. BROWN: The second matter concerns the
4 establishment of the order of presentations for this
5 morning by those participants who want to speak. We
6 have established a ten-minute time limit for all
7 presenters to include anything that they want to say,
8 covering any testimony or comments that they filed.
9 That order will go this way. Time Warner will go
10 first, then the FCCA. KMC, I think they have a
11 presentation, am I correct? And then BellSouth, GTE,
12 and Sprint. And if I missed anyone, I would like them
13 to raise their hand. And the Pay Telephone
14 Association will go after KMC.

15 That's the other --

16 COMMISSIONER DEASON: Martha, could you go
17 over that order one more time?

18 MS. BROWN: Yes. Time Warner, FCCA, KMC,
19 the Pay Telephone Association, BellSouth, GTE, and
20 Sprint.

21 I have no other preliminary matters, unless
22 the parties have something.

23 MR. REHWINKEL: Yes. Chairman Garcia,
24 Charles Rehwinkel with Sprint. Just as a housekeeping
25 matter, I passed out a copy of Mr. Poag's comments and

1 the Attachment 1 to his comments. When we filed the
2 comments, the copies we filed with the Commission had
3 proposed legislative changes highlighted in yellow.
4 When they were Xeroxed and served on the parties, the
5 highlighting didn't show up, so I provided the parties
6 with a copy with the highlighting showing up in gray.
7 So I just -- that's what I've distributed to the
8 parties. What you have is correct, and what the
9 parties have is the same.

10 CHAIRMAN GARCIA: Correctly highlighted.
11 Thank you very much, Mr. Rehwinkel.

12 Anything else? Good.

13 MS. BROWN: Thank you. Mr. Dunbar just
14 reminded me of something that I forgot to mention,
15 which is that in rule hearings we have an opportunity
16 for the public to comment. It would my suggestion
17 that we offer that opportunity now before we start the
18 presentations of the participants.

19 CHAIRMAN GARCIA: Is there anyone here?
20 Anyone related to Mr. Dunbar here to speak?

21 All right. That said, we offered the
22 opportunity. I guess we're going -- a ten-minute time
23 frame. Martha, will you have someone there keep an
24 eye on their watch? Please try to keep within that so
25 that we can get the fullest presentation possible from

1 all the parties.

2 Do you need anything else? Does anyone
3 need any -- well, then let's go ahead and start.

4 Mr. Dunbar?

5 MR. DUNBAR: Mr. Chairman, it's my
6 understanding that there's going to be one
7 representative per party, and Carolyn Marek, our
8 Regional Vice President, will make the Time Warner
9 presentation.

10 CHAIRMAN GARCIA: Okay.

11 MS. BROWN: If I might interject, I think
12 GTE has proposed to divide up their time. Is that
13 correct?

14 MS. CASWELL: Yes. We have about a
15 five-minute statement on legal issues that I'll do,
16 and about five minutes of policy.

17 MS. BROWN: Staff has no problem with
18 that.

19 CHAIRMAN GARCIA: Okay. There being no --
20 you're ready?

21 MS. MAREK: Okay. We're going to defer our
22 legal comments to the post-hearing brief.

23 My name is Carolyn Marek. I'm the Vice
24 President of Regulatory Affairs in the Southeast
25 Region for Time Warner Telecom, and I appreciate the

1 opportunity to address this Commission.

2 I would like to start by asking a few
3 questions, and I think the first question is, why are
4 the ILECs so afraid of Fresh Look? The proposed rule
5 does not mandate that we take the contracts away from
6 the ILECs' customers and hand them over to the ALECs.
7 It does, however, mandate that the ILECs compete head
8 to head with the ALECs for the business of some
9 significant customers. But the ILECs will only lose
10 the revenues or termination charges if they can't
11 compete. So why are the ILECs so afraid to compete?

12 In my opinion, the ILECs should not be
13 afraid to compete, since they still control nearly
14 100% of the market. They have a ubiquitous network,
15 they have brand identity, they have customer loyalty,
16 and they still control the essential facilities that
17 some of the ALECs need to offer their services. But
18 even though they have all of these advantages, the
19 ILECs argue that their customers should have known
20 that competition was coming, and therefore they should
21 be held to their contracts.

22 The ILECs made a deliberate attempt to
23 forestall competition by locking in these large
24 customers before facilities-based competition was
25 barely out of the gate. Even if the customers knew

1 that competition was coming, they couldn't be assured
2 exactly when it was going to come and knock on their
3 door. And it's very tempting when you have immediate
4 savings that can be realized to take advantage of
5 those savings. And in some cases, it was necessary
6 possibly just for survival. After all, a bird in the
7 hand is worth two in the bush.

8 Well, then why would these seemingly happy
9 ILEC customers even want to get out of their existing
10 contracts and switch to another carrier? The answer
11 is because another carrier's offering is more
12 competitive in some way. So if the ILEC cannot be
13 more competitive, the customer is going to switch to a
14 more competitive provider, someone who can give the
15 consumer additional benefits. And wasn't that the
16 point of competition to begin with, to offer the
17 consumers more benefits and choice?

18 I submit that this Fresh Look rule is the
19 most tangible consumer-oriented rule to be considered
20 by this Commission since the passage of the
21 legislation opening up the local exchange to
22 competition.

23 Now, don't get me wrong. I think that a
24 lot of the other regulatory proceedings we have done
25 have been incredibly important to establish the rules

1 for the ALECs in order to allow them to compete and to
2 establish the rules so that players are ensured that
3 we're competing fairly amongst each other.

4 But this rule really only takes effect if
5 the customer invokes it. You all can order a Fresh
6 Look rule, and the ALECs can't force the consumer to
7 take advantage of it. So it's only if the customer
8 chooses to take advantage of Fresh Look will it
9 actually become effective. It directly gives the
10 consumer the opportunity to consider competitive
11 alternatives not previously available to them and
12 allows the consumer to realize the benefits of
13 competition now instead of waiting for these less
14 competitive contracts to expire.

15 There has been a lot of controversy in this
16 proceeding about whether or not there were any
17 competitive alternatives available to consumers who
18 entered into these CSAs. As I recall, the legislation
19 opening up the local exchange to competition was
20 enacted on July 1st of 1995. So why are the ILECs
21 talking about competitive alternatives from the 1970s
22 and the 1980s? These references are totally
23 irrelevant to this proceeding where we're talking
24 about local exchange telecommunications services that
25 would be affected by the Fresh Look rule.

1 Additionally, on July 1st of 1995, the
2 facilities-based providers were not able to wave this
3 magic wand and become operational overnight. It takes
4 time and money to negotiate interconnection
5 agreements, to get switches in place, and to build
6 facilities. In fact, Time Warner was the first ALEC
7 to negotiate their interconnection agreement with
8 BellSouth, and we did not become operational in
9 Florida until February of 1997.

10 The comments of the ILECs would also lead
11 us to believe that Fresh Look is a new concept, or
12 where it has been considered, it has been summarily
13 rejected. Well, hasn't this Commission already
14 adopted Fresh Look in the past in the expanded
15 interconnection docket, and hasn't the FCC adopted
16 Fresh Look provisions on at least three separate
17 occasions? And should we just forget about the other
18 ten states that have either accepted a Fresh Look rule
19 or are considering it as we speak?

20 Again, I would submit that Fresh Look is a
21 tool that has been used at the state and federal
22 levels to jump-start competition. There has been a
23 lot of pressure from the U.S. Congress on the FCC, and
24 there's a lot of pressure from the State Legislatures
25 on this State Commission and others to advance

1 facilities-based competition.

2 As the record in this docket will reflect,
3 as of September 30, 1998, only 1.6% of the voice grade
4 lines in the BellSouth serving area and 2% of the
5 lines in GTE's service area were served by ALECs, and
6 the vast majority of these lines were actually served
7 by resellers.

8 So again, I think the CSA resale
9 requirement that was ordered by this Commission was
10 incredibly effective in terms of stimulating resale,
11 which brings me to my last question, and that is,
12 well, then how can this Commission stimulate or foster
13 facilities-based competition. And I really believe
14 that the answer is by adopting your proposed Fresh
15 Look rule and giving the ALECs the opportunity to
16 offer consumers the benefits of competitive
17 alternatives.

18 In conclusion, Fresh Look will not require
19 the ILECs' existing customers to change providers, but
20 it will enable the customers to access innovative and
21 cost-effective products and services in a competitive
22 environment. It will allow customers to avoid
23 potentially exorbitant termination liabilities. It
24 will further the public interest and the Commission's
25 objectives by promoting facilities-based competition.

1 And it will make the benefits of competition available
2 now which would otherwise be delayed for many years
3 for many customers.

4 Thank you.

5 MS. BROWN: Chairman Garcia, this would be
6 the time for anyone to pose any questions if they have
7 any.

8 CHAIRMAN GARCIA: Any questions?

9 MS. BROWN: Staff has some if no one else
10 does.

11 MS. CASWELL: Yes, I probably have a couple
12 of questions.

13 MS. BROWN: Okay.

14 MS. CASWELL: Ms. Marek, just for
15 clarification here, I'm looking at the Commission's
16 December 1996 competition report, and it says that
17 Time Warner was providing local service as of
18 September 1, 1996, in Florida, and I think you gave a
19 February 1997 date.

20 MS. MAREK: That's really when we started
21 offering services on a more widely available basis.
22 We had test customers in September.

23 MS. CASWELL: Okay. You mentioned some
24 Fresh Look decisions elsewhere. One of those was the
25 FCC's and the expanded interconnection docket. Do you

1 remember how long the Fresh Look window there was?

2 MS. MAREK: I don't.

3 MS. CASWELL: It was 180 days. Do you
4 remember what length of contracts it applied to?

5 MR. DUNBAR: Mr. Chairman, I will just
6 make a brief inquiry, if I might. And I apologize for
7 interrupting, but I think it's appropriate if we're
8 going to do clarification. If we're going to do
9 cross, that's different than what I had anticipated,
10 although we're prepared to engage in that if that's
11 what the Commission would like. If Ms. Caswell wants
12 to put material of record, she has reserved time to do
13 so, and she can certainly make her points as she
14 wishes at that time.

15 CHAIRMAN GARCIA: Martha, had we
16 contemplated this, and do you have a reaction or
17 suggestion on this?

18 MS. BROWN: Chairman Garcia, I would point
19 you to the order establishing procedures to be
20 followed at rulemaking hearing issued March 26, 1999,
21 by the prehearing officer in this docket. And on page
22 4, in the middle paragraph, the last sentence says,
23 "Persons making presentations will be subject to
24 questions from other persons. Such questions shall be
25 limited only to those necessary to clarify and

1 understand the presenter's position."

2 CHAIRMAN GARCIA: I think that's very
3 clear, Ms. Caswell, so let's try to keep them there.

4 MS. CASWELL: Fine. Okay. That's it.

5 MS. BROWN: We just really basically have
6 one question for you. In a lot of the comments that
7 were filed in this case, mention has been made of the
8 term "long-term contract." We're somewhat uncertain
9 of what that actually means. What is your view on
10 what a long-term contract is?

11 MS. MAREK: Time Warner's position would be
12 that any contract that is over a year would be
13 considered long-term.

14 MS. BROWN: Thank you.

15 MR. GOGGIN: Mr. Chairman, I'm sorry.
16 Michael Goggin, BellSouth. If we could ask just a
17 couple of clarifying questions.

18 CHAIRMAN GARCIA: That's fine. If we
19 could, I would just ask that you let Staff close.

20 MR. GOGGIN: I apologize. I realize
21 we're --

22 CHAIRMAN GARCIA: No problem.

23 MR. GOGGIN: -- speaking out of order.

24 CHAIRMAN GARCIA: Go right ahead.

25 MR. GOGGIN: Ms. Marek, you mentioned that

1 Time Warner actually began to offer service on a large
2 scale in February 1997. Did Time Warner offer
3 proposals to provide service in advance of that date
4 to business customers?

5 MS. MAREK: I'm certain they did.

6 MR. GOGGIN: Wouldn't that, from the
7 customer's standpoint, be the time at which
8 competitive alternatives became available?

9 MS. MAREK: Potentially. However, really,
10 until -- if we're talking about the number of
11 proposals, it may have been under a dozen proposals
12 that were actually made, and then actually customers
13 in service in February of '97. So in order for a
14 customer to have been in service in February of '97, a
15 proposal would have had to have been made and the
16 customer made a decision in order for us to build the
17 facilities to the customer and actually have them up
18 and working in February of '97. So "operational" I
19 guess is a term -- I would say is when we're actually
20 providing service to a customer.

21 MR. GOGGIN: Does Time Warner employ
22 long-term agreements as you've defined them in signing
23 up customers, business customers?

24 MS. MAREK: Yes, we do.

25 MR. GOGGIN: And do the long-term contracts

1 that Time Warner employs contain termination
2 provisions that impose monetary liability if customers
3 should terminate the contracts prior to the end of the
4 term?

5 MS. MAREK: I'll answer your question that
6 it does. I'm not sure -- the ALEC contracts are not
7 at issue, so again, they're totally irrelevant for
8 this proceeding while we're looking at the contracts
9 of the ILECs, since you all are in the monopoly
10 position.

11 MR. GOGGIN: For an ALEC entering the
12 market today, wouldn't a long-term agreement --

13 MR. DUNBAR: Mr. Chairman.

14 MR. GOGGIN: Wouldn't a long-term agreement
15 with Time Warner present the same sort of obstacle
16 that a long-term agreement with BellSouth might
17 present?

18 MS. MAREK: Absolutely not. It absolutely
19 would not. I mean, the whole point of the Fresh Look
20 is because the ILECs have the monopoly power that
21 you're giving an opportunity, and because those
22 contracts were closed at a time when the ALECs were
23 just beginning to emerge. That's the whole purpose of
24 being able to promote facilities-based competition.
25 So the contracts of the ALECs are totally irrelevant

1 to this proceeding.

2 MR. GOGGIN: Is there any mention in your
3 prefiled testimony or in your presentation today about
4 evidence that would tend to support an assertion of
5 market power?

6 MS. MAREK: Well, I did assert that you
7 have -- yes, on two things. One, I assert that you
8 have nearly 100% of the market, and I reflected back
9 on the record that it was 2% of the total lines
10 available in Florida are being served by ALEC
11 customers. So whether that's 2%, 3%, I'll give you
12 4%, that's still market dominance by the ILEC.

13 MR. GOGGIN: Can you define for me what
14 most courts and economists would -- the way they would
15 define market power?

16 MS. MAREK: That was not part of my
17 prefiled testimony.

18 MR. DUNBAR: Mr. Chairman, if Bell would
19 like to make presentations or points, my understanding
20 is we're not engaged in traditional cross. Now, we
21 are prepared to engage in that, but that's not my
22 understanding from talking to Staff of what we were
23 intending to do today.

24 CHAIRMAN GARCIA: The hope is to elucidate
25 the testimony that has been made before. You have an

1 opportunity to present exactly the same or different
2 information that you have.

3 MR. GOGGIN: We understand. I just -- if
4 she's going to employ terms like "market power," I
5 think it would be important to the Commission to
6 understand what her understanding of the term "market
7 power" is. That was the purpose of that line of
8 questions.

