

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 080065-TX

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In the Matter of:

INVESTIGATION OF VILAIRE COMMUNICATIONS,
INC. (VCI) ELIGIBLE TELECOMMUNICATIONS
CARRIER STATUS AND COMPETITIVE LOCAL
EXCHANGE COMPANY CERTIFICATE STATUS IN
THE STATE OF FLORIDA.



PROCEEDINGS: AGENDA CONFERENCE
ITEM NO. 4

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

DATE: Tuesday, February 12, 2008

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

REPORTED BY: JANE FAUROT, RPR
Official FPSC Reporter
(850) 413-6732

1 PARTICIPATING:

2 HAROLD McLEAN, ESQUIRE, STACEY KLINZMAN, ESQUIRE,
3 BETH KEATING, and STANLEY JOHNSON, representing Vilaire
4 Communications, Inc.

5 LEE ENG TAN, ESQUIRE, BOB CASEY, and RICK MOSES,
6 representing the Florida Public Service Commission Staff.

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P R O C E E D I N G S

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2 CHAIRMAN CARTER: So we are now prepared to hear from
3 staff on Item 4.

4 MR. CASEY: Good morning, Commissioners. Bob Casey
5 on behalf of staff.

6 Item Number 4 addresses staff's investigation into
7 the eligible telecommunications carrier status of Vilaire
8 Communications in the state of Florida. Staff's investigation
9 determined that Vilaire is overcharging for E911 monthly fees
10 to its customers and has received over \$1.3 million in improper
11 compensation through the Federal Universal Service Low Income
12 Program by making misrepresentations to the universal service
13 administrative company.

14 Staff believes it is no longer in the public interest
15 to allow Vilaire to remain an eligible telecommunications
16 carrier in Florida or have the authority to provide competitive
17 local exchange service in Florida. Therefore, staff is
18 recommending that the Commission rescind Vilaire
19 Communications' eligible telecommunications carrier status in
20 Florida and cancel its competitive local exchange company
21 Certificate 8611 as of the date of the consummating order.

22 In addition, staff is recommending Vilaire be ordered
23 to provide staff with a worksheet showing all E911 overcharges
24 since Vilaire received certification in Florida so that staff
25 can oversee refunds to customers. Staff is also recommending

1 results of staff's investigation along with the Commission
2 order be forwarded to the universal service administrative
3 company, the Federal Communications Commission, and the U.S.
4 Department of Justice for further follow-up to recover
5 universal service funds obtained by Vilaire through
6 misrepresentations made to the universal service administrative
7 company.

8 Representatives for Vilaire are here this morning and
9 are also participating by way of phone, and staff is prepared
10 to address any questions the Commissioners may have.

11 CHAIRMAN CARTER: Okay. Let's hear from the parties.

12 Mr. McLean.

13 MR. McLEAN: Good morning, Mr. Chairman,
14 Commissioners. A pleasure to appear before you today, as
15 always. I'm Harold McLean from the law firm of Akerman
16 Senterfitt here in Tallahassee on behalf of VCI, the company
17 which is under your scrutiny today. With me is Beth Keating,
18 also from Akerman Senterfitt. As you have noted, Mr. Chairman,
19 Stanley Johnson is on the phone. He is the president of the
20 company. And also with me is Stacey Klinzman here who will
21 offer some argument to you this morning.

22 You will hear from two of us, essentially.
23 Ms. Klinzman is going to address some of the technical aspects
24 of the allegations, and I want to underscore allegations, and I
25 will be addressing some of the, at least, three items that I

1 think should be of concern to you, and certainly are of concern
2 to us about the staff recommendation itself. So with that, may
3 I introduce to you Ms. Stacey Klinzman, who is counsel for VCI.
4 Thank you.

5 CHAIRMAN CARTER: Okay. Ms. Klinzman, you're
6 recognized.

7 MS. KLINZMAN: Thank you, Harold.

8 My name is Stacey Klinzman. I am the regulatory
9 attorney for VCI Company, which is doing business in Florida as
10 Vilaire Communications, Inc. Thank you for giving us the
11 opportunity to come here and address some of staff's
12 allegations in the recommended decision.

13 We mainly want you to understand how seriously we
14 take these allegations, how important continuing to serve
15 Florida is to us, and we also want you to understand that
16 staff's recommendation was really the first definitive document
17 that we had that laid out specific issues that staff had that
18 we then could turn around and try to figure out a way to
19 resolve.

20 I, unfortunately, cannot address all of staff's
21 allegations today. Some of the staff's allegations is based on
22 information that they got from AT&T that we have not had an
23 opportunity to review. Some information was already submitted
24 to staff under cover of confidentiality, and I can't go into
25 detail about it. But right now what I would like to do is

1 emphasize the fact we really do want to work with staff on
2 this. We really want the Commission to assist us in learning
3 how to be an ETC according to Florida's rules. This company
4 does operate according to the federal rules. And with that I
5 would like to issue -- there are two issues today, one is the
6 E911 overcharges and the other is staff's allegation that VCI
7 is a pure resale carrier.

8 Turning to the first issue, which is E911, VCI or
9 Vilaire has admitted that they did inadvertently overcharge 911
10 customers. And we did send to staff, in January, the 911
11 worksheet. Now, Florida Statutes only require a carrier to
12 remit E911 charges that are actually paid to it. And the 911
13 worksheet that we sent to staff is an accurate representation
14 of those customers who actually were billed and paid us that
15 911 surcharge. So there is no way to do a revised 911
16 worksheet because the one that staff has is an accurate
17 representation of those customers who paid us those charges.

18 The second issue that I would like to talk about is
19 the fact that VCI is not a purely resale carrier. And there
20 are a number of minor points that need to be -- that kind of
21 need to add up to understand that situation. First of all,
22 there are nine supported services that make up universal
23 service: Voice grade access to the public switched network,
24 local usage, dual tone multi-frequency, single party service,
25 access to emergency services, access to operator services,

1 access to interexchange service, access to directory
2 assistance, and toll limitation for qualifying low income
3 customers.

4 Now, among other things, in order to receive
5 universal service support, a carrier must offer the nine
6 supported services either through its own facilities, or by a
7 combination of its own facilities and resale of another
8 carrier's services. Now, the FCC has defined a facility as --
9 and I am going to read you this because they say it so much
10 better than me, "Any physical components of a
11 telecommunications network that are used in the transmission or
12 routing of the services designated for support," and those are
13 the nine services.

14 A UNE is one type of facility, but it is not the only
15 facility that meets this particular definition. Furthermore,
16 the FCC has never determined what level of facilities is
17 necessary for a carrier to be a combination resale and
18 facilities-based offerer of the nine supported services. It
19 does not require a specific level of -- the FCC does not
20 require a specific level of facilities. They don't need to use
21 their own facilities to offer each of the supported services,
22 but it may provide one of the supported services by its own
23 facilities. And there is a particular example that the FCC
24 gives in Report and Order at 12 FCC record. We conclude that a
25 carrier could satisfy the facilities requirement by using its

1 own facilities to provide access to operator services while
2 providing the remaining services designated for support through
3 resale. And VCI does just that.

