Supplemental Agenda Item 2

PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA
COMMISSION DIRECTIVE

ADMINISTRATIVE MATTER	☐	DATE	**October 15, 2009**
MOTOR CARRIER MATTER	☐	DOCKET NO.	**2009-326-C**
UTILITIES MATTER	☑	ORDER NO.	**2009-746**

THIS DIRECTIVE SHALL SERVE AS THE COMMISSION'S ORDER ON THIS ISSUE.

SUBJECT:
DOCKET NO. 2009-326-C - State Universal Service Support of Basic Local Service Included in a Bundled Service Offering or Contract Offering - Discuss with the Commission Correspondence Dated October 14, 2009, Filed by Frank R. Ellerbe, III, Esquire.

COMMISSION ACTION:
I would note for the record that, after the Hearing Officer issued his directive on a discovery dispute in this Docket regarding copies of several forms provided by Carriers of Last Resort to the Office of Regulatory Staff, several documents were filed, including correspondence from attorney Frank Ellerbe, who represents a group of competitive local exchange carriers, and who sent out the original discovery request, reply correspondence from attorney John Bowen, who represents the South Carolina Telephone Coalition, and a joint motion from the South Carolina Telephone Coalition and the Office of Regulatory Staff requesting Commissioner review of the original hearing officer's directive. A letter of support for the motion has also been received from counsel for CenturyLink. It appears to me that this material provided new information that was not available to the hearing officer. Attorney Ellerbe's letter also requested that we go ahead and order ORS to provide the requested material, without prejudice to the ORS arguments against providing it, which would be considered later. The problem that I have, Madam Chairman, is that the new material also raises new questions in the discovery dispute, two of which merit special attention. Attorney Bowen notes that neither SCTC nor ORS have an objection to releasing appropriate information in aggregate form, as long as detailed company specific information is not released. Mr. Bowen states a belief that aggregate information is more than sufficient for Mr. Ellerbe's stated purpose. However, at this point, we do not know Mr. Ellerbe's position on this question. A second question relates to the potential harm that would be created if we affirm the hearing officer's directive to ORS to release the disputed material to the CLECs. The SCTC letter fails to mention that the hearing officer's directive provided a protective order, so that the material involved would only be released to the CLECs under very stringent conditions, that is, under seal and to a limited number of non-competitive CLEC agents. I am interested in having SCTC tell us how it would be harmed by the limited release of the information under the protective order proposed by the hearing officer. Accordingly, Madam Chairman, I would ask the parties to provide the answers to these questions in writing to this Commission by the close of business on Monday, October 19, 2009. Further, due to testimony deadlines, I would move that we consider this discovery dispute again at next week's Commission meeting, and that ORS have the requested material available here in the hearing room at the time of the meeting, in case we affirm the original hearing officer's ruling, so that the CLECs can have immediate access, if we so rule.

PRESIDING: Fleming SESSION: Regular TIME: 2:30 p.m.

	MOTION	YES	NO	OTHER	
FLEMING	☐	☑	☐		
HAMILTON	☐	☐	☐	Absent	Annual Leave
HOWARD	☐	☑	☐		
MITCHELL	☐	☑	☐		
WHITFIELD	☐	☑	☐		
WRIGHT	☑	☑	☐		

(SEAL)

RECORDED BY: J. Schmieding