9 CHAIRMAN GARCIA: Okay. Is that it?

10 MR. GOGGIN: That's it. Thank you.

11 CHAIRMAN GARCIA: Okay. The next presenter?

12 MS. BROWN: The next presenter will be
13 offered by FCCA.

14 MS. KAUFMAN: Thank you, Mr. Chairman.
15 Vicki Gordon Kaufman on behalf of the FCCA. We did
16 not file traditional testimony. We essentially filed
17 comments, and what I would like to do is basically
18 summarize the comments that we have filed.

19 As you know, the FCCA is an organization
20 composed of competitive carriers, as well as the
21 Telecommunications Resource Association is one of our
22 members. And we are very interested in seeing the
23 Commission take this step forward to bring some more
24 local competition into the marketplace.

25 When this proceeding began, the FCCA filed

1 its own rule proposal, and that rule proposal is
2 remarkably similar to what is before you from the
3 Staff, or I guess I should say the rule that you have
4 proposed. It essentially has two differences.

5 One difference is that in the proposed rule
6 you have a two-year Fresh Look window. The FCCA has
7 proposed a four-year window. And our thinking behind
8 the longer window is that it's fairly obvious that
9 competition is going to come at a different pace to
10 different areas of the state, and so we believe that a
11 longer window would be helpful in making sure that
12 competition reaches various areas as it's going to
13 progress at a different pace.

14 The second difference between the rule we
15 have put forward and your Staff's rule is that we do
16 not have any provision in our rule for any termination
17 liability. And our thinking behind that is that that
18 is going to be a barrier to customers who want to
19 switch carriers, to become involved in a dispute over
20 what is the termination liability, to have to go
21 through a proceeding in order to figure that out. We
22 think that's going to be a great barrier. So our rule
23 takes a little bit of a more simplified approach, and
24 it has a longer window, but it has a lot in common
25 with the rule that you've proposed.

1 I just want to take a minute and respond to
2 some of the comments that were filed by the incumbents
3 in this case. And I judge from what Ms. Caswell said,
4 you're going to hear some argument on that from them.

5 One has to do with the alleged
6 constitutional infirmities that the LECs have
7 suggested this rule would pose. And we've done an
8 analysis in the comments we filed, and we would
9 suggest to you that there is no constitutional bar to
10 you proposing this rule. This is a rule in the public
11 interest. It's a rule that implements state and
12 federal policy vis-a-vis competition. We don't see
13 any constitutional infirmity here, and I would suggest
14 to you that that's somewhat of a smoke screen.

15 Secondly, the LECs have suggested that
16 because there's resale of CSAs that that sort of takes
17 care of any Fresh Look problem or opportunity that
18 competitors should have. I think it's important to
19 understand that resale means that a competitor can
20 take the exact contract services, the package that the
21 LEC is offering, and resell it. It does not give the
22 competitor the ability to offer innovative services,
23 innovative packaging, something that would be more
24 attractive and more useful and more tailored to the
25 customer's needs. So we don't see this argument that,

1 "Well, you've got resale; therefore, Fresh Look is
2 unnecessary," as something that's very persuasive.

3 So what we would urge you to do is take a
4 close look at the rule that the FCCA has proposed,
5 compare it with the one you have proposed in this
6 proceeding, and we would suggest that you either adopt
7 the rule as we've proposed it or make those changes to
8 the rule that you have proposed and go forward and let
9 this rule work in the marketplace.

10 Thank you.

11 CHAIRMAN GARCIA: Okay. Questions?

12 Charles, just so we don't get hopping
13 around, we'll just go this way. Is there anyone?
14 Ms. Caswell?

15 Charles, go right ahead.

16 MR. REHWINKEL: Yes. Just a clarification
17 on the level of support for the proposed rule,
18 Ms. Kaufman.

19 Do you have any problem with a limitation
20 in whichever version of the rule the Commission adopts
21 that would limit limitation of termination liability
22 to only customers seeking to go to another competitive
23 provider?

24 MS. KAUFMAN: I'm not sure I understand
25 what you're asking me. I think this rule is only

1 applicable to people that change providers.

2 MR. REHWINKEL: If the rule isn't clear on
3 that, would you agree that such a limitation would be
4 appropriate, or such a clarification would be
5 appropriate?

6 MS. KAUFMAN: Well, I guess you would have
7 to point out to me how the rule is not clear on that.
8 I think it's our position that the rule is intended to
9 and applies only to people that are seeking to switch
10 from an incumbent to a competitor. I don't think that
11 termination provisions or lack thereof would apply to
12 any customers that remain with the LEC, if that's what
13 you're asking me.

14 MR. REHWINKEL: Well, what if a customer
15 just wanted to get out of a contract because of a
16 reason other than moving to another provider, such as
17 -- I don't know, his business plan changed. That's my
18 only question, is if a customer is not switching
19 carriers, should he not be allowed to avoid
20 termination liability in a contract?

21 MS. KAUFMAN: I don't think the situation
22 you're describing is contemplated by this rule,
23 Charles.

24 CHAIRMAN GARCIA: Charles, why don't you
25 just for my own edification tell me what situation

1 you're contemplating so that I can understand what
2 you're trying to get at?

3 MR. REHWINKEL: Mr. Poag can address this.
4 I was just trying to see what the other parties
5 thought about this issue. In our original rule
6 proposal that we filed last year, we had such a
7 limitation. It's our view that the way the rule is
8 written, it would not prohibit a customer from coming
9 to Sprint and seeking limitation of termination
10 liability or abrogation entirely, even in a case where
11 they were just changing -- moving out of town,
12 disconnecting service, changing their business plan.

13 So all we wanted to do was to ensure that
14 this rule would not be abused in that way. And I
15 don't think anybody here would disagree with that.
16 That was the whole purpose of my question.

17 CHAIRMAN GARCIA: Very good. BellSouth?

18 MR. GOGGIN: I have just one question.
19 You've advocated a rule with a four-year window that
20 would permit customers who want to switch carriers to
21 avoid all termination liability if they're subject to
22 a long-term contract. As you know, the rule as it's
23 currently written would affect all contracts that are
24 entered into up to the effective date of the rule,
25 which would include, obviously, contracts signed in

1 1999.

2 For a new ALEC entering the market at that
3 time, they might just as easily encounter a long-term
4 contract subject to termination liability that has
5 been entered into between a customer and, say, Time
6 Warner, as they would a long-term contract entered
7 into between a customer and BellSouth. The contract
8 may have been entered into as late as December '99 if
9 the schedule for implementing the rule holds true.

10 Would you favor amending the rule in a way
11 that would sweep away what you believe to be
12 obstacles, long-term contracts subject to termination
13 liability, even if those contracts are signed by ALECs
14 rather than ILECs?

15 MS. KAUFMAN: I think the same scenario was
16 posed to Ms. Marek, and I agree with her. I think
17 what we're dealing with here is an incumbent that
18 controls, you know, the vast majority of the market,
19 and that's what this rule is intended to address. So,
20 no, I would not be in favor of your proposal.

21 CHAIRMAN GARCIA: Is that it? Okay.

22 MS. BROWN: Ms. Kaufman, in FCCA's prefilled
23 comments, they mentioned that they believed a
24 long-term contract would be 180 days or more. Am I
25 correct on that?

1 MS. KAUFMAN: Yes, ma'am.

2 MS. BROWN: 180 days, that's six months?

3 MS. KAUFMAN: Yes.

4 MS. BROWN: What's the rationale for
5 considering that to be a long-term contract?

6 MS. KAUFMAN: Well, I think Ms. Marek
7 answered that her definition was a year, and I don't
8 think that there's any magic, you know, six months, a
9 year, nine months. It just seemed to us that if you
10 entered into a contract for six months or longer, you
11 are locking yourself in and not having the advantages
12 of the marketplace. But I don't think that we would
13 object if it was changed to nine months or 12 months.

14 MS. BROWN: All right. Thank you.

15 The next presenter on my list is KMC.

16 MR. DUKE: Good morning. I am Mike Duke.
17 I am Director of Regulatory Affairs for KMC Telecom.
18 I've spoken here before in favor of the proposed Fresh
19 Look rule.

20 CHAIRMAN GARCIA: Sir, you're going to need
21 to bring the mike a little bit closer.

22 MR. DUKE: A little bit closer? Okay.

23 But just to remind everyone, KMC is a
24 facilities-based ALEC operating networks in 23 Tier 3
25 markets across the U.S. Right now our largest

1 investment is in the State of Florida. We are
2 currently serving customers in six cities in Florida.
3 They are Pensacola, Tallahassee, Daytona Beach,
4 Melbourne, Fort Myers, and Sarasota. And we have
5 plans to make additional significant facility-based
6 investments in Florida.

7 There is a need for Fresh Look in Florida.
8 The incumbent local exchange carriers in Florida
9 continue to exercise market power even as the local
10 exchange market has theoretically been opened to
11 competition through legislation and regulation.

12 Opening the local market in 1995 and
13 granting a number of ALEC certificates are important
14 steps in providing the benefits of competition to
15 customers, but they don't guarantee the development of
16 a competitive market. ALECs cannot offer a true
17 competitive option in the local market the day after
18 they receive their certificate.

19 Passage of the Telecommunications Act of
20 1996 didn't mean that customers could choose from
21 among several carriers the day after the Act became
22 law, or even a year later, for that matter. As KMC
23 noted in its comments, both BellSouth and GTE still
24 hold near monopoly market shares in Florida.

25 Since there hasn't been a flash-cut to

1 competition, the Commission should not assume that
2 contracts entered into in the past several years are
3 necessarily the product of a competitive environment.
4 In fact, KMC's experience in its six Florida markets
5 indicates that the ILECs still possess market power
6 and the ability to use long-term contracts to lock up
7 customers. KMC therefore disputes the ILECs'
8 assertions that they formed these contracts in a
9 competitive environment.

10 Further, the ILECs' assertions that we
11 could always resell their long-term contracts also
12 missed the mark. Even if we do resell a BellSouth
13 customer's contract, for example, the customer really
14 doesn't see the benefit of competition, because he's
15 still locked into the same terms, conditions, and
16 services for the duration of the contract just as if
17 he never switched from BellSouth at all. Only a fresh
18 look will give Florida consumers an adequate
19 opportunity to take advantage of other services and
20 providers in the local exchange market.

21 KMC supports the Fresh Look rule because we
22 believe it will prove to be a necessary and effective
23 tool in opening the Florida local exchange market to
24 competition. However, we recommend that the rule be
25 modified in two respects to ensure that it serves its

1 purpose most effectively.

2 First, the rule should be clarified by
3 separately defining what constitutes an eligible
4 contract. This separate definition would spell out
5 clearly the kinds of services, such as advanced
6 telecommunications services and private line services,
7 that would fall within the Fresh Look rule. KMC also
8 believes it important to make clear that an ILEC's
9 tariffed term plans will be covered by the Fresh Look
10 rule so that it is unmistakable that customers under
11 such plans have the ability to exercise a fresh look
12 just like customers under contract with the ILEC.

13 Secondly, it is likely that disputes over
14 the extent of termination liability could undermine
15 the effectiveness of the rule. Customers facing
16 termination liability or disputes over how much a
17 termination penalty they owe are going to be deferred
18 -- deterred, excuse me, from taking advantage of a
19 fresh look. KMC therefore believes that the
20 Commission should revise its rule so that no
21 termination liability will be imposed where customers
22 exercise a fresh look.

23 If the Commission decides that the ILECs
24 should be able to impose a termination liability for
25 non-recurring investment, the Commission should

1 provide for a quick resolution of disputes over such a
2 liability. A Fresh Look rule will be of little use if
3 a customer needs to spend months fighting with the
4 ILEC over how much he owes for taking a fresh look.

5 KMC therefore recommended that if the ILECs
6 are allowed to impose some termination liability, the
7 Commission should set up a separate dispute resolution
8 procedure in which the ILEC bears the burden of
9 proving the costs it wants to recover are warranted.
10 This kind of expedited procedure would allow end users
11 and their new carriers to ensure that disputes over
12 termination liability won't undermine the fresh look
13 opportunity provided by the rule.

14 Thank you.

15 CHAIRMAN GARCIA: Questions?

16 MS. CASWELL: I have a couple of
17 questions.

18 As I understand your presentation, you
19 believe that a Fresh Look rule is necessary because
20 there hasn't been competition in the local exchange
21 market. How do you define competition?

22 MR. DUKE: KMC would define competition as
23 the ability to deliver facility-based solutions as
24 envisioned by the Act. Clearly, customers have been
25 able to avail themselves of resale of CSAs, that is,

1 assuming they sign something called a CLEC assumption
2 agreement, by which they take on all the terms and
3 liabilities under the existing contract. But KMC
4 would say that true competition needs to be
5 facility-based.

6 MS. CASWELL: And have there been
7 facility-based providers providing service in some
8 areas of the state for some time now?

9 MR. DUKE: There may be. I'm mostly
10 familiar with KMC.

11 MS. CASWELL: Okay. Thank you.

12 CHAIRMAN GARCIA: BellSouth?

13 MR. GOGGIN: This is Michael Goggin with
14 BellSouth.

15 The first question was, when did KMC begin
16 to offer facilities-based services in Florida?

17 MR. DUKE: KMC's first city that its
18 network became operation is Melbourne, Florida, and it
19 was basically operational the first quarter of 1998.

20 MR. GOGGIN: At what time? I'm sorry.

21 MR. DUKE: I believe it was the first
22 quarter of 1998.

23 MR. GOGGIN: And prior to KMC's entry, were
24 there predecessor companies acquired by KMC that had
25 been offering service in Florida prior to that date?

1 MR. DUKE: Yes. I believe the Melbourne
2 operation -- it's my understanding KMC did purchase
3 the Melbourne operation, but I'm not sure when that
4 actually was.

5 MR. GOGGIN: What about KMC's operations in
6 the other five cities?

7 MR. DUKE: Those were basically started.
8 Tallahassee I think became operational in September of
9 '98, and then the remaining cities in the fourth
10 quarter, or really the first quarter of 1999.

11 MR. GOGGIN: Were those all cities in which
12 KMC built facilities, or did --

13 MR. DUKE: Yes, yes.

14 MR. GOGGIN: So apart from the Melbourne
15 operation, which apparently began to operate sometime
16 before you acquired it, the rest of them were green
17 field built?

18 MR. DUKE: That's correct.

19 CHAIRMAN GARCIA: That's it?

20 Staff?

21 MS. BROWN: KMC in its comments did mention
22 that -- on page 2 at the bottom of the first paragraph
23 and the beginning of the second paragraph that the
24 only service options are to take a month-to-month
25 service from the ILEC or service for several years

1 from the ILEC at a lower rate. Do you see that? Then
2 you talked about long-term contracts in the next
3 paragraph. You are referring to contracts of more
4 than one year?

5 MR. DUKE: Yes, generally. I would say
6 that it's my experience right now that the majority of
7 what I would call tariffed term plans -- and that's
8 really what we're most familiar with, are either month
9 to month, straight out of the tariff, or they jump to
10 a 36-month.