4 VCI, and staff has this information in great detail
5 and I'm not going to go into a lot of detail about the type of
6 facilities we have, but we have developed a way of offering
7 access to 411 service by our own facilities. That is one of
8 the nine supported services, and we supplement that offering a
9 form of access to 411 with the resale of the other eight
10 services. Thus, we operate within the FCC's rules and orders.
11 And we are offering the nine supported services via our own
12 facilities and resale of another carrier's services as the FCC
13 permits us to do.

14 Those are the only two issues that I wanted to
15 address right now, and I'm certainly open to questions that you
16 may have. Both myself and Mr. Johnson are happy to attempt to
17 answer them.

18 CHAIRMAN CARTER: Commissioners, before I get to
19 questions, I wanted to kind of give Mr. Johnson a couple of
20 moments. He's on the phone, and we would like to have him
21 weigh in.

22 Mr. Johnson, if you are there, we would like to give
23 you a couple of minutes to kind of make a couple of statements
24 here before I recognize the Commissioners.

25 MR. JOHNSON: Hello, Commissioners. I follow exactly

1 what Stacey said. We've been doing universal service or
2 participating in a low income program for four and a half, five
3 years here. Most of the things that I saw staff ask about only
4 for the first time in the order. A lot of these things I
5 believe that we could work together and try to follow what
6 rules staff believes Florida has that we violated. That's
7 pretty much all I have to say there.

8 CHAIRMAN CARTER: Okay.

9 MR. McLEAN: Mr. Chairman, Harold McLean here.

10 CHAIRMAN CARTER: Mr. McLean.

11 MR. McLEAN: I have a couple of things to add
12 whenever you think the time is appropriate.

13 CHAIRMAN CARTER: Okay. I will come back to you.

14 MR. McLEAN: Yes, sir. Thank you.

15 CHAIRMAN CARTER: Commissioner Argenziano, you're
16 recognized.

17 COMMISSIONER ARGENZIANO: Thank you, Mr. Chairman.

18 I guess my question is a simple one, and it goes back
19 to what I found that the FCC, I guess, has found in other
20 states, Minnesota, Oregon, and Washington, in that there was a
21 failure to keep proper records and duplicate reimbursement for
22 low income customers. And I guess my question is, as I say
23 very simple, haven't you learned from those three states? You
24 seem to feel that there was no wrongdoing here or there was an
25 error on the company's part. And it seems to me that you had a

1 track record of doing the same thing in other states, and what
2 is your excuse for that here in Florida?

3 MR. JOHNSON: I can answer that. We did learn, and
4 like I said in all the other meetings, we believe every carrier
5 has double billing or there are some multiple billings on every
6 carrier's platform, so we are absolutely in the wrong in some
7 areas. In Florida -- I'm sorry, in Washington and Oregon, we
8 have invested just about \$200,000 in a brand new database to
9 try to better track records, because there is a human error
10 component. You are getting information from the consumer, a
11 human is putting it into our system, also putting it into the
12 LEC's system, and the LEC has someone actually who key punches
13 things in that don't automatically flow through the system.

14 We have made a significant investment in a better
15 computer system so we can track this information better, and it
16 is totally -- one of the main objectives of ours and has been
17 for the last year and a half, trying to build a system that
18 could better track this transient consumer.

19 We are absolutely at fault in some areas, there is no
20 doubt about that. Every carrier has double billing. Actually,
21 the FCC has something on their website that talks about
22 40 percent of all carriers submit the 497 incorrectly, so I
23 think they acknowledge the system in dealing with a transient
24 customer and frames and different platforms, and customers not
25 notifying carriers, that there is going to be some overlap

1 there. But VCI under no terms thinks that it is totally there
2 is no wrongdoing there. We are not at all saying that. We do
3 believe we have some wrongdoing. We are trying to get better
4 year over year, month over month, day over day is what we have
5 been striving to do to track this customer better.

6 CHAIRMAN CARTER: Commissioner Argenziano, you're
7 recognized.

8 COMMISSIONER ARGENZIANO: I'm just not feeling very
9 warm and cozy right now. Thank you.

10 CHAIRMAN CARTER: We will come back to you.

11 Commissioner McMurrian.

12 COMMISSIONER McMURRIAN: Thank you, Chairman.

13 And later I know when the company is finished with
14 their presentation, I would like to hear from staff more,
15 especially on the points Ms. Klinzman raised about the
16 definition of facilities and that sort of thing. I was
17 somewhat confused by that, so maybe you could help me with
18 that.

19 But first I wanted to ask Ms. Klinzman, I think you
20 said, and don't let me misquote you, but I think you said that
21 the staff rec was the first document you had that laid out the
22 concerns. And I just wanted to verify with you, this is not
23 the first time -- even though it is the first document, it is
24 definitely not the first time you have heard of these concerns
25 from staff, because you have had at least a couple of

1 conference calls, is that right?

2 MS. KLINZMAN: This is correct. There were
3 conference calls where questions were asked and information
4 went back and forth, but this is the very first document where
5 we have a concrete idea of what staff's concerns are. And much
6 of what was in staff's recommendation was never addressed
7 during the audit. Some of these allegations we are hearing for
8 the very first time.

9 COMMISSIONER ARGENZIANO: May I?

10 CHAIRMAN CARTER: Commissioner Argenziano.

11 COMMISSIONER ARGENZIANO: To the point that
12 Commissioner McMurrin made, at the time that staff -- there
13 were many conference calls from what I understand, and I
14 believe the company even questioned -- it was very clear from
15 staff what the problem was at that time, and the company even
16 questioned the Commission's authority for oversight of those
17 issues. So you knew, the company knew back, I think it was in
18 September. Staff, is that correct?

19 MR. CASEY: Yes, ma'am.

20 COMMISSIONER ARGENZIANO: So you knew at that point,
21 but just questioned our authority to even question you on those
22 issues.

23 MS. KLINZMAN: May I respond to that?

24 COMMISSIONER ARGENZIANO: Mr. Chair, certainly.

25 MS. KLINZMAN: May I be recognized?

1 CHAIRMAN CARTER: You're recognized.

2 MS. KLINZMAN: Yes, VCI did question staff's
3 authority to audit a federal program, but we know that we are
4 not the only carrier that did that. FairPoint Communications
5 did request some written information from staff as to where
6 they drew their authority.

7 We are used to being audited by states where they
8 have their own universal service funds and USAC. We went
9 through many different audits from those types of entities. We
10 have not yet been audited by a state that does not have its own
11 universal service fund that actually reimburses carriers. We
12 believe that was a legitimate question based on our experience
13 and we know we are not the only carrier that had it.

14 CHAIRMAN CARTER: You're recognized.

15 COMMISSIONER ARGENZIANO: Of course my point is not
16 that you didn't have the right to ask the question, but you
17 were advised by staff what the problems were at that time.