11 MS. BROWN: Now, that's your experience
12 from your operations and --

13 MR. DUKE: That's correct.

14 MS. BROWN: -- marketing and negotiations?

15 MR. DUKE: That's correct.

16 MS. BROWN: Okay. You spoke just a minute
17 ago about modifying the rule to include a dispute
18 resolution process?

19 MR. DUKE: Yes.

20 MS. BROWN: Do you have any more details
21 on what that would involve or --

22 MR. DUKE: No. We would leave the details
23 up to the Commission at their discretion. But it's
24 just anticipating that in the current rules, that
25 there really is no provision that should the ILEC come

1 back with some charges after their ten-day period in
2 their statement of liability, that if the customer
3 were to say that this is totally wrong, where did you
4 get these figures, we don't see any way right now for
5 that to be quickly resolved without there being some
6 way to do it in an expedited procedure here at the
7 Commission.

8 MS. BROWN: Okay. Thank you.

9 MR. ROMANO: One other thing, if I may
10 clarify further. The attachment to KMC's initial
11 comments contains that dispute resolution language as
12 a proposal.

13 MS. BROWN: Great. Thank you.

14 CHAIRMAN GARCIA: Okay. Next presenter?

15 MS. BROWN: Next is the pay telephone
16 association.

17 MS. GREEN: Good morning, Chairman and
18 Commissioners. Angela Green on behalf of the Florida
19 Public Telecommunications Association.

20 We have not filed formal comments in this
21 proceeding because we've been monitoring and reviewing
22 what has been going on, and we believe overall that
23 our interests have been very adequately represented by
24 the able participants in this docket. However, in
25 final review of all the things that have been filed up

1 to this point, a couple of things have come to light
2 that have caused us some concern.

3 KMC touched on one of these issues in their
4 comments, and that is the definitional problem with
5 the eligible contracts. It's not clear to me in my
6 review of what the ILECs have filed that all eligible
7 contracts are being captured or identified by the
8 incumbent local exchange companies. It appears that
9 some of the participants in this docket are being very
10 literal with their definitions, and when terms are
11 used such as contract service arrangement, they are
12 identifying documents that have this on the title,
13 that say "contract service arrangement." And if the
14 term "tariffed term plan" is being used, then if they
15 have something in their tariff that is called that
16 exact thing, then they have identified those
17 contracts.

18 Now, I have seen something in BellSouth's
19 contract -- in its tariff in Section A2.12 called a
20 comprehensive discount. Now, I will gladly be
21 corrected if I am wrong on this, but I have not seen
22 anything identified by BellSouth in their filings
23 related to these comprehensive discounts, and yet to
24 me these are nothing but contract service arrangements
25 with another name attached to them. They give

1 discounts of up to 7%, and that's above and beyond
2 whatever discount might be available in the tariff
3 otherwise, and they require a period of time. They
4 require a commitment to keep your service with the
5 company for that length of time, and they have
6 termination penalties. So I don't see how those are
7 any different than a contract service arrangement, and
8 they appear to fall under the language in this rule,
9 or what I believe to be the intent of the proposed
10 rule.

11 There's also -- I believe that in GTE's
12 filing, I did see the tariffed term plans identified.
13 And I'm not an expert on everyone's tariffs, so there
14 may be things other companies have. I'm just trying
15 to point out what I found as some of the most obvious
16 examples of this problem.

17 BellSouth also has something they're
18 offering that I've only recently found out about that
19 they call an MSA. What is an MSA? A master service
20 agreement or arrangement. That appears to be a
21 multistate discount plan with a term and volume
22 commitment that combines basic and non-basic service,
23 access lines, and various and sundry other types of
24 non-basic services and combines the customer's
25 business in multiple states. I've not seen any

1 evidence that any of those have been identified or
2 filed here.

3 I would have loved to bring you one today
4 to show it to you, but these contracts all require the
5 customer to swear to confidentiality and be subject to
6 all types of penalties if they show them to anyone.
7 So I haven't been able to actually see one of these,
8 but it's on my best knowledge and belief that this
9 item does exist, and I believe it should fall under
10 this rule. They should be identified before this
11 proceeding is wound down and made subject to the Fresh
12 Look.

13 Another type of contract that I haven't
14 seen identified in here is for placements of pay
15 telephones with end user customers. These are
16 long-term contracts. They typically last five years.

17 I think some people would say, well,
18 there's competition out there. Well, yes, that's
19 true. My members have been working for 15 years
20 fighting to combine the minority share of the market,
21 and yet I see no evidence that the new competitive
22 carriers have had a fair opportunity to enter that
23 marketplace. We would welcome the opportunity for
24 them to be able to serve the customers as well.

25 And in light of those -- those type of

1 contracts are typically for something like five years,
2 and they have substantial termination penalties in
3 there, and they appear to be covered under the
4 definition or my understanding of what is meant to be
5 encompassed here.

6 And as far as those particular types of
7 contracts, some of those are going to be shielded from
8 this Commission's purview by virtue of the fact that
9 two local exchange companies have created separate
10 subsidiaries and transferred those contracts that were
11 negotiated, if you want to use that word, by the
12 incumbent local exchange company, and have transferred
13 those into separate subsidiaries. So if pay telephone
14 contracts, placement contracts fall under the purview
15 of the rule, some incumbents will be required to open
16 theirs up, whereas others could effectively shield
17 those.

18 Now, I'm not asking that those contracts
19 that the subsidiary itself entered into be opened up,
20 but that those that the local exchange company secured
21 and transferred over there, that they should fall
22 under the rule, because the other LECs that don't have
23 separate subsidiaries will have to open theirs up.

24 That concludes my comments.

25 CHAIRMAN GARCIA: Any questions? There

1 being no questions -- do you have some?

2 COMMISSIONER CLARK: I have a question.

3 CHAIRMAN GARCIA: Okay.

4 COMMISSIONER CLARK: Ms. Green, tell me why
5 the fact that it's -- why are you taking the position
6 that if they were transferred, they shouldn't be
7 opened up? Or maybe I misunderstood you.

8 MS. GREEN: If they were transferred over
9 by the incumbent local exchange company and they're
10 still in existence and they would otherwise meet this
11 definition, those I think should be opened up. I'm
12 not asking that the separate sub who has gone out on
13 its own since its creation have to open its up,
14 because presumably they did that under the same terms
15 and conditions as everyone else. But there are
16 incumbent local exchange companies in this state that
17 still refuse to allow resale of pay telephone lines
18 to competitive local exchange carriers, so there can't
19 be competition in that arena.

20 MR. REHWINKEL: Mr. Chairman, can I ask --

21 COMMISSIONER JOHNSON: How is that process
22 of --

23 MR. REHWINKEL: Oh, I apologize. I'm
24 sorry.

25 COMMISSIONER JOHNSON: How is that process

1 of -- what's happening? You said they're transferring
2 contracts to their new -- how does this work? Could
3 you explain what's happening? And --

4 MS. GREEN: Well, I'm --

5 COMMISSIONER JOHNSON: And I'm assuming the
6 parties had to agree that someone else then -- that
7 their contracts be transferred. Or how is that
8 process working?

9 MS. GREEN: Well, two companies, BellSouth
10 and Sprint, have created separate subsidiaries that
11 deal only in pay telephone services. And on whatever
12 date they picked, they just wholesale took all the LEC
13 contracts and put them into this separate subsidiary.
14 Now, presumably some things went on with their books,
15 and I'm really not here to address that issue. I just
16 feel that you've got other LECs like GTE, Alltel, they
17 don't have those subsidiaries. And so if my view of
18 what contracts should be opened up is adopted, you're
19 going to have two of the largest players in this
20 industry allowed to shield some of those contracts
21 from a fresh look.

22 MR. REHWINKEL: Mr. Chairman, may I ask a
23 question?

24 CHAIRMAN GARCIA: Sure.

25 MR. REHWINKEL: Ms. Green, are you talking

1 about dial tone contracts, or are these location
2 contracts for pay phone?

3 MS. GREEN: They are providing dial tone
4 services.

5 MR. REHWINKEL: Isn't the contract you're
6 talking about for locations for pay phones that are
7 compensated through commission payments?

8 MS. GREEN: Well, I suppose if we want to
9 get into a hypertechnical definition, we could isolate
10 it like that. But the fact remains, Mr. Rehwinkel,
11 your company still refuses to allow competitive local
12 exchange companies to purchase pay telephone lines
13 under resale so that they can go out and install pay
14 telephones themselves. So they cannot compete with
15 you when you will not resell your lines to them.

16 MR. REHWINKEL: Mr. Chairman, I think this
17 last answer is not germane at all to the rulemaking
18 that's before us. This is not an issue that's
19 relevant to what the Commission has proposed.

20 COMMISSIONER CLARK: I have a question.
21 Let me ask Staff, was it intended that this Fresh Look
22 apply to pay telephone contracts?

23 MS. BROWN: We don't -- I don't think so.
24 I'm not certain of that.

25 COMMISSIONER CLARK: Okay. I didn't think

1 so either.

2 Ms. Green, why should it apply to pay
3 telephone? Because it strikes me that we've had
4 competition in pay telephones for a whole lot longer
5 than other local service. Why should we have a Fresh
6 Look?

7 MS. GREEN: Well, maybe the Fresh Look
8 should be limited to the new competitive carriers
9 being allowed an opportunity to compete with the
10 incumbent on it.

11 The people that I represent have been
12 working for 15 years, and they still combined do not
13 have 50% of the market. That tells you how hard it is
14 to break into any of these businesses when someone
15 else is already sitting there holding all the
16 contracts.

17 COMMISSIONER CLARK: That still doesn't
18 answer my question. Why should we do it at all for
19 pay telephones?

20 MS. GREEN: Well, my reason is that, as I
21 said, for instance, Sprint will not allow resale of
22 its pay telephone lines, so that a company who wants
23 to compete as a local exchange carrier will either
24 have to build facilities or they'll have to buy pay
25 phone lines at retail rates, so they have no effective

1 opportunity to place pay telephones themselves.

2 COMMISSIONER CLARK: I still don't
3 understand. Are you saying competitive providers
4 cannot place pay telephones in Sprint's territory?

5 MS. GREEN: If you're trying to do -- if
6 you're trying to be a full service local exchange
7 company with a full range of services --

8 COMMISSIONER CLARK: Including pay
9 telephones?

10 MS. GREEN: Yes. My point here is that --

11 COMMISSIONER DEASON: I'm sorry. I'm
12 confused. Yes, they will resell in that situation, or
13 no, they will not resell in that situation? Your
14 answer was yes. I want to clarify what it is.

15 MS. GREEN: Well, maybe I didn't understand
16 the question.

17 COMMISSIONER DEASON: Well, I'm not trying
18 to reask the question. I'm just trying to understand
19 what your answer was. What is your understanding of
20 the question, and what was your answer to that
21 question?

22 MS. GREEN: I don't know. I don't know
23 anymore.

24 COMMISSIONER CLARK: I'm just trying -- it
25 seems to me that the argument being made is that we

1 haven't had competition in local exchange service,
2 significant competition that's new. We have had it in
3 pay telephones for a long time. The fact that you
4 don't have -- what you're suggesting is because you
5 don't have over 50% of the market share because
6 competitive providers don't have over 50%, then you
7 should do Fresh Look.

8 MS. GREEN: Well, I mean, we've had
9 competition in ESSX, PBX, and all that. But because
10 they're under these long-term contracts and they have
11 substantial cancellation penalties in them, the new
12 entrants in the market are being deprived of an
13 opportunity to compete with these customers.

14 You have to understand, Chairman Clark,
15 these incumbent local exchange companies that you see
16 sitting here today, they have a huge sales force
17 outside there that is aggressively marketing to the
18 customers that they know that the competitive carriers
19 want. And they're offering them deals that are
20 unbelievable, and they have substantial termination
21 penalties, and they have confidentiality clauses in
22 them so that we can't even see what we're out there
23 fighting against.

24 MR. REHWINKEL: Commissioner --

25 COMMISSIONER CLARK: I'm still trying to

1 get at the notion of why we should apply this to pay
2 telephones. We have had competition in pay telephones
3 for I guess 15 years. Is that what you've indicated?

4 MS. GREEN: I would say we have had
5 alternative carriers for 15 years, yes.

6 COMMISSIONER CLARK: Let's just talk about
7 pay telephones. Why should we have Fresh Look for pay
8 telephone contracts?

9 MS. GREEN: Because that's an area that the
10 new carriers would like to get into as well.

11 COMMISSIONER CLARK: But they've been
12 allowed to get into it for 15 years.

13 MS. GREEN: If they want to be a
14 traditional -- just a pay telephone provider, yes.
15 But I just submit to you that if you're trying to be a
16 full service local exchange company, you need to be
17 able to do all of these things and offer all of these
18 things and have an opportunity on all of them. And
19 I'm just not sure how you differentiate those
20 contracts from any other type of service that the LEC
21 is offering.

22 COMMISSIONER JACOBS: One of the arguments
23 that has been made with regard to the ILEC services is
24 that there's market power, that the ILECs have market
25 power here. I guess the thing that troubles me is

1 that in pay phones, do you still see that there's
2 entrenched market power by the ILECs such that any
3 entrant would face that as a substantial barrier?

4 MS. GREEN: Well, when someone is willing
5 to pay substantial up-front money of \$1,000, \$2,000,
6 \$3,000 a phone in order to secure a contract, I see
7 that as market power. When I see numbers like \$19
8 million a year in Dade County floating around, I see
9 that as market power too.

10 COMMISSIONER JACOBS: Help me understand
11 how those -- how that works. What happens there?

12 CHAIRMAN GARCIA: I'm sorry. Angela,
13 wait. She threw something out there, and I was just
14 curious what it was before we get by it.

15 COMMISSIONER JACOBS: Yes, that's what I
16 was asking.

17 CHAIRMAN GARCIA: When you see what in Dade
18 County? Millions of what?

19 MS. GREEN: I'm going to withdraw that
20 comment. It's not appropriate here.

21 COMMISSIONER JACOBS: Well, tell me what's
22 happening when ILECs exercise -- in your view, how are
23 ILECs exercising market power to restrain competition
24 in pay phones?

25 MS. GREEN: Well, the foremost example that

1 I can give you is the issue of resale of pay telephone
2 lines. One by one, every single incumbent has had to
3 be beat around the head and shoulders to allow resale,
4 including GTE had to do it as a result of a hearing in
5 one of its arbitrations. BellSouth agreed to do it
6 after the results of GTE's arbitration. Sprint will
7 still not allow resale of its pay telephone lines at a
8 discount to a competitive local exchange carrier.
9 That's what I am focused on.

10 COMMISSIONER JACOBS: So that goes to an
11 existing marketplace out there that you're trying to
12 enter, as opposed to new, new --

13 MS. GREEN: There's a difference between
14 being the pay telephone carrier like our guys are and
15 being a full service, a KMC or a Supra or whoever you
16 are. That is a totally different thing than being the
17 guy in the van with the tool belt. And they need to
18 be able to offer the full range of services. Yes, if
19 they wanted to be the guy in the van with the tool
20 belt, they could have done that, that's true.

21 COMMISSIONER JACOBS: Okay. Thank you.

22 CHAIRMAN GARCIA: All right. Let's go --
23 no, let's not. We're going to take a ten-minute
24 break, and then the next presenter will be --

25 MS. BROWN: BellSouth.

1 CHAIRMAN GARCIA: BellSouth. Okay.

2 (Recess from 10:35 to 10:55 a.m.)