18 MS. KLINZMAN: We were advised by staff of some of
19 the problems. We were asked questions and we gave data back
20 and forth, but I have to be clear that I truly believe that
21 this is the first document that really sets forth many of
22 the -- in concrete form what staff's allegations are so that we
23 can actually sit down with them and discuss. We never heard
24 anything about the fact that they thought we were a pure resale
25 carrier.

1 There are a number of other allegations that are
2 based on information from AT&T that we have never received and
3 never had a chance to review. We have a full request with the
4 Commission for that information. We really do want to sit
5 down. Now that we know exactly what all of the different
6 issues are, we really do want to sit down with staff and work
7 this out.

8 CHAIRMAN CARTER: Commissioner Skop.

9 COMMISSIONER SKOP: Thank you, Chairman Carter.

10 Again, I think I share the same concerns that
11 probably my colleagues have. Commissioner Argenziano has
12 certainly raised some points as has Commissioner McMurrian.

13 I find it hard to believe, you know, it just seems
14 like we are getting a host of excuses and collateral issues.
15 We have the president of the company on the phone telling us
16 that he knows that there are problems without admitting to
17 specifically what the problems are, but there are problems
18 related to the billing.

19 You know, to come in here and say this is the first
20 time we have heard about this; what about proactive disclosure?
21 If you know you have problems, perhaps it would be a good idea
22 to affirmatively disclose those issues to staff as opposed to
23 coming in and saying, well, this is the first time we have
24 heard about these concerns.

25 But, again, I'm not persuaded. Again, I think staff

1 has adequately defined the nature of what appears to be going
2 on here in terms of the conduct of the company. I commend
3 staff for its diligent and hard work. I think this is some of
4 the finest work I think I have seen staff do since I have been
5 at the Commission, and I am strongly in support of the staff
6 recommendation. Thank you.

7 CHAIRMAN CARTER: Thank you, Commissioner.
8 Commissioner Edgar.

9 COMMISSIONER EDGAR: Mr. Chairman, if it is
10 appropriate at this time, could we ask staff to respond to some
11 of the comments and issues that were raised by the company?

12 CHAIRMAN CARTER: I think this is an appropriate
13 time, absolutely.

14 Mr. Casey, you're recognized.

15 MR. McLEAN: Mr. Chairman, may I respectfully suggest
16 that I still have some argument to offer that is consistent
17 with what you have already heard from the company, and I think
18 you will want to hear staff's response to what I have to say,
19 as well. But you're the boss.

20 CHAIRMAN CARTER: Mr. McLean, we will be more than
21 happy to listen to you. You're recognized.

22 MR. McLEAN: Thank you very much, sir.

23 Let me tell you that it is difficult for me to
24 criticize a piece of staff's work, because like Mr. Skop, I
25 recognize the excellence of your staff, and I served on it for

1 quite a little while. But, nonetheless, my duty is to tell
2 about two shortcomings which I believe that it has, and I want
3 to suggest to you perhaps a better way to go that will serve
4 staff's interests and the public's interest.

5 First, what I perceive to be a shortcoming of the
6 staff recommendation is its lack of proportionality. This is a
7 death sentence to the company. Nothing short of that. It puts
8 them out of business in Florida. If you vote the staff
9 recommendation out, you will propose to remove not just their
10 ETC status, but their CLEC license, as well. I would ask you
11 to look for a nexus between the nature of the offenses which
12 are alleged and staff's conclusion that this company lacks
13 managerial, financial, and technical capability to continue in
14 the CLEC business.

15 They have 5,000 happy customers in the state of
16 Florida, from which five complaints have emanated over the past
17 18 months that we know of. They have real customers in Florida
18 and they are serving them well. The allegations in this case
19 go to the issue of payments from the federal -- or from a firm
20 overseen by the Federal Communications Commission. It does not
21 go to the quality of service of Florida customers.

22 We recognize that the FCC has had some issues with
23 this company. But as Commission Terry Deason said from about
24 four of those microphones up there, this is not a field office
25 for the FCC. You do not have rules in place governing the

1 behavior of an ETC. It is somewhat difficult for affected
2 parties, people in the ETC business to know exactly how to
3 conduct their accounting, and it is somewhat easy to run afoul
4 of the difficult rules that are currently administered by the
5 FCC.

6 You have heard from fellow counsel here that there
7 are quite -- it is a fairly complex area to know whether you
8 are complying with it. You have heard the response from the
9 company. There is a genuine issue of material fact here. The
10 staff brings to you allegations. Staff doesn't bring facts to
11 you. The proportionality is look at the offenses, look at the
12 alleged offenses, and think whether they also need to be kicked
13 out of the CLEC business. They have happy customers. They
14 have happy customers who don't contact you because they don't
15 have problems. If you vote affirmatively today, and if that
16 recommendation became reduced to law, you scatter those 5,000
17 customers back to AT&T, and I ask you whose interests would
18 that serve?

19 My second area -- again, it's difficult to criticize
20 staff, because I respect staff a very great deal, but I think
21 staff probably should have told you a great deal more about the
22 special posture that you are in when you undertake to remove a
23 license. Your staff appears as a prosecutorial force. It is
24 governed by a case in Florida and many cases which follow it
25 called the Cherry (phonetic) case, which arose from the Public

1 Service Commission, a case in which the Florida Public Service
2 Commission was reversed by the Supreme Court for not
3 maintaining a good firewall between prosecutorial staff and
4 advisory staff.

5 Two things that are especially important about that
6 is this company, VCI, has two rights that come immediately to
7 the forefront when you propose to remove their license. First
8 of all is a disinterested impartial set of judges who have not
9 yet made up their minds. The second thing they are entitled to
10 is staff has the burden to show why they should not continue
11 the license, and they must show that by clear and convincing
12 evidence. It is a relatively high standard of proof. The
13 company will have every opportunity to test that case in
14 discovery, including depositions, requests for production,
15 requests for admission, and so forth. It is your staff's duty
16 to go forward and prosecute this company. And you must
17 bifurcate the staff into two sections, one which is accusatory
18 or prosecutorial, and one which is advisory.

19 The reason I bring that up is to suggest to you that
20 that is a cumbersome and expensive way to proceed when there is
21 a rather better way to go. My suggestion to you is defer this
22 thing once or perhaps two agendas and order the folks involved,
23 as you routinely do and have done over the years, to get
24 together and figure out what their differences are.

25 I think the scenario that you see in the staff

1 recommendation, aside from whose fault it was, was imperfect
2 communications between this company and the staff, which in
3 this case is their accusers. If you set them all down around
4 the same table with a mandate from this agency to come back
5 with either one of two things, either a settlement with respect
6 to all the issues perhaps, a settlement -- or of three things,
7 a settlement with respect to as many issues as possible, and a
8 sharpening of exactly what the dispute is so that we can save
9 time if and when we go to hearing.

10 That would give an opportunity for the two sides to
11 talk to each other. I don't sense a great deal of a sympathy
12 from the questions I have heard so far that this company does
13 not have a good grasp of what the wrongdoing that it is accused
14 of. It filed a public records request on Friday to discover
15 more about the case that is brought against them. They don't
16 know exactly what it is. And in western jurisprudence every
17 accused person or entity has the right to know the nature of
18 the accusations against them so that they can defend adequately
19 against them.