3 CHAIRMAN GARCIA: All right. We'll start
4 up. BellSouth?

5 MS. BROWN: Mr. Chairman, if I might
6 interrupt for just a second.

7 CHAIRMAN GARCIA: Sure.

8 MS. BROWN: AT&T asked me at the break if
9 they might just have a minute of the Commission's
10 time, not to make a presentation, but just to make a
11 little speech.

12 CHAIRMAN GARCIA: Sure.

13 MS. RULE: Thank you. This is Marsha Rule
14 with AT&T. And we have filed comments in this case,
15 and I don't intend to reiterate them, but I would like
16 to say that AT&T supports the comments of FCCA. And
17 to the extent that FCCA's position and comments may
18 expand upon or go further than AT&T's, we would
19 support FCCA.

20 CHAIRMAN GARCIA: Thank you. Are you going
21 to ask to be excused, Ms. Rule, or are you going to --

22 MS. RULE: No.

23 CHAIRMAN GARCIA: Oh, okay. Well, thank
24 you, Ms. Rule.

25 BellSouth.

1 MR. GOGGIN: Mr. Chairman and
2 Commissioners, I'm Michael Goggin. I represent
3 BellSouth in this matter. Ned Johnston of BellSouth
4 is also here with me today. We would like to split
5 our presentation. I'll spend some time at the
6 beginning talking about the legal issues, and
7 Mr. Johnston will address more the factual issues.

8 I'm sorry to say that because it's largely
9 outside the scope of the rule, we're not in a position
10 to address the issues that were raised by the Public
11 Phone Association, so we'll leave that issue aside.

12 In reviewing the proposed rules, there's
13 one key issue. Obviously, BellSouth has many issues
14 with the proposed rules, including some constitutional
15 concerns and statutory concerns, but ultimately you
16 don't need to reach those issues.

17 The one key issue is, is there any
18 justification for this? The purported justification
19 that has been offered by all of the rule's proponents
20 is that the contracts that would be authorized to be
21 abrogated by this rule were all entered into at a
22 time when there were no alternatives to ILEC service.

23 Now, some of the supporters of the rule
24 have tempered that by saying there were virtually no
25 alternatives, or just describe it generally as a

1 monopoly environment. But the rule as drafted would
2 affect contracts that haven't even been entered into
3 yet, contracts that would be signed even to the end of
4 this year.

5 And in looking at contracts that were
6 signed even before the advent of switched competition
7 back in '80s, the Commission recognized that there
8 were substitutes for dial tone service available to
9 business customers. But for that competitive
10 pressure, we would not have been authorized to offer
11 contract service arrangements or tariffed term
12 agreements, for example.

13 Before I go any further, we've distributed
14 a list of Commission orders and a few BellSouth
15 filings that are public documents with the Commission
16 that we would ask that the Commission take official
17 recognition of and that these orders be made part of
18 the record. And we've also distributed an exhibit to
19 Mr. Johnston's prefiled testimony that had not been
20 distributed with the prefiled testimony that we would
21 like to have entered into the record in this matter,
22 and he'll address that in just a moment.

23 The justifications for the rule are really
24 two, according to the proponents. One is that these
25 contracts were entered into at a time when there was

1 no competition, and the other is that they represent a
2 barrier to entry, to new entrants. Neither one of
3 these purported justifications hold water.

4 There is no factual evidence that has been
5 provided by the alternative carriers that these
6 contracts were entered into at a time when there were
7 no competitive alternatives available. As we've
8 mentioned, prior to 1995, there were competitive
9 alternatives. Admittedly, they were access line
10 substitutes rather than switch-based service. But
11 since Florida deregulated local exchange services in
12 1995 and since the Federal Telecommunications Act, the
13 competition reports filed by the Commission
14 demonstrate the steady growth of competition in the
15 local exchange market, and in particular, in the local
16 exchange market for business customers.

17 The business growth in this area has --

18 CHAIRMAN GARCIA: How much is that growth?
19 What does that represent in percentage of the market?

20 MR. GOGGIN: I'm sorry?

21 CHAIRMAN GARCIA: What does that -- you
22 probably have the figures better at hand than I would.
23 What competitive growth has there been there? Let's
24 segment it. Let's not touch residential, but just in
25 the business market.

1 MR. GOGGIN: Just in the business market,
2 the percent of access lines, the number of access
3 lines served by alternative local exchange carriers is
4 growing at a rate of over 300% annually.

5 CHAIRMAN GARCIA: And what's the total rate
6 of the market out there?

7 MR. GOGGIN: Well, the market is --

8 CHAIRMAN GARCIA: What percentage of that
9 market is --

10 MR. GOGGIN: The market is growing, that is
11 for certain. BellSouth's number of access lines is
12 growing by 5% a year, yet BellSouth's market share is
13 eroding. And that is something I would like to
14 respond to. A number of the ALECs have stated,
15 without any proof at all whatsoever, that BellSouth
16 has market power and continues to enjoy market power.
17 None of them have stated what it means to have market
18 power.

19 It's fairly fundamental as a rule of
20 economics and of law that market power is defined as
21 the ability to raise prices and restrict output.
22 Other courts have said that it may be the power to
23 raise prices and exclude competition. You cannot --
24 courts have found, and economists agree, you cannot
25 assume market power simply because market shares are

1 high.

2 The more salient point to be made with
3 market shares are, number one, that the figures that
4 they're quoting are not accurate, because they don't
5 include access line substitutes that would boost the
6 share of the alternative to the ILECs. They do
7 include residential lines, where admittedly
8 competition is not nearly as fierce as in the business
9 market.

10 And moreover, they take a static view of
11 what market share is. The salient point to consider
12 when you're looking at market shares or price levels
13 or anything else is what's happening over time. If
14 you look at the market share of the ALECs for business
15 lines between 1997 and 1998, there was over a 300%
16 increase in their market share. What that tells me is
17 that there are no barriers to entry, or at least these
18 contracts do not represent barriers to entry
19 sufficient to keep these ALECs from growing their
20 business.

21 Moreover, the presence of facilities-based
22 ALECs --

23 CHAIRMAN GARCIA: A 300% increase you would
24 say 19 what?

25 MR. GOGGIN: 1997 to 1998. As Mr. Johnston

1 will note in just a minute --

2 CHAIRMAN GARCIA: Can you give me the
3 concept -- I don't necessarily mean percentage,
4 because 300%, if you had one client two years ago and
5 you have three this year, and you have --

6 MR. GOGGIN: That's correct.

7 CHAIRMAN GARCIA: -- nine the year before
8 that, that's 300%.

9 Unfortunately, if you're starting with this
10 very thin sliver, it makes -- that's meaningless,
11 300%. So what percent of the market is today held by
12 your competitors as opposed to you, or what percent of
13 growth in business lines has occurred in comparison to
14 your diminishment of the percentage of the market that
15 you hold?

16 And I don't want to use residential,
17 because it really does skew it, and I don't -- I'm not
18 trying to skew it. I just want to get a better
19 understanding of where you stand.

20 MR. GOGGIN: According to the Commission's
21 figures, the number of business access lines in terms
22 of share as of year-end 1998 was roughly 95% for
23 BellSouth and 5% for its competitors in the business
24 market.

25 Now, it doesn't sound like a great deal,

1 but when you consider that a year earlier that
2 estimate was somewhere like 1.7% versus 98.3%, that's
3 an astounding increase.

4 When you look at the markets in which
5 facilities-based ALEC competitors were operating,
6 virtually every exchange in BellSouth's territory that
7 had a significant concentration of businesses to whom
8 services could be offered was served. Many of these
9 exchanges were served as early as 1996. Virtually all
10 of them were served by 1997. And the numbers of ALECs
11 serving these exchanges multiplied greatly between
12 1997 and 1998.

13 CHAIRMAN GARCIA: That numbers are
14 particularly worse in large business centers; right?
15 I mean, for example, in Miami-Dade or in the Orlando
16 area, Jacksonville.

17 MR. GOGGIN: In Jacksonville, in Melbourne
18 and Daytona and Orlando, all over our territory.

19 CHAIRMAN GARCIA: I'm sorry for
20 interrupting. Go ahead.

21 MR. GOGGIN: That's okay.

22 In short, no rule proponent has submitted
23 any evidence to demonstrate that customers had only
24 one choice, or even only one choice of a switch-based
25 provider, at the time that the contracts that would be

1 subject to this rule were entered into. There have
2 been assertions that there was no competition, but
3 there's no factual evidence to support it.

4 On the question of whether these contracts
5 are barriers to entry, the evidence is even weaker.
6 When you consider the growth in ALEC business lines,
7 it's pretty clear that these contracts do not
8 represent barriers to entry. When you consider the
9 makeup of the contracts that would be subject to this
10 rule, it's pretty clear that it's not a barrier to
11 entry. The majority of these contracts, the bulk of
12 them were entered into after January 1, 1997.

13 As Mr. Johnston will note in a minute, if
14 the rule were to go into effect, say, July 1st, based
15 on contracts that BellSouth has now, roughly half of
16 them would have expired by the end of year 2000. It
17 hardly seems that these people are captive to
18 BellSouth in a manner that prevents ALECs from
19 marketing services to them.

20 Moreover, BellSouth has a number of
21 customers who purchase additional services from other
22 carriers. And although much has been made about the
23 inadequacies of resale as a form of competition, it
24 does permit ALECs to establish a relationship with the
25 customer, to provide customer service to the customer,

1 to increase their brand presence, and to identify
2 during the remaining term of the resold contract what
3 those customers' needs are and how the ALEC can best
4 serve those needs. So it's far from an ineffective
5 form of competition.

6 The most telling remark made in the
7 comments about the inadequacies of resale were in
8 KMC's comments, where they said that one of the
9 reasons why resale was inadequate is because BellSouth
10 would still get revenues. That's really what the
11 ALECs are going for here. They're not looking for an
12 opportunity. They're looking for a handout. There's
13 a difference.

14 MS. BROWN: Mr. Chairman, the time is
15 passing.

16 CHAIRMAN GARCIA: I understand, but I took
17 a significant portion of that time with my probably
18 irrelevant questions. Go right ahead.

19 MR. GOGGIN: I will quickly finish.

20 ALECs also, at least a couple of them, KMC
21 and AT&T in particular, have indicated that they do
22 not view long-term agreements as barriers per se.
23 Time Warner said that they offer long-term contracts
24 subject to termination liability and have been doing
25 so since 1997.

1 It's unclear to us why a contract signed by
2 BellSouth in 1998 for, say, a three-year term subject
3 to termination liability is a barrier to entry, when a
4 contract signed by Time Warner, or KMC, or any of the
5 other competitors who have been in this market, for a
6 three-year term subject to termination liability does
7 not represent a barrier to entry. No one has been
8 able to explain why that is so.

9 The unspoken premise is that it's a barrier
10 to entry because that person, the BellSouth customer,
11 signed the contract at a time when there was no
12 competition. As we stated before, there's no evidence
13 to support that.

14 CHAIRMAN GARCIA: Let me ask you just sort
15 of a hypothetical. If this rule applied to everyone,
16 how would you feel about that rule?

17 MR. GOGGIN: Well, we would certainly -- we
18 would be no more in favor of it than we are now. We
19 believe that the rule does have serious constitutional
20 issues attached. We believe there are serious
21 questions about whether the Commission has the
22 statutory authority to enter into it.

23 Moreover, we think that the Legislature's
24 intent in deregulating telecommunications was to
25 establish a market for telecommunications service

1 where market forces would determine, for example, how
2 long a term a contract should be offered and what
3 terms in terms of termination liability should be
4 offered.

5 You see in the wireless market that
6 termination liability is not offered -- is not part of
7 many carriers' offerings. The same sort of
8 competitive alternatives will and have been occurring
9 in this market.

10 The reason why we would oppose a rule that
11 applied to everybody is that it would shake the
12 confidence of carriers and customers that their
13 expectations when they strike a deal, that -- for
14 example, that Time Warner can rely on the revenues
15 that it has contracted for, or that BellSouth can rely
16 on the revenues that it has contracted for. It would
17 end up in a situation where contracts basically do not
18 have much meaning anymore.

19 On the other hand, if a rule were to be
20 passed and were to be found valid as a valid exercise
21 of statutory authority and not violate -- didn't
22 violate the Constitution in any manner, we would
23 certainly favor a rule that applied equally to
24 everybody. We think that it's disingenuous for the
25 ALECs to say that they want a rule that is carrier

1 neutral, when in fact the rule would only apply to
2 ILECs.

3 CHAIRMAN GARCIA: Okay.

4 MR. GOGGIN: I'm sorry. I would like to
5 turn it over at this time to Mr. Johnston.

6 CHAIRMAN GARCIA: Mr. Johnston, you have
7 five minutes.

8 MR. JOHNSTON: Thank you, Commissioner.

9 I just would like to reiterate that
10 competition in this market segment -- and you hit it
11 on the head, Commissioner, it is large businesses.
12 Not 6 million access lines in BellSouth's case. It's
13 about 1.2 million that are BellSouth access lines in
14 the segment of medium and large size businesses.

15 Competition in that market segment has been
16 around for a very long time in a lot of different
17 forms, mainly in the form of substitutes, as Michael
18 said. You've had competition since the 1970s for
19 Centrex and ESSX, private line since the '80s. And
20 the Commission has recognized this in several orders,
21 for example, in the initial access charge order that
22 it issued in Docket 820537-TP, Order No. 12765. And I
23 quote from that order, "We believe that the ability to
24 contract or use bulk rate discounts with customers
25 will allow the LECs greater flexibility in dealing

1 with market situations and should be permitted in
2 order for LECs to remain viable in a competitive
3 environment."

4 Subsequent orders issued in there have
5 been passed out and are part of the record, but
6 basically they enhanced our position to compete
7 through the use of contract service arrangements.

8 As competition continued to evolve, we have
9 come to the point where today you have a proceeding
10 where the market is most competitive in the large
11 business segment. You found that in your 271
12 proceeding order, and that was Order No. 960786-TL --
13 or Docket No., I'm sorry, 960786-TL, Order No.
14 PSC-97-1459-FOF-TL. I'm quoting, "Based on the
15 evidence in this proceeding, we find that there are
16 ALECs operating in Florida. These ALECs are providing
17 a commercial alternative to local exchange business
18 subscribers, thereby satisfying the phrase 'competing
19 provider' contained in the Act and recently defined by
20 the FCC in the Ameritech order."

21 The type of contracts that are involved
22 here we have entered into in good faith with our
23 customers. Certainly in the last four years, maybe
24 even longer, the marketing efforts of the ALECs have
25 been pronounced. They may have cut over some of their

1 central offices or started actually providing service
2 to customers in the '97, '98 time frame, but their
3 sales force was out long before that, because they had
4 to assemble the critical mass in order to make the
5 investment to do it. So the customers have been aware
6 of these folks for a very long period of time, at
7 least in the telecommunications world.

8 The exhibits passed out to my testimony
9 show -- lend basically evidence that our contracts all
10 do expire. They are not excessively long. They're
11 averaging around 36 to 37 months in length. So they
12 do expire, as my testimony said, about one-third every
13 year.