20 So my suggestion to you is it is a better, cheaper,
21 and better use of public and private resources to defer this
22 item a couple of times and let these folks talk to each other
23 and see if they can sharpen their difference. But, if you are
24 disinclined to do that, this is a death penalty case. If you
25 vote the staff recommendation out, it becomes proposed agency

1 action, and if it goes unprotested these folks are out of
2 business in the state of Florida. They must protest.

3 I don't want to express a threat to you. It is not a
4 threat. I respect proposed agency action, had a hand in it at
5 its origin, but you can't face the firing squad without having
6 something to say. And your recommendation would put them out
7 of business, so they must protest.

8 My point in mentioning that is it will inevitably go
9 to hearing if you accept the staff recommendation. And if that
10 be true, and if you are disinclined to afford the opportunity
11 to these folks to work out their differences with staff, a very
12 able staff, if you are disinclined to do that, then by all
13 means simply set it directly to hearing and we will hear what
14 the staff has to say and what their case is against the company
15 in much more formal and I think expensive surroundings.

16 Thank you.

17 CHAIRMAN CARTER: Thank you.

18 Commissioners, are we going to listen to staff before
19 coming back to the Commissioners?

20 Commissioner Argenziano, you're recognized.

21 COMMISSIONER ARGENZIANO: Thank you.

22 I would just like to comment to what some of Mr.
23 McLean had responded. And I understand he is representing the
24 company, so it is his job to do so. But I do want to make it
25 clear that while you stated this is not the field office for

1 the FCC, it is the field office to make sure that the consumers
2 of the state of Florida, as well as the companies do well and
3 do business properly, and that the consumers do not get double
4 billed. Because where I come from, double billing, there is
5 another term for that. And I just have a real ache right now
6 in my belly that this company would say now at this time after
7 its experience in three other states, the same thing, that all
8 of a sudden it would say we don't know what you are talking
9 about.

10 So while I understand that we need viable companies
11 here, they also need -- we have a job and a responsibility and
12 the public is entitled to that protection of this Commission to
13 make sure that this doesn't occur. And if you do business in
14 the wrong way in the state of Florida then perhaps you should
15 be booted out of the state of Florida.

16 I understand what you're saying. I guess, Mr.
17 Chairman, my feelings at this moment are I'm not happy with
18 what the consumers have been hit with. You say five complaints
19 out of 500. Well, how many of the other 500 know that they
20 were overbilled? Low income Lifeline customers. So I don't
21 feel real good about the excuses that the company is giving
22 today.

23 I don't know where you could go. If we punish the
24 company and said, you know, this is what you are going to get.
25 You are going to pay back the consumers right away, and if you

1 want to do business in the state of Florida, even if we decide
2 to do that today, how do we have accountability in the next few
3 months while we defer this that they are not going to continue
4 to rip off the people of the state of Florida?

5 So, you know, the excuse, and I understand you have
6 to represent your client, but they showed bad business sense
7 here, and I take exception to the consumers in Florida being
8 ripped off. Now, if it's an accident, well, then show me where
9 the accident is. Or I'm not sure how you proceed, Mr.
10 Chairman, if you wanted this company to even stay in the state
11 of Florida. What protections would we give the consumer today,
12 or could you advise, Mr. McLean, that you would give the
13 consumers today if we deferred like you asked?

14 MR. McLEAN: May I respond?

15 CHAIRMAN CARTER: Yes.

16 MR. McLEAN: First of all, let me mention in passing,
17 again, that this company is entitled to an unbiased, undecided,
18 and impartial judge when it does go to hearing. The second
19 thing is the double billing was against a federal fund to which
20 Florida sends huge money and gets back small money. It was not
21 a double billing against customers.

22 You can make an argument, it's a rather, I think,
23 sketchy argument that the effect on the federal fund if it is
24 improperly billed will eventually inure to the detriment of all
25 the citizens of the United States, but those are all unproven

1 facts, number one. But I wouldn't sit here and tell you that a
2 double billing of a Florida resident, I could not defend that
3 and I don't believe that is what is happening here.

4 If there is double billing, and I doubt that there is
5 because I am persuaded by what the company tells me, if there
6 is it is a double billing of a fund in Washington to which we
7 all send money like it or not. I think it's real important,
8 and I don't want to beat the drum too hard, that this company
9 is entitled to unbiased, undecided, and disinterested judges
10 when the hearing comes, if it comes.

11 CHAIRMAN CARTER: Commissioner Argenziano.

12 COMMISSIONER ARGENZIANO: Can you tell me, does the
13 company still do business in Minnesota, Oregon, and Washington?

14 MR. McLEAN: No, ma'am, but I believe that the
15 company -- yes, in Minnesota I'm advised.

16 CHAIRMAN CARTER: Commissioner Skop.

17 COMMISSIONER SKOP: Thank you, Mr. Chairman.

18 And, again, Mr. McLean, thank you very much for
19 raising the arguments. I do respect the due process argument
20 that you have raised. The question I have, I guess you just
21 made an analogy, and this is where I'm having a disconnect. I
22 mean, we speak to the double billing of the universal service
23 fund. Personally, I don't have a problem. I mean, if there
24 are eligible carriers who are able to tap from that fund, so be
25 it. I mean, you know, there has been arguments raised that the

1 federal fund is flawed and there is redundancies and what have
2 you. But, again, it is analogous to, perhaps, a flawed tax
3 system. And I'm trying to think of the word. I'll come back
4 to it in a second.

5 Anyway, what I'm trying to get at, though, is I don't
6 see a basis -- I hear more of an excuse that double billing of
7 the federal fund is acceptable. And, again, I'm having
8 problems with that. I don't think I could say it any better
9 than Commissioner Argenziano articulated it. There is problems
10 here, and, you know, if we need to go to hearing, maybe we need
11 to go to hearing. But at the end of the day, the company seems
12 to have a consistent track record of having problems.

13 You know, what I would like staff to articulate also
14 is that it seems to me that my understanding is that Washington
15 state and Oregon seem to be states where the company pulled the
16 certificate prior to any action being taken. So it was a
17 voluntary withdrawal. And to me, I wonder if the same thing
18 would happen here if we moved affirmatively forward with the
19 staff recommendation whether we would see that same voluntary
20 action.

21 But, again, you know, getting back to this universal
22 service fund argument that may be analogous in some situations
23 to companies exploiting what is a tax loophole. Businesses do
24 that every day, but I can distinguish that whole-heartedly
25 between double billing of the federal fund, which as

1 Commissioner Argenziano raised, there is another word for what
2 appears to be going on here.

3 So, again, I'm interested to hear our staff rebut
4 some of the arguments that have been made, but I just hear a
5 whole host of excuses that, you know, because it's a federal
6 issue we should just choose to ignore it, irrespective of how
7 business is supposed to be conducted in Florida and the issues
8 related to protecting our consumers. Thank you.