14 Therefore, we would like to keep the good
15 faith efforts that we've gone into with our
16 customers. And again, I can't repeat enough, this is
17 large business. The customers are sophisticated.
18 They know what they're doing. These ALECs have had no
19 problem going in there and selling, in addition to our
20 contracts, supplementing services. In some cases the
21 customers have gone ahead and taken it out and paid
22 the penalty and gone with the ALECs. We don't see any
23 issue market wise that they're inhibited in any way.
24 They're all over the place, they're very active, but
25 they're all going after the same large business

1 segment. So this would be a -- I don't think an
2 appropriate use of the rulemaking proceedings.

3 COMMISSIONER JACOBS: Don't you think --
4 I'm sorry. Don't you think that argument cuts both
5 ways? These sophisticated customers would be very
6 capable of understanding what these companies have to
7 offer in making a decision whether or not to --

8 MR. JOHNSTON: Oh, I agree. But they've
9 been in that decision-making mode for the last three
10 years, and so they've been able -- by virtue of the
11 fact that these folks have been out there, they've
12 been able to make decisions. In a lot of cases,
13 they've made the decision for the ALEC. In a lot of
14 other cases, they've made the decision for us. So
15 that decision-making process has been going on quite a
16 bit longer than the ALECs are representing, and that's
17 all I'm trying to convey.

18 COMMISSIONER JACOBS: Okay.

19 MR. JOHNSTON: But basically it's our
20 position that there is no need -- because of the
21 market they're going after, and the sophistication of
22 the customers, and the length of time they've been
23 there, there's no need for the Commission to promote
24 competition further, because it's already there,
25 through this Fresh Look rule.

1 Thank you.

2 MR. DUNBAR: Mr. Chairman, if I could, I
3 think I have one clarifying question for Mr. Goggin
4 and one for Mr. Johnston.

5 CHAIRMAN GARCIA: Go ahead.

6 MR. DUNBAR: Mr. Goggin, the 300%, can we
7 clarify that? Are we talking about the 1998 December
8 PSC report where we go from .5 to 1.8? Is that the
9 300% that you're referring to?

10 MR. GOGGIN: No. We're talking about the
11 December 1998 report where business access lines go
12 from 1.7% to 4.5%.

13 MR. DUNBAR: And for Mr. Johnston,
14 Mr. Johnston, you made reference to an Ameritech
15 order. What is that? Could you be more specific?

16 MR. JOHNSTON: I have not seen the
17 Ameritech order and can't be more specific. The only
18 reason that I was referencing this particular part of
19 the 271 order was because it acknowledged that
20 competition exists in the marketplace here.

21 MR. GOGGIN: If I might help out, I believe
22 this Commission was referring to an order of the
23 Federal Communications Commission reviewing a 271
24 application that had been filed with the FCC by
25 Ameritech. And the Commission's order is in the list

1 of orders here.

2 CHAIRMAN GARCIA: BellSouth's counsel will
3 get that information to us so that we have the right
4 reference.

5 MR. GOGGIN: There's also a jump cite in
6 our comments to the Commission.

7 MR. DUNBAR: Yes. I'm just trying to
8 orient myself as to what -- so the Ameritech order
9 you're citing is on the list you handed out?

10 MR. GOGGIN: No. The Ameritech order was
11 referred to by this Commission in the order that was
12 cited by us. The order that's cited by us is a 271
13 application submitted by BellSouth to this
14 Commission. In this Commission's order, this
15 Commission referred to a definition from an FCC order
16 that involved an Ameritech application. If you read
17 the 271 case, the order of this Commission, you will
18 see that cite in that order.

19 MR. DUNBAR: Okay. And maybe Mr. Johnston
20 could tell me why he cited it, for what point then.
21 I'm just trying to get some clarification.

22 MR. JOHNSTON: Simply to show that it was a
23 finding of this Commission that competition did exist.

24 MR. GOGGIN: He was not citing the
25 Ameritech order. He was citing the order of this

1 Commission, a finding, a factual finding of this
2 Commission.

3 MR. JOHNSTON: Right.

4 MR. DUNBAR: So we don't rely on the
5 Ameritech order for any purpose?

6 MR. GOGGIN: No, we're relying on the order
7 of this Commission.

8 MR. DUNBAR: Thank you.

9 CHAIRMAN GARCIA: That's it? Okay.

10 MR. ROMANO: If I may have a few questions
11 for -- first for Mr. Goggin. You had referenced --

12 CHAIRMAN GARCIA: Can you identify
13 yourself?

14 MR. ROMANO: Oh, certainly. Michael Romano
15 for KMC Telecom.

16 Mr. Goggin, you referred to the 95% and
17 4.5% market share figures from the report. Do those
18 figures include ALEC lines provided through resale?

19 MR. GOGGIN: Yes, they did.

20 MR. ROMANO: And do they also include what
21 I think you called access line substitutes, such as --
22 well, do they include the access line substitutes as
23 well?

24 MR. GOGGIN: I don't believe they do, no.
25 They refer to access lines of ALECs compared against

1 access lines of ILECs. And PBX vendors, for example,
2 would not be necessarily considered an ALEC.

3 MR. ROMANO: Okay. And then I think,
4 Mr. Johnston, you may have referred to some discussion
5 of -- or, actually, this may have been Mr. Goggin
6 talking about alternative carriers and whether the
7 rule may apply to alternative carriers as well. I
8 think there was some discussion of that.

9 MR. GOGGIN: Uh-huh.

10 MR. ROMANO: Isn't it true that by
11 definition, an alternative carrier would always
12 provide service or contract for service where a
13 customer has at least two service alternatives?

14 MR. GOGGIN: I'm sorry. I'm not following
15 that.

16 MR. ROMANO: I mean, if you're an
17 alternative carrier, isn't that by definition, by
18 being alternative, the customer has at least two
19 service options when choosing an alternative carrier
20 or BellSouth? By definition, alternative carrier
21 would always be in a market where there is an
22 alternative and an incumbent; correct?

23 MR. GOGGIN: It depends on how you define
24 carrier. I mean, if you -- I think that the proper
25 way to look at it is, is there a provider of some

1 product or service that represents a substitute to the
2 switched service that BellSouth offers. With that
3 definition, yes, if there's somebody that offers a
4 service or product that would be a substitute for what
5 we're offering, we would say yes, that customer had at
6 least one competitive choice.

7 It's not our position that customers had
8 only two choices, although certainly that would not
9 necessarily preclude a finding that there were
10 competitive alternatives if only one alternative
11 existed.

12 I also -- if I may, I think I misspoke
13 earlier. The 300% increase in market share statistics
14 are actually based on 1998 -- I'm sorry, 1997 figures
15 in the business market of 1.4% and 1998 figures of
16 4.3%. I think I said 1.7 and 4.5.

17 MR. ROMANO: And Mr. Johnston, I think you
18 had spoken about customers being aware of competitive
19 service alternatives.

20 MR. JOHNSTON: Yes.

21 MR. ROMANO: Under your understanding of
22 competition, is awareness sufficient competition?

23 MR. JOHNSTON: It gets the ball rolling in
24 terms of our having to respond competitively, because
25 the minute the customer is aware of competitive

1 alternatives, the negotiation process is quite
2 different from when a customer does not perceive that
3 he has any alternatives.

4 Now, in Florida, as we've mentioned,
5 customers have perceived alternatives for a long
6 time. What I was trying to say in that particular
7 statement was that the marketing efforts for the ALECs
8 started long before the physical plant efforts in some
9 cases, and therefore, customers were receiving
10 proposals prior to the fact that the plant may have
11 been deployed. Although I would never infer that they
12 didn't have approval to do that from this Commission,
13 a lot of times they did sell before the plant was
14 deployed to the customer.

15 MR. ROMANO: So a customer that happens to
16 see an advertisement in one paper, but the
17 advertisement doesn't actually pertain to service
18 being provided in his or her area, or if the customer
19 reads about the State of Florida having enacted a law
20 to open the market to competition, in your mind,
21 that's -- in your opinion, is that sufficient?

22 MR. JOHNSTON: Well, that's not what we're
23 facing. What we're facing is a situation where actual
24 competitive proposals are given to customers, where
25 competitive salesmen visit customers. They tell them

1 that the law has passed, possibly. They tell them in
2 fact that this docket is going on. And we've had that
3 situation out in the marketplace.

4 The marketplace for large business is very,
5 very active. Sales forces for all these ALECs are out
6 there. They are very busy. They are seeing customers
7 all over the place.

8 I don't think this is particularly
9 exclusive to BellSouth. I think that's happening
10 pretty much all over the state, particularly in the
11 urban areas, and particularly for large businesses.

12 MR. ROMANO: Okay. One final question.
13 You had referred to the sophistication of customers.

14 MR. JOHNSTON: Yes.

15 MR. ROMANO: Would you agree that a
16 sophisticated customer that has no choice for service
17 but BellSouth would sign a long-term contract rather
18 than taking month-to-month service because of the
19 lower rates?

20 MR. JOHNSTON: I've hardly ever seen a
21 customer that had absolutely no choice, except in
22 certain situations where dial tone was concerned and
23 contracts for that type of dial tone -- and I'm saying
24 individual flat business lines and PBX trunks are not
25 tarified. They're not tarified contracts at all. So

1 you don't have a situation where contracts were
2 offered if you had absolutely no competition. You may
3 have had substitutes for the service, and that was
4 when we started developing tariffed contract
5 alternatives.

6 MR. ROMANO: Thank you.

7 CHAIRMAN GARCIA: Any other questions?

8 MS. BROWN: Staff has just a couple, one
9 for Mr. Goggin and a couple for Mr. Johnston.

10 Mr. Goggin, you said that Bell's position
11 is that the Commission doesn't have any statutory
12 authority to issue these rules. Are you considering
13 the Florida Statutes or the federal statutes when you
14 say that?

15 MR. GOGGIN: We base that on our reading of
16 the Florida Statutes.

17 MS. BROWN: All right.

18 MR. GOGGIN: In particular, 364.051, which
19 exempted carriers that are subject to price regulation
20 from a number of requirements that would otherwise
21 apply to them. We recognize that there are statutory
22 provisions that give the Commission the right to
23 review our contracts, but we don't think that the
24 statutory authority to modify contracts that have been
25 previously approved, at least in principal, and have

1 been entered into, that the statutory authority exists
2 to authorize the abrogation of those agreements after
3 the parties have begun to perform based on the
4 promises they have exchanged.

5 MS. BROWN: Right. Thanks.

6 Mr. Johnston, how long-- what would you
7 consider to be a long-term contract?

8 MR. JOHNSTON: A long-term contract in my
9 opinion would be anything over 18 months, 24 months.
10 Most of our contracts don't start until -- they start
11 with a 24-month premise and then go longer than that.
12 We have a very, very few cases where we've done
13 shorter than that, but it's not the norm.

14 MS. BROWN: Over 18 months?

15 MR. JOHNSTON: Yes, ma'am.

16 MS. BROWN: That opinion is somewhat
17 different than has been expressed here earlier. The
18 consensus really is anything over a year so far. How
19 do you explain the difference?

20 MR. JOHNSTON: If it's under a year, we
21 don't go into contract on it at all. So, I mean, it's
22 just a matter of semantics. What we would define as a
23 term of contract might be different from someone
24 else's.

25 MS. BROWN: Well, I understand that. We're

1 trying to get a handle on what contracts we should
2 focus on in this rule, and that's why I asked you the
3 question.

4 MR. JOHNSTON: Sure.

5 MS. BROWN: In your response to the Staff's
6 data request, the April 29th response -- do you have
7 that with you? We can bring you --

8 MR. JOHNSTON: Yes.

9 MS. BROWN: You do?

10 MR. JOHNSTON: Yes.

11 MS. BROWN: Okay. And for the
12 Commissioners' convenience, it's in Volume 2 of the
13 composite exhibit. It's the BellSouth Tab 1 near the
14 end.

15 Items 3 and 4 we're interested in here.
16 They are matrices that show BellSouth's outstanding
17 contracts.

18 Would you agree with me that based on the
19 information contained in those matrices -- am I going
20 too fast? I can wait a minute.

21 MR. JOHNSTON: I'm there now. Thank you.

22 MS. BROWN: Okay. Would you agree that
23 those matrices seem to show that there has been a
24 dramatic increase in both CSAs and tariffed term plans
25 since 1997?

1 MR. JOHNSTON: Yes, I would agree to that.

2 MS. BROWN: Okay. Why is that?

3 MR. JOHNSTON: The way our CSA tariffs are
4 written and the way the orders have come to us from
5 the Commission on CSAs, you can only have CSAs in a
6 competitive situation. So, yes, we have identified a
7 large, much larger number of competitive situations in
8 the last couple of years than we did before, and I
9 think that lays down with everything that has been
10 heard here. Tariffed contracts are also a response to
11 competitive situations. Sometimes you don't need a
12 special CSA in order to provide a viable alternative
13 to the customer and win the business, so that would
14 also be the case with the tariffed contracts.

15 MS. BROWN: Okay. Now, I just want to ask
16 you a couple of questions about some matters that
17 Ms. Green brought up. I realize Mr. Goggin didn't
18 want to address too much, but the first part of what
19 Ms. Green said concerned the definition of what would
20 be an eligible contract pursuant to the rule. It
21 seems to me that's fairly relevant for purposes of our
22 discussion here.

23 I would like you to respond to some of the
24 things Ms. Green said. She was taking about the MSAs,
25 the master service agreements, and she was also

1 talking about the tariffed A2.12 comprehensive
2 discount plans.

3 Can you respond to what she said? Her
4 premise was that they should be included in our
5 definition of what would be an eligible contract.

6 MR. JOHNSTON: Okay. I'll start with
7 MSAs. MSA stands for master service agreement, and
8 what it is is a -- the document itself simply allows
9 the customer to place orders for a variety of services
10 with us that are under contract with us without
11 signing another document. It's simply a vehicle by
12 which the customer is able to order without signing
13 our particular document. He can order via E-mail, he
14 can order via fax, he can order any way that's
15 convenient for him. But what that MSA covers is a CSA
16 for a variety of services. So it would be basically a
17 multi-service CSA, which we call a volume and term
18 agreement. It could be more than one state in origin,
19 but the agreements are set up state by state to
20 conform to various and sundry state statutes and
21 Commission rules.

22 MS. BROWN: So any CSA that the MSA covers
23 would be eligible under the terms of this rule; is
24 that correct?

25 MR. JOHNSTON: We've identified all the

1 MSA-covered CSAs and included them in the data that we
2 provided to you, to the extent that they're defined in
3 this rule, yes.

4 MS. BROWN: Okay. What about the A2-2
5 comprehensive discount plans?

6 MR. JOHNSTON: It would be nice to have
7 the tariff in front of me so that I make sure that I'm
8 reading, but basically what A2.12 gives you are
9 different types of payment arrangements and credit
10 allowances, including tariffed contract term plans and
11 what the penalties are if you disconnect, and a lot of
12 the generic language on what that is. So to the
13 extent that those tariffed payment plans are involved
14 in that language, they are also in the data that was
15 provided to you.

16 MS. BROWN: Okay. All right. Are there
17 any other similar contracts that you have not included
18 that you can think of that might be subject to a
19 definition of eligible contracts for purposes of this
20 rule?

21 MR. JOHNSTON: Based often our reading of
22 the rule, we saw that it covered ESSX, Centrex,
23 MultiServ, basic and primary rate ISDN.

24 MS. BROWN: Okay.

25 MR. JOHNSTON: That's how we define it.

1 primary rate ISDN. That's how we define it.

2 MS. BROWN: Thank you very much.

3 MR. JOHNSTON: You're welcome.

4 CHAIRMAN GARCIA: Okay. That does it.

5 MS. BROWN: We have GTE and Sprint.

6 CHAIRMAN GARCIA: Okay.

7 MS. CASWELL: I have about five minutes,
8 and then I'll turn it over to Mr. Dave Robinson.

9 Today the Commission has heard testimony
10 mostly about policy, telling you why you should or
11 shouldn't adopt a Fresh Look rule, but the Commission
12 should keep in mind that the proposed rule raises
13 legal questions as well. And it's the answers to
14 these questions that will tell you whether you can or
15 can't adopt a Fresh Look rule.

16 GTE will address the legal issues in detail
17 in its post-hearing comments, but I think it's
18 worthwhile to point out two of the biggest concerns at
19 the outset to avoid losing sight of the critical
20 importance of the legal concerns in this docket.

21 First, the U.S. Constitution provides that
22 no state shall pass any law impairing the obligation
23 of contracts. As the Florida Supreme Court has
24 pointed out in a case involving this agency, a state
25 regulatory agency cannot modify or abrogate private

1 contracts unless such action is necessary to, quote,
2 protect the public interest. To modify private
3 contracts in the absence of such, quote, public
4 necessity constitutes a violation of the impairment of
5 contracts clause of the United States Constitution.

6 The Fresh Look rule can't meet this high
7 standard. There is no public interest that needs
8 protecting in this case. Fresh Look would apply to
9 valid and lawful contracts. These contracts were
10 executed by large businesses to secure advantageous
11 rates or conditions not available to smaller
12 customers. There has been no finding that the
13 termination provisions in these contracts are
14 unconscionable or excessive. There is no public
15 interest harm in allowing these contracts to finish
16 out, and no public necessity to modify them. Doing
17 so, we submit, will violate the contracts clause.

18 But before we even reach the constitutional
19 questions, there's a state-specific question of
20 whether you have the statutory authority to adopt a
21 Fresh Look rule. As you know, your authority comes
22 from the Legislature. The courts have held that if
23 there's a reasonable doubt as to the existence of a
24 particular power being exercised, the exercise of that
25 power should be arrested.

1 There's more than a reasonable doubt here.
2 Nothing in Chapter 364 gives the Commission the
3 authority to abrogate contracts. In fact, any
4 Commission finding that the contracts at issue are
5 contrary to the public interest would directly
6 conflict with the Legislature's own actions.

7 In 1995, as you know, Chapter 364 was
8 revised to allow full local competition. But the
9 Legislature did not take this step without first
10 giving the LECs the flexibility to meet the increased
11 competition. It specifically directed that nothing
12 shall prevent the ILEC from meeting competitive
13 offerings by deaveraging non-basic service prices,
14 packaging basic and non-basic services together, using
15 volume and term discounts, and offering individual
16 contracts.

17 This specific approval of volume and term
18 discounts and contract authority did not appear in the
19 previous version of the statute. It was instead part
20 of a new and carefully considered scheme in which the
21 ILECs would give up their exclusive franchises, but
22 not without gaining in return greater flexibility to
23 meet competitive challenges. The Legislature did not
24 place any constraints on the contract or discount
25 authority of the LECs. It did not prohibit long-term

1 contracts. It did not say contracts could not be used
2 until there was a certain level of competition in a
3 particular area.

4 The Legislature could have done these
5 things. In fact, it knew precisely how to condition
6 competitive flexibility on the level of competition in
7 a market.

8 Before Chapter 364 was changed in 1995, it
9 contained language that LECs could be granted pricing
10 flexibility where the Commission determined a
11 particular service was, quote, effectively
12 competitive. And that was the old Section 364.338.

13 In making this determination, the
14 Commission was told to evaluate, among other things,
15 the ability of consumers to obtain equivalent services
16 and the ability of competitors to make equivalent
17 services available at competitive rates, terms, and
18 conditions.

19 All of this language was eliminated in
20 1995. The CLECs, however, act as if it's still
21 there. They argue that the local exchange market is
22 not now and was not, quote, effectively competitive,
23 whatever that means, when the ILECs executed contracts
24 with big customers. They want the Commission to do
25 exactly the kind of analysis it was charged with under

1 the old statute. But that's not what the Legislature
2 intended. It removed that language. It explicitly
3 confirmed that the ILECs had contract authority and
4 declined to attach any conditions to this authority.
5 Tying contract or term plan authority to the existence
6 of a certain level of competition in the local
7 exchange market would directly contravene the
8 statutory scheme.

9 A number of other commissions have rejected
10 fresh look rules for legal or policy reasons, or both.
11 As the North Carolina Commission observed when it
12 dismissed a fresh look petition for lack of
13 jurisdiction, "Congress, the FCC, and the State
14 Legislature have each had the opportunity to impose
15 fresh look requirements in the context of implementing
16 local competition, but none have elected to do so."

17 Likewise, GTE urges you to vote against the
18 Fresh Look rule here.

19 We have about a five-minute presentation by
20 Mr. Robinson at this point focusing on policy issues.

21 Thank you.

22 MR. ROBINSON: Good morning. I'm Dave
23 Robinson, GTE Service Corporation. I'm the Manager of
24 Regulatory Planning and Policy, and I'm located in
25 Irving, Texas.

1 GTE believes that there's no need for a
2 Fresh Look rule in Florida. Fresh Look will benefit
3 the very same group of consumers that has had the most
4 competitive options for quite some time, large
5 business customers mostly in metropolitan areas.

6 These sophisticated customers are well able
7 to protect their own financial interests. They would
8 have reasonably been aware that local competition was
9 expanding in 1995 when the Florida Legislature opened
10 the local exchange, and certainly in 1996 when the
11 federal act was adopted. They were able to factor
12 into their contract negotiations potential competitive
13 changes, just as they factored in a host of other
14 things, including possible technological change. This
15 Commission has no responsibility to assure that these
16 large customers get the best possible deal.

17 As I said in my testimony, and as the Staff
18 agrees, the issue here is not how many competitive
19 alternatives were available to customers at some
20 point, but rather, whether these customers knew those
21 alternatives were on the horizon.

22 Even so, the Commission should not accept
23 the ALECs' premise that these customers have not had
24 and still do not have a choice of providers. There
25 are over 270 certified -- certificated carriers in

1 Florida. GTE has signed 110 interconnection
2 agreements with the ALECs. ALECs have made
3 significant inroads in the business market. In some
4 exchanges, they have up to 14% of the business access
5 lines. ALECs are making much greater inroads into the
6 local market than the IXC's made in the toll market
7 after divestiture. Nationally, they are adding more
8 business lines than the ILECs.

9 There is no reason to think this trend
10 will be particularly pronounced -- will not be
11 particularly pronounced in Florida, where business
12 markets are rapidly expanding. Indeed, as the
13 BellSouth witness explained to us, the CLECs have
14 tripled their access line gains in just one year from
15 '97 to '98.

16 The CLECs, many of which are affiliated
17 with huge, well-financed corporations, have made these
18 substantial strides in the absence of Fresh Look.
19 They will continue to do so without it, especially
20 since they can already resell the ILECs' contracts.

21 If, despite all these facts, the Commission
22 believes that a Fresh Look rule is still necessary, it
23 must reasonably be tailored for that purpose. Staff's
24 proposed rule, and certainly the CLECs' suggested
25 revisions, go far beyond anything that has been

1 adopted anywhere. In this regard, it is worth noting
2 that fresh look has not been popular among the states.
3 Many states have rejected completely on legal or
4 policy grounds those proposals.

5 Careful examination of the CLECs' pleadings
6 here reveal only two states that have adopted any
7 fresh look rules in the local exchange market, and
8 even then, they were much more limited than anything
9 proposed here. Indeed, in all of the rules of which
10 I'm aware in both the state and the federal
11 jurisdictions, the Fresh Look windows are much
12 shorter, measured in terms of days and not years, and
13 termination liability is based on repricing the
14 contract to the shorter term the customer actually
15 took.

16 If the Commission feels compelled to adopt
17 any Fresh Look rule, then there are three aspects that
18 need to be revised.

19 First, the contract eligibility cutoff date
20 should be no later than February of 1996, when the
21 Telecommunications Act was passed. By then, large
22 business customers certainly would have known of the
23 advent of competition, if not the competitive
24 alternatives themselves. Indeed, CLECs started to be
25 certified or certificated here in Florida as early as

1 1995, even before the January 1996 opening of the
2 local exchange.

3 Since then, the number of CLECs has grown,
4 as I've mentioned, to 270. These 270 firms are either
5 operating or preparing business plans to begin
6 operations.

7 Given the existence of these competitors,
8 along with the flood of information for years about
9 competitive changes in the industry, the year 2000 is
10 plainly unreasonable as a cutoff date for eligibility
11 of contracts for Fresh Look.

12 The second change that needs to be made in
13 the Fresh Look window is the Fresh Look window. Staff
14 has proposed two years. This is longer than any Fresh
15 Look window I've ever seen in any context. Usually
16 the assumption, and I think it's a correct one, is
17 that competitors will capture customers in the first
18 few months, if at all.

19 Even if one were to assume, albeit
20 incorrectly, that big customers could not have known
21 about competitive alternatives until 2000, they do not
22 need a period as long as two years to educate
23 themselves and to initiate the contract termination
24 process if they wish to do so. Four to six months
25 should be the outside for any Fresh Look window. Six

1 months is the longest I've ever seen.

2 The third necessary revision to the Staff's
3 rule is that the ILECs must have the right to reprice
4 contracts to recognize that the customer exercising
5 Fresh Look is taking a term length shorter than that
6 for which they had originally contracted. That is,
7 the customer would pay the difference in rates between
8 the term he actually took and the longer term he
9 originally agreed to. This is the measure of
10 termination liability that the FCC has used in its
11 limited Fresh Look rules and the measures I've seen
12 everywhere states have implemented Fresh Look for any
13 purpose.

14 Contract repricing puts the ILEC back in
15 the position it would have held if the customer had
16 originally taken a shorter term contract. It
17 recognizes that a shorter contract will usually be
18 priced higher than a longer one and that the customer
19 has already received benefits under the contract up
20 until the point he decides to terminate it.

21 Contract repricing will, moreover, be
22 easier, less costly, and less contentious to
23 administer than the NRC recovery scheme the Staff
24 proposes. For example, the question of identifying
25 and recovering certain non-recurring costs, which

1 obviously would differ for each contract and customer,
2 would not be an issue under this method.

3 In summary, GTE urges the Commission not to
4 adopt any Fresh Look rule, and if it does adopt a
5 rule, it should be modified as I've proposed.

6 Thank you.

7 CHAIRMAN GARCIA: Questions?

8 MR. DUNBAR: Mr. Chairman, I have three
9 brief ones for Ms. Caswell.

10 CHAIRMAN GARCIA: You're not on.

11 MR. DUNBAR: Thank you.

12 Ms. Caswell, let me see if I can clarify a
13 couple of points that you raised. In addressing the
14 contract clause issue and your statement on public
15 interest, is it GTE's position that there is no
16 statement in Chapter 364 concerning whether or not
17 competition is in the public interest? Is it GTE's
18 position that that is not in the statute?

19 MS. CASWELL: No, it's not.

20 MR. DUNBAR: So we do agree that it is a
21 clear statement of public policy in Florida that
22 competition is in the public interest?

23 MS. CASWELL: Yes, but I think my point is
24 that there's no public interest to be protected here,
25 and there's no public necessity for such a rule.

1 Going back to Mr. Goggin's remarks, there
2 have been no facts here adduced that tell us that
3 there has been no competition and that there's no
4 competition now. In fact, an AT&T witness testified
5 recently in Ohio, and before that in Illinois, that
6 competition was a meaningful choice between two
7 providers. That's competition from the customer's
8 perspective. So if that's the case, there has been
9 competition for quite some time, and it's here now.
10 Thus, there's no need for a Fresh Look rule. There's
11 no public necessity. There's no public interest to be
12 protected, particularly when these consumers can well
13 protect their own interests. They knew competition
14 was coming, if not already there, when they executed
15 these contracts.

16 MR. DUNBAR: So GTE's position would be
17 that we knew all the rules of competition well before
18 the United States Supreme Court ruled in January of
19 this year where the jurisdictional lines lay? I mean,
20 we were all able to intelligently guess at that time?
21 Is that GTE's position?

22 MS. CASWELL: I'm not sure I understand
23 your question or how it relates to anything I've said.

24 MR. DUNBAR: Well, you talked extensively
25 about the composition of competition, how it works,

1 what it should be, what people should know. And my
2 observation is that all of us have just recently
3 received the benefit of the U.S. Supreme Court's
4 decision in January of this year as to where the
5 jurisdictional lines fall and how they will be
6 implemented. But GTE does not agree with that?

7 MS. CASWELL: No, because even before that
8 decision, you had interconnection contracts executed.
9 You had those after the Telecoms Act of 1996, and you
10 had them even before, because there were state
11 statutes, interconnection statutes when the
12 Legislature made the revisions in 1995. So to say
13 you're just getting the benefits of competition now
14 because of that January decision would not be correct.
15 And in fact, the FCC hasn't even come up with rules in
16 response to that decision.

17 So, I mean, if you're tying somehow
18 competition and level of competition to that January
19 decision, I completely disagree.

20 MR. DUNBAR: Oh, I'm not asking you to
21 agree or disagree.

22 MS. CASWELL: Okay.

23 MR. DUNBAR: I just wanted to see if you
24 acknowledge that order.

25 And finally, I wonder if you and I could

1 both agree -- you went through a number of things that
2 are not contained in Florida's telecommunications act.
3 But could you and I both agree that 364.19 provides
4 that the Commission may regulate by reasonable rules
5 the terms of telecommunications service contracts
6 between the telecommunications companies and its
7 patrons?

8 MS. CASWELL: Absolutely. But we don't
9 interpret that to mean the Commission can cancel the
10 contracts or even that it can modify an existing
11 contract. And I think the interpretation that you're
12 advancing has never been set forth either by this
13 Commission or any court.

14 MR. DUNBAR: Thank you, Mr. Chairman.

15 CHAIRMAN GARCIA: Okay.

16 COMMISSIONER JOHNSON: Ms. Caswell, you
17 stated in your opening remarks that the FCC, Congress,
18 and at least the State of North Carolina --

19 MS. CASWELL: As well as this state have
20 never --

21 COMMISSIONER JOHNSON: North Carolina
22 affirmatively, their Commission affirmatively rejected
23 the notion of Fresh Look?