9 CHAIRMAN CARTER: Thank you. Hold on. Hold, it.
10 I've got the gavel. Here is how it works. We will hear from
11 Commissioner McMurrin, then we will hear from staff, then we
12 will hear from Commissioner Edgar. That's the way it goes,
13 okay?

14 Then, Commissioners, if you have any questions for
15 the parties, then we will go back to the parties, but this is
16 the way it is going to go. Commissioner McMurrin had some
17 questions, then we will hear from staff to respond to the
18 questions, then we will hear from Commissioner Edgar.

19 Commissioner McMurrin, you're recognized.

20 COMMISSIONER McMURRIAN: Thank you, Chairman. And I
21 guess these questions could be answered by the parties and
22 staff, and however you choose to lay that out, that is
23 perfectly okay with me.

24 Mr. McLean brought up the point about the options,
25 about settlement and sharpening the dispute and then PAA, and

1 that there would be a likely protest, or setting it directly
2 for hearing. And I want to hear from staff and the company
3 about even if those latter two options were chosen, if you vote
4 out the PAA in accordance with the staff recommendation and
5 they protest, or if we set it directly for hearing, there is
6 nothing that stops us also directing the parties to work with
7 the staff on trying to come to some settlement of some of these
8 issues and sharpening the dispute before we are actually in
9 hearing mode, if we are. And that is one question.

10 And I guess the second, I guess it is a point, but I
11 also want to make sure I get clarification from our General
12 Counsel on this. But with respect to the right to unbiased
13 decision-makers, and I think that is correct, in a PAA mode,
14 though, we are allowed to deal with allegations and not
15 necessarily facts. We definitely are in a fact finding mode of
16 an official hearing, and so it is sort of a quick and dirty
17 decision based on what we have before us without having to have
18 sworn testimony at this point. And then if we go forward and
19 there is a hearing, we have the sworn testimony, and it may be
20 that the decision is different after we find out the true facts
21 of the case. But at this point we don't have to have exact
22 facts. I am probably not laying this out exactly correctly,
23 but can you help me?

24 Chairman, whenever it's appropriate, I wanted answers
25 to those two points.

1 CHAIRMAN CARTER: Okay. Mr. Cooke, you're
2 recognized.

3 MR. COOKE: The first point was whether we could have
4 negotiations if there was a hearing in process. And, yes, the
5 answer is that there is no reason we couldn't continue to speak
6 with the company and see if there is some settlement that is
7 appropriate, and that could be presented to the Commission.

8 The second question is this is PAA, proposed agency
9 action, and we are entitled to -- it's an informal process
10 based on the allegations that are presented in the
11 recommendation. The company has the right if it disagrees with
12 the outcome of this process to request a hearing, and a hearing
13 would be conducted, and I believe that this Commission, these
14 Commissioners, based on the evidence heard at that hearing
15 would exercise unbiased decision-making at that point.

16 CHAIRMAN CARTER: Commissioner Edgar, after hearing
17 from staff, Commissioner McMurrian asked a question that would
18 go to the parties and to staff. Did you want me to continue
19 with her line of questioning and then come back to staff?

20 COMMISSIONER EDGAR: Thank you. If I may, a brief
21 comment along the same lines.

22 CHAIRMAN CARTER: You're recognized.

23 COMMISSIONER EDGAR: Thank you, Mr. Chairman.

24 And, Commissioner McMurrian, you asked the questions
25 that I was getting ready to ask, so thank you. I'm thinking

1 back over the past few years, and probably even before that,
2 and I think we have had a number of instances where we have
3 adopted a PAA recommendation and have begun to move in the
4 direction of going to hearing, but, yet, have also had our
5 staff work with a party or parties towards a potential
6 settlement or other negotiations. So I think that we do have
7 precedent of that occurring in the past in a number of fronts,
8 and I would say that that is not all that unusual in either a
9 regulatory administrative forum or in any other judicial forum
10 that at the same time you are getting ready to go to hearing,
11 you are also exploring other remedies that may or may not be
12 able to come to fruition. So the comments about bifurcating
13 staff, I mean, I think all of that is very doable.

14 You know, there are a number of issues in here. We
15 have the excess charges, or allegations, or instances raised of
16 excess E911 fees, of inappropriate billing, of late fees, of
17 concerns raised about, my words, that perhaps misuse of some of
18 the federal funds, and that is an issue that is of particular
19 interest and concern to me.

20 So I guess I would like, if I may, Mr. Chairman, then
21 as part of this discussion that we are having to ask staff to
22 also respond to some of those issues that have come up in their
23 investigation that brought us to where we are today, because I
24 think there are some other instances of concern that we haven't
25 really touched on yet.

1 CHAIRMAN CARTER: Mr. Casey, you're recognized.

2 MR. CASEY: Thank you, Mr. Chairman.

3 We began looking at VCI last year in April, and we
4 sent out a data request to them because we were worried about
5 the toll blocking charges. It seemed that every one of their
6 customers were on toll blocking. We wanted to make sure that
7 the customers had an option to take toll blocking or not. That
8 is what started it.

9 And, of course, we can go back even further. Staff
10 has been monitoring universal service disbursements since
11 October of 2004. Every month we watch what's disbursed and to
12 who it is disbursed. If we see a red flag or something, we
13 will question it, and we will go after it and find out what's
14 wrong.

15 In August -- well, even before August. In June of
16 last year we had an agenda conference where this Commission was
17 adamant about accountability of the Federal Universal Service
18 Fund and practically demanded accountability. And that is what
19 staff is after, accountability. The order from the FCC came
20 out in August. We followed up and notified them of an audit in
21 September. And, as Ms. Klinzman said, they questioned our
22 authority, but that was straightened up on the conference call.
23 I asked at the end of that explanation if they still wanted a
24 written response and they say no, that would be fine.

25 Then we had another conference call, post-audit

1 conference call, and then we actually gave them the questions
2 that we were going to ask. They asked if they could have the
3 questions ahead of time. So they new staff's concerns. We
4 actually wrote out the questions and submitted them to them
5 before the conference call.

6 Staff went on and analyzed the information from the
7 audit. We went ahead and subpoenaed AT&T's records, because we
8 wanted to know the actual amount of lines in the state of
9 Florida that VCI had, and compared them to what they were
10 claiming at the universal service administrative company. And
11 that is the black and white picture right here.

12 We have the actual lines in the state of Florida,
13 which were provided by their underlying carrier, and we have
14 the Form 497s, which were filed by VCI showing the number of
15 lines that they claimed, and there is a huge amount of
16 difference. Mr. McLean said that they have 5,000 happy
17 customers. Well, according to the actual number of lines in
18 the state of Florida it's a fraction of that.

19 If I could respond just to a couple of Ms. Klinzman's
20 inquiries. On E911, staff would be happy to look at that if
21 they could provide proof of the actual payments to the 911. We
22 are concerned. Of the telephone numbers that they did give us,
23 there was a lot of false ones. If they could provide some
24 evidence in an affidavit, staff could certainly work with that.

25 As far as being a strict reseller, we never stated

1 that they were a strict reseller. What the recommendation
2 states is that between June and November of last year they were
3 a strict reseller. Now, in order to provide universal service,
4 they have to use their own facilities or a combination of their
5 own facilities and another carrier's resale facilities. They
6 didn't do that for six months. From May -- I'm sorry, from
7 June until November of last year they did not, it was strictly
8 resale. So we didn't say they were a strict reseller the whole
9 time, just those six months they were a strict reseller in
10 violation of federal rules.

11 As far as a death sentence, yes, it is, and we took
12 it very seriously whether or not to recommend that. I
13 contacted the Federal Communications Commission, the
14 enforcement bureau, and spoke to a deputy bureau chief just two
15 weeks ago, and I have had three calls with him since then. And
16 I was asking if a state commission has the authority to suspend
17 payments to an ETC. He called me at 4:00 o'clock yesterday
18 finally, and said no, we can't answer you. We don't know.

19 What can this Commission do? Well, we can only do
20 what is in our purview. We can rescind the ETC status, which
21 is their license to receive these federal funds. Apparently,
22 according to the FCC, we can't suspend it at this time. The
23 only thing we can do is rescind that ETC status, which would
24 stop payments to them.

25 The reason why we started this, basically two things.

1 The Commission issued the ETC status to them, granted it. We
2 granted it to them, we also have the authority to take it back,
3 and that has been stated in many FCC orders. That was our
4 concern. We gave them this license and this misconduct is
5 occurring, and that bothers staff.

6 The other thing is that Florida consumers are paying
7 into the universal service fund. What staff is saying is that
8 there was 1.3 million inappropriately given to them. Well,
9 Florida citizens accounted for over \$100,000 of that, and that
10 also concerns staff. And if you have any legal questions, of
11 course, my attorney is here. I don't want to get into that.

12 CHAIRMAN CARTER: Commissioner Edgar.

13 COMMISSIONER EDGAR: Thank you, Mr. Chairman.

14 You know, as I think through these issues, it does
15 seem to me that under both the federal and state law that state
16 commissions have the authority to grant ETC status under
17 certain criteria, and that when that grant is given that that
18 is offering kind of the keys to the kingdom. I mean, it is
19 offering or giving the right to pull down federal funds that
20 every consumer contributes to. And because it is an action of
21 the state commission to then open the doors to those federal
22 funds, I do feel like we have a responsibility to have our
23 staff do audits and to pursue accountability and to pursue
24 fuller and more transparent information about what is being
25 done with those funds under that program. And I'm just

1 concerned that with a number of the issues that staff have
2 raised to us that we may need to take some action.

3 CHAIRMAN CARTER: Thank you, Commissioner.

4 I'm just kind of thinking aloud. I'm going to get to
5 part two of your question, Commissioner McMurrian. I'm just
6 kind of thinking aloud. Listening to Mr. McLean's lecture
7 about he didn't want to threaten us or anything like that, but
8 we have got lawyers, too. And I don't know anybody on this
9 Commission that's willing to be intimidated, so that's not an
10 issue.

11 I think what is before us is, you know, we get into
12 the weeds, but let's kind of break it down to reality. The
13 reality is people were overcharged by this company. That's the
14 reality. Secondly is that this company, even when it got
15 caught with its hands in the cookie jar, tried to backhand
16 staff and say you don't have jurisdiction.

17 You know, first of all, let he who seek equity do so
18 with clean hands. This doesn't seem like a clean hands case,
19 Mr. McLean. And fundamentally in business is that if the ETC
20 status was so important to this company, it seems like to me
21 they would have moved heaven and earth to protect it, and I
22 don't think they have done so in this case. I really don't
23 think so. I think that on its face it's a classic case of, you
24 know, how not to run a business.

25 And Commissioner Edgar, Commissioner Argenziano,

1 Commissioner Skop, Commissioner McMurrrian, and myself agree
2 that citizens of Florida, customers in Florida paid money for
3 services that were not rendered to them, and I haven't heard
4 anyone on the side of this company make any kind of statement
5 about a refund, any kind of attempt that they may refund one
6 brown penny to the customers. That gives me great concern. I
7 have heard all the legal and lofty arguments, by I haven't
8 heard not single scintilla of a statement from anyone saying we
9 found out that we made a mistake, therefore, we are willing to
10 offer a refund to the customers.

11 Commissioners, did I miss something? Did you all
12 hear that, because I didn't hear that. I'm really concerned
13 about that.

14 Now, Commissioner McMurrrian, you had two questions
15 and you asked your two questions of staff and you asked them of
16 the parties. You're recognized.

17 COMMISSIONER McMURRIAN: Thank you. I'm sure
18 Mr. McLean remembers my questions, but I will go over them
19 again. The first was with respect to your three options, and
20 particularly with the second two with regard to if we were to
21 vote out staff's rec and the PAA form and it was protested, and
22 it sounds like it definitely would be, or we set it directly
23 for hearing that you would still be in a posture to settle. In
24 fact, the Commission could try to direct the parties to settle
25 and try to sharpen the case, as you said, before we get into

1 the hearing mode.

2 And then the second was with respect to the bias
3 issue. And, again, we are in that PAA posture, and that we are
4 dealing with, I guess, allegations at this stage, and that if
5 we do end up in a hearing mode, and, again, it sounds like we
6 might very well do that, then we will be looking at sworn
7 testimony and facts and we will be looking at it from that
8 point of view. But I will just let you respond to those two
9 things.

10 MR. McLEAN: Yes, ma'am. I agree entirely with your
11 General Counsel. It is certainly true that you can settle the
12 case until the jury gets back, essentially. We will always be
13 willing to settle, willing to talk, I should say, and try to
14 work these differences out. And that can follow all the way
15 through the process, irrespective of what your vote is today.

16 I would say, however, that when you vote out
17 essentially an indictment, an administrative law indictment,
18 which your show cause order is, it revokes their license,
19 parties are more likely to engage in a siege mentality. It is
20 human nature to be a lot more careful when you are under the
21 gun, and I believe it would chill settlement negotiations that
22 would otherwise take place. That's my personal experience with
23 negotiations, and I would urge you, again, to allow some time
24 for them to work out their differences. But, yes, ma'am, it is
25 certainly true that if you vote the staff recommendation, or if

1 you vote to go directly to hearing, it is still possible to
2 have settlement negotiations. I think less likely, but
3 certainly still possible.

4 The second issue, I think I may have been
5 misunderstood when I reemphasized several times that the
6 parties are entitled to unbiased, undecided, fair judges of
7 their case. You have seized the proposed agency action exactly
8 correctly. Some have called it quick and dirty and I accept
9 that. It is essentially, staff brings to you a series of
10 allegations and you propose to act on those. That alone, of
11 course, doesn't represent any bias at all. But when you make
12 statements like the company should probably be run out of the
13 state of Florida, you are signaling how you are going to
14 receive the evidence, perhaps, when presented.

15 And my point in bringing that up several times was to
16 say, remember, this is an accusatory proceeding in which the
17 staff is accusing a business and that business is entitled,
18 just like every other citizen of the state, to a fair hearing,
19 to the production of clear and convincing evidence before an
20 unbiased panel.