24 MS. CASWELL: Yes, they did, because they
25 decided that the state statute didn't give them the

1 jurisdiction to do it, and they pointed to things
2 similar to what I'm pointing to now. They said their
3 Commission doesn't even approve these contracts. We
4 don't approve them either. And their statute gave the
5 companies the authority to do contracts, just as our
6 statute gives us the authority to do those contracts.
7 So that order was very similar to -- well, that
8 situation there was very similar to the situation
9 here.

10 Other states when they've rejected it have
11 looked at both constitutional and statutory concerns.
12 North Carolina happened to dismiss it under the
13 statute before even having to get into constitutional
14 stuff. I think that was the case.

15 COMMISSIONER JOHNSON: Have any states
16 adopted a similar rule?

17 MS. CASWELL: I think that Ohio -- well,
18 the CLECs have cited some of the states, but I think
19 there are only two. Ohio is one of them. I think the
20 rule was adopted probably in 1997 or thereabouts.

21 But we've got to realize that when we look
22 at any of these rules, all of them are more reasonable
23 than anything that has been proposed here. Ohio, for
24 instance, I think is a 180-day Fresh Look window, and
25 it does contain the contract repricing that we've

1 talked about. Everything, every rule I've seen at the
2 federal and state level have included sorter windows,
3 windows measured in terms of days, not years. And
4 that's true of the FCC expanded interconnect order
5 that Ms. Marek mentioned before. That was a 180-day
6 window, it was for contracts three years or longer,
7 and it included contract repricing.

8 The only other state I think they've
9 mentioned is New Hampshire. I was not able to find
10 the New Hampshire order. I can't speak to the rules,
11 but I suspect from the way that their comments were
12 worded that they're nowhere near as extensive as
13 anything that's proposed here.

14 So again, we've got windows -- that's in
15 the local exchange context. Those are the only two
16 that have been cited. Those are the only two I'm
17 aware of. You have had other contexts like the
18 expanded interconnection. In some states like -- you
19 know, they've cited settlement agreements where, you
20 know, companies agree to like a 120-day window or
21 something in an intraLATA market. As far as local
22 exchange, they're not popular.

23 And even when they have been imposed in
24 other contexts, there are no Fresh Look windows I've
25 seen that approach two years. They're six months,

1 they're three months, they're four months. They're
2 long contracts, and they always include repricing so
3 that the LEC gets compensation appropriate to the term
4 that the customer actually took.

5 You know, that's only fair, and that has
6 been recognized by the FCC and other commissions, that
7 if you do anything else, you're going to have a
8 taking, and you're going to have unfairness to the
9 LEC. I mean, the point of the rule shouldn't be that
10 it's punitive. It should put the LEC back in the
11 position it would have been in if the customer had
12 originally taken the shorter contract.

13 COMMISSIONER JOHNSON: And when the FCC
14 looked at the issue, it was in the context of the
15 expanded interconnection.

16 MS. CASWELL: Expanded interconnection for
17 special access. I think that was back in 1992. And
18 then you had -- and I think Ms. Marek mentioned this
19 as well. You had a state proceeding, intrastate
20 expanded interconnect proceeding. And since the FCC
21 had adopted a Fresh Look there, most states followed
22 suit, and they did their own Fresh Look rules. I
23 think did you the same thing, but again, I think you
24 followed the FCC's guidelines there for the Fresh Look
25 window for repricing. I would have to go back and

1 look at that, but my understanding is that most states
2 did it because the FCC did it, and you couldn't very
3 well have different rules in the two states.

4 Oh, I have the New Hampshire rule. It's a
5 180-day Fresh Look opportunity, so that's consistent
6 with all of the other instances I've cited and the one
7 other Fresh Look rule that I know of in the local
8 exchange context.

9 COMMISSIONER JOHNSON: Do you know if they
10 were challenged at all on the constitutional grounds
11 or the status of those rules?

12 MS. CASWELL: In Ohio or New Hampshire?

13 COMMISSIONER JOHNSON: Uh-huh.

14 MS. CASWELL: I do not know that. I would
15 have to find it out.

16 COMMISSIONER JOHNSON: Well, actually,
17 when did those rules go into effect? Maybe we --

18 MS. CASWELL: New Hampshire was ordered by
19 the PSC on December 8, 1997. I think Ohio was 1997 as
20 well. I have it here somewhere. I don't want to hold
21 you up. I can --

22 COMMISSIONER JOHNSON: Or maybe you can --

23 MS. CASWELL: -- give it to you later.

24 COMMISSIONER JOHNSON: You can give it to
25 us later.

1 MS. CASWELL: I think it was 1997 as well.
2 There's nothing been --

3 MR. ROBINSON: July 17th.

4 MS. CASWELL: I'm sorry?

5 MR. ROBINSON: July 17th.

6 MS. CASWELL: July 17th, 1997?

7 MR. ROBINSON: Yes.

8 MS. CASWELL: Okay. Thank you.

9 COMMISSIONER JOHNSON: But, Ms. Caswell,
10 you're still saying, though, even if we did the
11 shorter time period and did the repricing stuff that
12 you suggested, that we would still have the
13 constitutional problem?

14 MS. CASWELL: Yes, you very well might. I
15 think the constitutional analysis looks at
16 reasonableness.

17 COMMISSIONER JOHNSON: Okay.

18 MS. CASWELL: And in that regard, you might
19 be a little better protected, but I don't know that
20 you get rid of all the constitutional issues. It
21 would depend on the date, I think, that you proposed.
22 As you know, the Staff proposed a 1997 date initially,
23 and under that scheme, you might be a little better
24 off legally than proposing a 2000 date with no
25 evidence of no competition until that date.

1 COMMISSIONER JOHNSON: Thank you.

2 MR. ROMANO: If I may ask a few questions.
3 Mike Romano for KMC.

4 Ms. Caswell, are you aware of whether the
5 Ohio Commission's 180-day window triggered immediately
6 upon the rule's effective date?

7 MS. CASWELL: No. I think it depended on
8 when -- let's see, an interconnection contract was
9 probably executed, and maybe even if the competitor
10 was taking something out of it. But even if you use
11 that standard, it's going to be most of the big
12 exchanges here, and, you know, it's not going to make
13 much of a difference in practical terms. If we use
14 that in Florida, it would still be, you know, better,
15 because it would recognize that competition has been
16 in at least the larger exchanges for quite some time.

17 MR. ROMANO: Okay. But that -- you're
18 saying then that that would allow the Commission --
19 that sort of a 180-day window which would be measured
20 by an interconnection agreement or a first call
21 terminated, I think may have been the measure.

22 MS. CASWELL: Uh-huh.

23 MR. ROMANO: That would allow you to tell
24 when any facilities-based competitor had started using
25 an interconnection or completed a call, and thereby

1 tell when competition existed in an exchange? Is that
2 what --

3 MS. CASWELL: No, I'm not saying it would
4 tell when competition existed. I'm not sure I would
5 agree with you on that. But I am saying that, you
6 know, the Ohio measure, even if we used it here, I
7 don't know if it would make much practical difference,
8 because you would still have a trigger date that was
9 somewhere, you know, certainly sooner than 2000 in
10 most of the exchanges we're talking about where there
11 are big contracts.

12 MR. ROMANO: I have one question for
13 Mr. Robinson as well.

14 You've referenced I think 250 ALEC
15 certifications and some amount of interconnection
16 agreements that have been signed. Isn't the real
17 measure of competition how many of those agreements
18 are in fact operational and how many of those
19 certificates people are actually providing service
20 under?

21 MR. ROBINSON: Well, I don't believe so. I
22 disagree. I think that just by having certification
23 means that if you have a business plan and you are
24 trying to acquire customers -- just as they pointed
25 out earlier, you might be acquiring customers prior to

1 even having your plant in service or having a customer
2 gained. But the minute you get one, you will probably
3 operate, so, no. And of the 100 interconnection
4 agreements that GTE has entered into, 55 of them are
5 operational.

6 MR. ROMANO: Is that on facilities-based or
7 resale?

8 MR. ROBINSON: Facilities.

9 MR. ROMANO: All 55 of them. Okay. Thank
10 you.

11 CHAIRMAN GARCIA: Ms. Kaufman, any
12 questions?

13 MS. KAUFMAN: Thank you, Mr. Chairman.

14 Mr. Robinson, can you tell us, what is the
15 typical length of one of these contracts that GTE has
16 with a customer?

17 MR. ROBINSON: They vary. We start with
18 one. One year is considered long. Anything over one
19 year is considered long-term, and our average
20 generally is about three.

21 MS. KAUFMAN: So your average contract is
22 about three years?

23 MR. ROBINSON: Yes.

24 MS. KAUFMAN: One of the suggestions that
25 you made is pushing back the date of contract that

1 would come under the Fresh Look rule to February 1,
2 1996; is that right?

3 MR. ROBINSON: Yes.

4 MS. KAUFMAN: So if that's the case,
5 essentially there wouldn't be any GTE contracts that
6 would be eligible under the rule; correct?

7 MR. ROBINSON: Depending on when they make
8 the fresh look available, if it was before or after
9 2000, that's true.

10 MS. KAUFMAN: So I guess my point is that
11 if the Commission adopts your suggestion of moving
12 back the date, that would pretty much take care of any
13 GTE contracts that the rule would apply to, because
14 you said most of them are three years or shorter.

15 MR. ROBINSON: Yes.

16 MS. KAUFMAN: Thank you.

17 CHAIRMAN GARCIA: Okay. Staff?

18 MS. BROWN: Just two questions for
19 Mr. Robinson. Well, maybe three.

20 Do you have your direct testimony with you?

21 MR. ROBINSON: Yes, I do.

22 MS. BROWN: Okay. If you would refer to
23 page 6, lines 12 through 14. And for the -- that's in
24 the first volume of Staff's composite exhibit.

25 You say in there that the number of new

1 CSAs provided annual increases from '94 to '95, but by
2 '97 showed a 77% decrease from '94 levels.

3 MR. ROBINSON: Yes.

4 MS. BROWN: Do you see where you say that?

5 MR. ROBINSON: Yes.

6 MS. BROWN: We're concerned with the
7 consistency of that statement with your responses to
8 our Staff's data request, April 29, 1999. Do you have
9 a copy of that with you?

10 MR. ROBINSON: Yes.

11 MS. BROWN: All right. Items 3 and 4 on
12 there -- for the Commission's convenience, it's Tab 3
13 and page 4 -- are the matrices again showing
14 outstanding contracts. And it appears from them that
15 GTE has experienced a dramatic increase in both CSAs
16 and tariffed term plans since 1997, and what appears
17 to be a large increase in 1999. Do you agree with
18 that?

19 MR. ROBINSON: No. I don't see a large
20 amount of numbers of CSA type contracts starting in
21 1997.

22 MS. BROWN: Okay. All right. Maybe that's
23 where the problem is coming. You're talking primarily
24 CSAs?

25 MR. ROBINSON: Yes. Now, the other page

1 there is the eligible tariffed term plans. And, yes,
2 they are increasing.

3 MS. BROWN: Okay. So in your testimony you
4 were just talking about CSAs.

5 MR. ROBINSON: Yes. Yes, ma'am.

6 MS. BROWN: And in the matrix you're
7 dealing with both.

8 MR. ROBINSON: Yes.

9 MS. BROWN: And it is the tariffed term
10 plans that have increased dramatically since '97?

11 MR. ROBINSON: That's correct.

12 MS. BROWN: Okay. All right.

13 Just a second.

14 You do see on your matrix that it appears
15 there are four contracts, new contracts that you've
16 entered into in 1999 for CSAs?

17 MR. ROBINSON: Yes.

18 MS. BROWN: Which is double the amount from
19 1998.

20 MR. ROBINSON: Yes.

21 MS. BROWN: Okay. Thank you.

22 MR. ROMANO: Mr. Chairman, if I may, can I
23 ask one point of clarification, having looked at the
24 1998 competition report from the Commission?

25 CHAIRMAN GARCIA: One question. Go.

1 MR. ROMANO: Mr. Robinson, I'm looking at
2 the 1998 competition report of this Commission. And I
3 don't know if you've reviewed this at all, but Table
4 3-1 I don't believe indicates that there's any company
5 currently providing service, at least as of the date
6 of this chart, that is in GTE's service territory
7 through a facilities-based method. Could you clarify
8 the discrepancy?

9 MS. CASWELL: Could you tell me what this
10 chart is? Because we haven't had time to look at it.

11 MR. ROMANO: Table 3-1 on pages 29 and 30
12 of the Competition in Telecommunications Markets in
13 Florida, December 1998 report.

14 MR. ROBINSON: Well, I'm not sure of the
15 characterization of the chart, but I know that ICI in
16 Tampa is one of the competitors, and they are
17 facilities-based.

18 MS. CASWELL: Yes, and also I was looking
19 at it, and I see Reconex in Tampa. I see Telephone
20 Company of Central Florida in Tampa. I see United
21 States Telecom in Tampa. I see U.S. Telco in Tampa.

22 MR. ROMANO: But those are all resale, if I
23 -- or most of those are resale, at least. I see
24 those.

25 MS. CASWELL: ICI isn't resale or

1 facilities-based.

2 Does this chart distinguish between
3 facilities-based and resale?

4 MR. ROMANO: The third column, method.

5 MS. CASWELL: Oh, I see. Okay. I got it.

6 MS. BROWN: Excuse me. If I might just
7 interject. If you have questions to ask about an
8 exhibit, could you -- I don't think anyone else has
9 seen copies of what you're asking for, and it's --

10 MR. ROMANO: It's the competition report
11 of the Florida Commission that BellSouth had asked
12 that we take official recognition of.

13 MS. BROWN: Yes, we've taken official
14 recognition of it, but we don't have -- no one has a
15 copy to look at.

16 MR. ROMANO: Okay. I apologize.

17 MR. DUNBAR: (Inaudible.)

18 MS. CASWELL: (Inaudible.)

19 MR. ROMANO: We're just trying to clarify
20 the distinction.

21 MR. DUNBAR: (Inaudible.)

22 MS. BROWN: Well, wait.

23 CHAIRMAN GARCIA: The court reporter can't
24 hear. Tell us exactly what it is that you're looking
25 for. What's the problem?

1 MS. CASWELL: If the clari -- maybe I can
2 cut this short. If the clarification is that there
3 are more resellers than facilities-based carriers, I
4 would say, yes, I agree.

5 MR. ROMANO: No. The clarification is that
6 he had referenced 55 facilities-based carriers
7 providing service in GTE's service territory in
8 Florida. This chart shows maybe two, one or two. And
9 that's the clarification I'm trying to --

10 MS. CASWELL: What I thought he said was 55
11 interconnection agreements, probably interconnection
12 resale agreements.

13 MR. ROMANO: Operative? Operative on a
14 facilities-based?

15 CHAIRMAN GARCIA: One at a time.

16 MR. ROMANO: Operative on a
17 facilities-based basis, there are 55 interconnection
18 agreements in Florida right now for GTE?

19 MR. ROBINSON: They have been certified to
20 be facilities-based, yes, and we have interconnection
21 agreements with them.