21 CHAIRMAN CARTER: Commissioner Argenziano.

22 COMMISSIONER ARGENZIANO: To the point, if you are
23 referring, Mr. McLean, to my comment, let me refresh your
24 memory of what I said, is that if the company was practicing in
25 a way that was not in the interest of the consumer, or abiding

1 by the FCC rules, or the Florida law, then perhaps they should
2 not longer practice or be in business in the state of Florida.
3 So that is my opinion if they were found to have not been above
4 and beyond.

5 MR. McLEAN: We agree with that entirely,
6 Commissioner.

7 COMMISSIONER ARGENZIANO: Let me put into the record
8 something else so that it's not just -- sometimes it's just
9 common sense. Sometimes you just read and see what you find,
10 and sometimes you just come up with a conclusion. And let me
11 read this, if I may. Indulge me, please.

12 CHAIRMAN CARTER: You're recognized.

13 COMMISSIONER ARGENZIANO: "Seven phone numbers of the
14 130 sample invoices from Florida obtained by our auditors
15 contained area codes for Canada, Georgia, Texas, Michigan, one
16 fictitious area code, and two area codes that are not even
17 assigned yet. However, each of the addresses on the bills had
18 Florida addresses. Staff believes that these bills may not
19 represent real customers.

20 "Staff called the telephone numbers provided on the
21 130 invoices and found that 77 numbers were disconnected, nine
22 had recordings that their numbers were not in service, four
23 were business numbers not eligible for Lifeline, two were
24 consumers that stated that they were not customers of VCI, and
25 one was a consumer who stated he was a VCI customer, but not on

1 the Lifeline program. Two customers confirmed that VCI was
2 their provider of service and that they were participants in
3 the Lifeline program.

4 "A check of the 130 sample VCI invoices also showed
5 that every customer was paying a \$10 late fee. Every customer.
6 Staff asked VCI how all 130 customers in the random sample
7 could have paid their bill late. VCI replied that it was a
8 coincidence. And during staff's calls to verify the VCI
9 customers, one customer stated that VCI's payment was an
10 automatic deduction from their checking account and it still
11 showed a late payment on its invoice."

12 So some things you just take at face value, you know,
13 when the customers are called and asked the question. That,
14 you know, just makes you feel, like I said before, not so cozy
15 about the whole situation.

16 Mr. Chairman, if it is proper and due process to go
17 to a hearing, then I say yes, due process should always take
18 place. But I would want some assurances and maybe some kind of
19 a little maybe a friendly statement by the company that they
20 are willing to pay back the consumers of the state of Florida
21 if they overcharged inappropriately. And some kind of security
22 in between that due process. How do we know that that doesn't
23 continue while it's deferred and then they pull a certificate
24 and our consumers are out even more money after deferring. So
25 that would be my feeling at this time.

1 CHAIRMAN CARTER: Commissioner Argenziano, I share
2 your concern, because to me with the PAA -- I disagree with Mr.
3 McLean's perspective on it. I think that we can resolve -- if
4 we go to a formal hearing, we may decide to allow them to
5 maintain the ETC status and we may not, but certainly we will
6 get into a more formalized process. But I agree with what you
7 are saying is that we don't really want them to say that they
8 have got the money, so we will just withdraw and you don't have
9 any jurisdiction over us. So all of the money that we got,
10 including the \$100,000 from the Florida customers, we'll get to
11 keep that, too.

12 And if they are serious about doing business in
13 Florida, they will go through the process. I am concerned
14 about that as well. And I'm sure that from listening to what
15 all five of us are saying, I hope that everybody understands
16 that we are concerned about this. We are very concerned about
17 this.

18 Mr. Johnson?

19 MR. JOHNSON: Yes. Yes. Yes.

20 CHAIRMAN CARTER: Do you want to say anything?

21 MR. JOHNSON: Yes, I do. I absolutely want to say
22 something.

23 (Simultaneous conversation.)

24 CHAIRMAN CARTER: Mr. Johnson?

25 MR. JOHNSON: Yes.

1 CHAIRMAN CARTER: I hope you have been listening to
2 the Commissioners.

3 MR. JOHNSON: Oh, absolutely I have.

4 CHAIRMAN CARTER: And I hope that what you have to
5 say will have some impact on where we are.

6 MR. JOHNSON: I understand. I heard everything the
7 Commissioners said.

8 First and foremost, every single meeting VCI had with
9 staff we agreed to resubmit 497s for anything that we both
10 agreed was a double billing. I just want to address all the
11 concerns that I heard that VCI had never ever said they would
12 refund any monies that were found in wrongdoing. The whole
13 time we went through the process we did that.

14 Anybody who deals with the low income consumer knows
15 how transient the customers are. Some of the bills they looked
16 at are over a year old. Some of the 137 bills that they
17 grabbed from are well over a year old. Our average customer, a
18 good customer lasts four months. They are on and off the
19 platform all the time. Area codes, you have typos from our
20 system to their system. There are absolutely some inherent
21 errors in the system and VCI agreed to resubmit 497s.

22 Of the \$100,000 that VCI took from Florida customers,
23 I'm not quite sure how staff arrived at that number, because
24 there is well over 4 or \$5 million that goes into California
25 from Florida every year. I'm not going to go that direction

1 right now.

2 Commissioner, whatever you guys decide, it sounds
3 like to me decisions have already been made. I understand if
4 you guys feel that that is the way we are, and you have heard
5 everything we had to say, then I would like to go ahead and go
6 to trial as soon -- I'd like to go ahead and get started on
7 this. Because we bill no different than any of the other
8 wireless carriers there. The billing system we developed comes
9 from a Verizon, or AT&T.

10 All of those questions were never asked. Not once
11 did we get a question saying, well, hey, we subpoenaed AT&T,
12 you know, they said you have one line, you say you have four.
13 Not one time did we hear anybody ask any questions at all. I
14 could have easily explained, hey, this is how our billing
15 system works. We are in a one-year contract, one-year
16 agreement with every customer based on the FCC's rules, and we
17 are not allowed to collect early on any of those customers
18 until the one year is up.

19 So every single month whether the line is active or
20 not, which there's no rules in the FCC rules that says the line
21 has to be active. Every month they get a connection fee. If
22 they don't pay the connection fee by the 15th they get a late
23 charge. Every single month. That's invoiced billable
24 customers according to the FCC rules. I don't see anywhere --
25 we've went back and forth, we bill just like wireless carriers

1 bill. You enter an agreement with those guys, you are under
2 contract where you pay an early termination fee. We could have
3 talked to staff about any question that they had. They never
4 actually asked the questions they wanted to know.

5 Yes, we got a lot of information thrown across the
6 desk at us and answering questions, and the six months that he
7 talked about we operated legally, we had a union line in every
8 single one of those months. We did provide facilities or had a
9 combination of. Some of the experts at the FCC and DC believe
10 that if you provide a de minimis number of UNEs on your
11 platform, as long as it's a combination of, that's
12 facility-based. That has not been defined by the FCC, as well.
13 So during those six months we had a combination of. We just
14 chose to build our own network. Contrary to what AT&T says,
15 you can dial around and get toll charges.