22 MS. CASWELL: I think those are
23 interconnection and/or resale agreements. And I think
24 those 55 are operational.

25 MR. ROMANO: But they're interconnection

1 and/or resale. That's --

2 MS. CASWELL: I think so. That's -- yes.

3 MR. ROMANO: I think that just -- thank
4 you.

5 CHAIRMAN GARCIA: The discrepancy has been
6 cleared up.

7 MR. ROMANO: Thank you.

8 CHAIRMAN GARCIA: Thank you.

9 COMMISSIONER CLARK: Let me indicate it
10 hasn't been cleared up for me. Are you saying in
11 Florida there are 55 competitive local exchange
12 carriers?

13 MR. ROBINSON: No. I'm saying that GTE has
14 entered into interconnection agreements with 110
15 competitive local exchange carriers. Fifty-five of
16 them are operational either through facilities-based
17 or resale.

18 COMMISSIONER CLARK: How many of them --

19 MR. ROBINSON: In GTE territory.

20 COMMISSIONER CLARK: How many of them are
21 facilities-based carriers in GTE territory?

22 MR. ROBINSON: Well, I would have to look
23 through this list, but I agree -- I disagree with the
24 listing as I look right now to Intermedia, for one.
25 So I don't know how accurate that chart would be, but

1 certainly a large number. And I don't know how
2 accurate this chart is.

3 COMMISSIONER CLARK: How many does the
4 chart show?

5 MR. ROBINSON: It shows -- including
6 Intermedia, it shows them almost all as resale,
7 although it does show some with interconnection.

8 MS. CASWELL: Commissioner Clark, if we
9 could clarify, I think the table -- and we don't have
10 the exhibit in front of us again. I think the table
11 is only those who responded to the data request for
12 the reports, so I don't know if it's the whole
13 universe of carriers.

14 COMMISSIONER CLARK: Give me a figure of
15 how many facilities-based carriers are currently
16 providing service in GTE's territory.

17 MR. ROBINSON: I don't have the exact
18 number. I would say it's somewhere between zero and
19 55, or 1 and 55, because Intermedia is one for sure.

20 MS. CASWELL: Commissioner Clark, I think
21 ICI I know is facilities-based. I think we have
22 Teleport, TCG. I think Time Warner is
23 facilities-based. There are --

24 COMMISSIONER CLARK: Well, let me clarify.
25 You have interconnection agreements with them. Do you

1 know that they are currently providing service?

2 MS. CASWELL: I believe they are. I'm not
3 the expert on this, but yes, I believe they are. I
4 asked that question before we came, and the answer was
5 yes. I absolutely know that ICI has, because it has
6 been there for years, and we've been competing against
7 them. And I believe Time Warner says it provides
8 service in Tampa, facilities-based service in Tampa,
9 in some of the materials here. And I know there are
10 other carriers doing that.

11 COMMISSIONER CLARK: But neither one of you
12 know how many facilities-based carriers are currently
13 providing service in GTE's territory?

14 MR. ROBINSON: Not exactly. I don't have
15 that information with me. I --

16 MS. CASWELL: I would say between four and
17 ten.

18 MR. DUNBAR: Yes. Commissioner, I --

19 COMMISSIONER CLARK: That's a lot different
20 than zero and 55.

21 MR. DUNBAR: We would concur. We think
22 it's about four. We are one of them, and we think
23 there are four.

24 COMMISSIONER CLARK: Okay.

25 MS. BROWN: Mr. Chairman, may I ask one

1 more question? And I promise it won't be long.

2 CHAIRMAN GARCIA: Go ahead.

3 MS. BROWN: We were talking earlier when I
4 was asking you some questions about the increase in
5 your term discount plans in '97, and then we had a
6 little disagreement about whether four CSAs in '99 was
7 a significant increase. Can you explain what has been
8 the cause of that increase, both for the term plans,
9 tariffed term plans and the CSAs?

10 MR. ROBINSON: I think it's due to
11 competition. The customers are making it known that
12 they've had other offers, or we know they're going to
13 have other offers, and therefore, that is a way to
14 compete.

15 MS. BROWN: Okay. Thank you.

16 We have Sprint remaining.

17 MR. REHWINKEL: Mr. Chairman, Charles
18 Rehwinkel with Sprint. Before Mr. Poag starts with
19 the comments on behalf of Sprint, I would just like to
20 state that if the Commission feels that the resale
21 issues raised by the Florida Pay Telephone Association
22 are germane to this docket, I am prepared to address
23 those after Mr. Poag gives his comments. Otherwise,
24 we'll just limit our comments to what Mr. Poag has
25 filed.

1 CHAIRMAN GARCIA: Okay. Mr. Poag?

2 MR. POAG: Good morning. Ben Poag,
3 Director of Regulatory Affairs, Sprint Florida. My
4 comments today are on behalf of the Sprint
5 Corporation, and they reflect a compromise position
6 between our competitive local exchange company
7 operations and our incumbent local exchange company
8 operations.

9 Basically, Sprint supports the rules as
10 proposed with a few modifications. We passed out
11 earlier a copy of my testimony with the proposed
12 modifications in legislative format attached to that.
13 I would just like to briefly go through those
14 modifications. I'll give you a chance to get the
15 document if you don't have it.

16 I'm looking at the attachment to my
17 comments, and I'm on page 1, line 16. This is just a
18 clarification, in that Fresh Look is not in the
19 definitions, and it just provides a little bit more
20 explicit definition of what would be the application
21 of the eligible contracts.

22 On page 2, beginning in the middle of line
23 2, this is an addition to clarify, in case it wasn't
24 clear, that the termination liability limitation is
25 only applicable to end user customers that are

1 subscribing to service from a competitive local
2 exchange company to avoid a competitor (sic) trying to
3 get out of a contract because they're moving or for
4 some other reason.

5 On the same page 2, lines 10 and 11 is the
6 same clarification I talked about on page 1.

7 On page 3, line 7, the compromise position
8 of our competitive and incumbent local exchange
9 operations is that the Fresh Look window be limited to
10 one year instead of two years.

11 On page 5, line 2, this addition is to
12 clarify the intent of the application of the rule.
13 Under the prior section, it indicates that a customer
14 could opt between paying the unrecovered non-recurring
15 costs or paying monthly payments for the recurring
16 rate which covers the non-recurring costs. We do not
17 include a separate recurring rate for a non-recurring
18 cost in our contracts. And if the customer had the
19 option to select that, it would effectively negate any
20 recovery at all. That should only be an option where
21 the non-recurring cost is explicitly identified to
22 recover -- I'm sorry, where there is a recurring rate
23 element to recover an explicitly identified
24 non-recurring cost.

25 And that last addition on page 5, beginning

1 on line 2 through 4, just clarifies the application of
2 the preceding subparagraph (b).

3 That concludes my comments.

4 CHAIRMAN GARCIA: Questions?

5 MS. CASWELL: I do have one. Mr. Poag, on
6 page 3 of your testimony, you say that from a
7 competitive entrant standpoint, you recognize that six
8 months is adequate time for customers who want to
9 change carriers or respond to competitive
10 solicitations and take action to cancel contracts
11 pursuant to this rule. And then further on you
12 elaborate and say most likely candidates for Fresh
13 Look would be targeted within the first few months of
14 the window opening.

15 If that's true, and I agree that it is, why
16 would you double that and propose a year for the Fresh
17 Look window?

18 MR. POAG: Again, this was a compromise
19 position between our competitive local exchange
20 company operations and our local telephone operations.

21 MS. CASWELL: Okay. Thanks.

22 MR. GOGGIN: I have a question for you
23 about your competitive local exchange company. It
24 goes by the name of Sprint Metropolitan Networks,
25 Inc.?

1 MR. POAG: Yes, it was. I think it may
2 have changed recently.

3 MR. GOGGIN: In the 1996 competition
4 report, the Commission reported that Sprint
5 Metropolitan Networks was providing PBX trunks, rotary
6 lines, B-1 lines, direct inward dialing, direct trunk
7 interface, hunt groups, and dial tone services via
8 DS-1 transport to business customers. Is that an
9 accurate description of the services that were being
10 provided by Sprint at that time, Sprint's competitive
11 local exchange carrier?

12 MR. POAG: I would have to rely on the
13 report as much as you do. I don't have the report,
14 and I didn't provide that input.

15 MR. GOGGIN: Dial tone services versus DS-1
16 transport, does that -- in Orlando and Lake Mary is
17 what the report indicates. Do you understand that to
18 mean facilities-based service via transport from
19 outside Sprint's territory to one of the switches
20 within Sprint's LEC territory?

21 MR. POAG: Would you like me to speculate?

22 MR. GOGGIN: No, I don't want you to
23 speculate. I'm just asking.

24 On page 3 of your testimony you mentioned
25 that Sprint supports the change in the proposed rule

1 from having eligibility cutoff being January 1, 1997,
2 as originally proposed, to having a cutoff that begins
3 whenever is rule is adopted. The justification for
4 supporting this you say is that Sprint's average
5 duration of contracts is three years, and if the
6 eligibility cutoff were to begin three years back,
7 there would not be much reason to have a rule.

8 Judging from the 1996 report, at least with
9 respect to Orlando and Lake Mary, there seems to have
10 been ALEC competition for BellSouth services as early
11 as 1996. So it stands to reason that if the rule were
12 adopted in 1999 and the average length of Sprint's
13 contracts is three years, that there would be no
14 contracts affected by the rule that had not been
15 signed at the time that Sprint was competing with
16 BellSouth in its territory. Does that make sense?

17 MR. POAG: That was a long question. I'm
18 not sure what you're trying to say. I'm not clear.

19 CHAIRMAN GARCIA: I forgot the premise of
20 the question. Why don't you just ask --

21 MR. GOGGIN: Okay. I'm sorry. The premise
22 of the question is, if the average duration of
23 contracts is three years, then it's reasonable to
24 assume that as of three years ago, there would be
25 virtually no contracts -- there would be virtually no

1 contracts that would be affected by the rule that had
2 been signed longer than three years ago.

3 MR. POAG: Correct.

4 MR. GOGGIN: And if the rule goes into
5 affect, say, January 1 in the year 2000, the affected
6 contracts would really be contracts entered into
7 starting from approximately January 1, 1997; correct?

8 MR. POAG: Yes.

9 MR. GOGGIN: And Sprint Metropolitan
10 Networks apparently was competing with BellSouth in
11 its territory in Orlando and Lake Mary as early as
12 1996; isn't that correct?

13 MR. POAG: I'm not sure. I'm not sure of
14 that. I do know that they -- you're going to force me
15 to answer that earlier question.

16 Basically, as I understand their operation,
17 to the best of my knowledge, they basically have a
18 switch, and in terms of the transport, they do lease
19 the transport. And this is in common with other --
20 I'll call them facilities-based, because they do have
21 a switch. But they don't have what I'll call the last
22 mile network out to all of the customers, so they do
23 purchase or lease facilities either as unbundled
24 elements or access from the local exchange companies
25 to actually get to the customers.

1 MR. GOGGIN: I guess then -- it's a long
2 question, and I apologize. But given this report
3 regarding Sprint Metropolitan Networks and Time
4 Warner's earlier statement that they were providing
5 facilities-based local exchange service as early as
6 February 1997, and your understanding that the rule
7 would really affect contracts primarily signed after
8 January 1, 1997, is there a reason to have the rule?
9 Is there a justification for Fresh Look, at least with
10 respect to Orlando?

11 MR. POAG: In my opinion, there is some
12 justification for it, yes. And I think to state that
13 you had some competition would -- that competition for
14 the most part has been relatively limited. And as we
15 mentioned before, with regard to Sprint Metropolitan
16 Networks, it wasn't because they had, you know,
17 widespread fiber optic facilities to all of the
18 customers. They were in fact competing based on
19 having to lease those types of facilities. So, yes,
20 you had competition. Did you have competition
21 throughout the area? I don't think so. And did they
22 have facilities on a widespread basis? I don't think
23 so.

24 Again, this is basically a compromise
25 position of the company looking at both sides of the

1 business. And it's my personal opinion that this is a
2 fair and reasonable approach to resolve this issue.

3 MR. GOGGIN: One question to clarify the
4 amendments that you propose. One of the amendments
5 that you propose is that only end users seeking early
6 termination of otherwise eligible contracts with LECs
7 in order to acquire services from or enter into a new
8 contract with another local provider will be eligible.

9 We understand Sprint's intent in proposing
10 this is to avoid having current ILEC customers who do
11 not intend to switch services, but merely intend to
12 stop taking services, to be able to use this rule to
13 terminate the service. Is that the purpose for it?

14 MR. POAG: Yes.

15 MR. GOGGIN: It could also be construed as
16 perhaps preventing an ILEC from competing for the
17 business of that customer after they have received a
18 termination notice. Would it be Sprint's intent to
19 prohibit ILECs from competing for the business of a
20 customer who sends a termination liability notice?

21 MR. POAG: No.

22 MR. GOGGIN: Thank you.

23 CHAIRMAN GARCIA: Okay. Is there anything
24 you want to add before we --

25 MS. BROWN: We just have a couple of little

1 concluding things.

2 Supra wanted me to mention that their
3 witness had a personal emergency and was not able to
4 be here today to participate. They are a participant
5 in the case, and his testimony is included in our
6 composite exhibit.

7 And then the only last thing that I have
8 is, just to clarify, Chairman Johnson, Exhibit No. --
9 I'm sorry, Chairman Garcia, Exhibit No. 2, CNJ-1, is
10 BellSouth's total CSAs affected. I would assume that
11 that will be included in the record of this rule
12 hearing.

13 And then the last thing is that
14 post-hearing briefs are due on June 16th. And that's
15 it.

16 MR. DUNBAR: Mr. Chairman, I have one final
17 item too. I wonder if we could simply request that
18 official notice be taken of this Commission's Order
19 No. PSC-94-0284-FOF-TP, which was referred to in
20 Ms. Marek's comments earlier this morning.

21 CHAIRMAN GARCIA: Okay. Very good. Thank
22 you very much for --

23 MS. BROWN: Chairman Garcia, I need to
24 mention that the SERC is due to appeal Staff on
25 September 3rd, so that will be available at that

1 time --

2 CHAIRMAN GARCIA: Okay.

3 MS. BROWN: -- for anyone if they want to
4 ask me for it.

5 CHAIRMAN GARCIA: The what?

6 MS. BROWN: The SERC, Statement of
7 Estimated Regulatory Costs.

8 CHAIRMAN GARCIA: One more term I'll never
9 be able to understand.

10 Very good. Thank you very much. I
11 appreciate your presentations. See you next time.

12 (Thereupon, the hearing concluded at
13 12:20 p.m.)

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1
2 STATE OF FLORIDA)

3 : CERTIFICATE OF REPORTER
4 COUNTY OF LEON)

5
6 I, MARY ALLEN NEEL, RPR,
7 DO HEREBY CERTIFY that the hearing in Docket No.
8 980253-TX was heard by the Full Commission at the time
9 and place herein stated; it is further

10 CERTIFIED that I stenographically reported the
11 said proceedings; that the same has been transcribed
12 under my direct supervision; and that this transcript,
13 consisting of 122 pages, constitutes a true
14 transcription of my notes of said proceedings.

15 DATED this 24th day of May, 1999.
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18

19 
20 MARY ALLEN NEEL, RPR
21 100 Salem Court
22 Tallahassee, Florida 32301
23 (850) 878-2221
24
25

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