16 CHAIRMAN CARTER: Thank you, Mr. Johnson.

17 Commissioner Argenziano, you're recognized for a
18 question.

19 Mr. Johnson, we have a question for you.

20 MR. JOHNSON: Sure.

21 COMMISSIONER ARGENZIANO: Mr. Johnson, how do you
22 explain when a customer's payment is automatically deducted
23 from his checking account, how do you explain a late fee on
24 that?

25 MR. JOHNSON: Okay, I can explain that. We have

1 several customers whose have a date -- and I think I found a
2 particular customer that you talked about. He gets a late fee
3 every month. We actually charge him through his automatic
4 payment. It actually bounces. His check hasn't arrived yet.
5 Anytime he gets his check and it arrives a day or two late, he
6 actually bounces it, and we get charged from the bank. We get
7 charged from our bank because the payment doesn't go through,
8 his debit card. So it actually bounces back and forth, so his
9 bill is not paid on time.

10 COMMISSIONER ARGENZIANO: I don't understand that at
11 all. I know I have automatic deductions from my checking
12 account and I don't get any late fees.

13 MR. JOHNSON: If you are of a certain
14 creditworthiness with the bank and you have never had any
15 bounced checks or any of those things like that, they will
16 approve up to a certain limit if you have overdraft protection.
17 Most of our customers are not -- well, they're not creditworthy
18 or they would be with the AT&T if that was an option for them,
19 but it wasn't. So any time you charge their account and the
20 funds are not available right there, it actually bounces.

21 COMMISSIONER ARGENZIANO: I would like staff to
22 address that because I don't see how that's possible.

23 MR. JOHNSON: Sure.

24 CHAIRMAN CARTER: Mr. Casey or Mr. Moses.

25 MR. MOSES: Well, the person that he is talking to,

1 I'm the one that made the telephone call to them, and the lady
2 told me that she had it automatically drafted from her checking
3 account every month, and she mentioned nothing about being any
4 bounced checks or anything of that nature. And when I
5 questioned her about the \$10 late fee on her invoice, she said,
6 well, that is on there every time, and she said that's just the
7 way it is.

8 MR. JOHNSON: I can respond to that as well, too.
9 Two things. It had to be a debit card. We don't do checks
10 over the phone. She had a debit card that if her check, you
11 know, arrives on the 5th and she has a date set up for the
12 10th -- or, I'm sorry, for the 4th, and we go through and run
13 her debit card on the 4th, if her monies are not available in
14 her account, that comes back as a -- I will called it a bounced
15 check or a kickback. So her payment is not actually made on
16 the date that she has scheduled.

17 MR. MOSES: Regardless, Commissioners, of this one
18 individual, every single invoice that we got had that late
19 charge on it, and I find it hard to believe that 130 people are
20 late every single month.

21 MR. JOHNSON: Well, I can say this, every new
22 customer we get, 50 percent of them disconnect. Of every
23 customer that stay on our platform, 20 percent disconnect every
24 single month. And that's pretty much industry standard; so
25 getting paid late is the second dynamic of it. We are talking

1 people don't pay at all.

2 CHAIRMAN CARTER: Thank you, Mr. Johnson.

3 Commissioner Edgar, you're recognized.

4 COMMISSIONER EDGAR: Thank you, Mr. Chairman. As we
5 are all aware, the universal service fund and all of the
6 various components and programs related to it have
7 accountability spread across a number of places, a number of
8 levels with USAC, with the FCC, with the state commissions,
9 certainly also with the companies.

10 I am comfortable that with all of the discussion that
11 we have had today and the work that our staff has done, that to
12 proceed with the PAA process is appropriate at this time, and I
13 would make a motion in support of the staff recommendation.

14 COMMISSIONER SKOP: Second.

15 CHAIRMAN CARTER: It has been moved and properly
16 seconded.

17 Commissioners, any questions?

18 Commissioner McMurrin, you're recognized.

19 COMMISSIONER McMURRIAN: Yes. I'm going to support
20 the motion, but I did want to ask a procedural question of our
21 legal staff. How soon can we get the order out? And then Part
22 B would be -- because I heard Mr. Johnson when he said he's
23 ready to just get on to trial. I know that we normally have a
24 certain period, a protest period. If the company were to
25 protest earlier, we can get started with setting the matter for

1 hearing earlier, can we not? Or do we still need to wait in
2 case any other party protested for that full protest period?
3 Am I making sense? I will try to rephrase if I need to.

4 MR. COOKE: Commissioner, I think as soon as it's
5 protested we can begin trying -- it's more a reflection of the
6 calendar and making sure we can get hearing dates scheduled, et
7 cetera. If other persons later on, I guess, wanted to
8 intervene, there's an intervention process.

9 CHAIRMAN CARTER: Commissioner Skop.

10 COMMISSIONER SKOP: Thank you, Mr. Chairman.

11 And I think this has been mentioned, but I just want
12 to have staff reiterate that if we move forward with the PAA
13 and rescind the certificate that the customers are adequately
14 protected. There are other mechanisms for the customers who
15 receive phone service.

16 MR. CASEY: Yes, sir. In the recommendation we are
17 asking that the Commission order AT&T to take over those
18 customers. They are the underlying carrier, they are also an
19 ETC.

20 COMMISSIONER SKOP: Thank you.

21 MR. McLEAN: May I have a point of clarification?

22 You're voting to do that if the case is borne out at
23 hearing, is that correct, or is there a waiver contemplated
24 now? Because the way I read the recommendation, that waiver
25 would occur, if ever, after hearing.

1 CHAIRMAN CARTER: Mr. Casey.

2 Ms. Tan.

3 MS. TAN: Lee Eng Tan for Commission staff. If the
4 PAA is consummated, then the waiver would go into effect.

5 MR. COOKE: In other words, Commissioners, if it's
6 protested then there is not a final decision on this.

7 MR. McLEAN: Thank you.

8 That's the way I originally took it. I just wanted
9 to make sure. Thank you very much.

10 CHAIRMAN CARTER: Okay. Commissioners, any further
11 questions? We have been moved and properly seconded. Are you
12 ready for the vote? All in favor of the vote, let it be known
13 by the sign of aye.

14 (Unanimous affirmative vote.)

15 CHAIRMAN CARTER: All those opposed, like sign.

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STATE OF FLORIDA)

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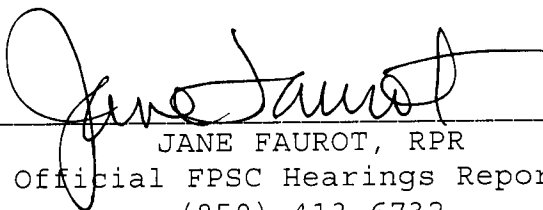
COUNTY OF LEON)

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

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

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

DATED THIS 19th day of February, 2008.



JANE FAUROT, RPR
Official FPSC Hearings Reporter
(850) 413-6732