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BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION



In re: Expanded Interconnection ) DOCKET NO. 921074-TP  
Phase II and Local Transport ) DOCKET NO. 930955-TL  
Restructure ) DOCKET NO. 940014-TL  
DOCKET NO. 940020-TL  
DOCKET NO. 931196-TL  
DOCKET NO. 940190-TL

PROCEEDINGS: PREHEARING CONFERENCE

BEFORE: CHAIRMAN J. TERRY DEASON

DATE: WEDNESDAY, AUGUST 10, 1994

TIME: COMMENCED: 9:30 A.M.  
CONCLUDED: 11:10 A.M.

LOCATION: 106 FLETCHER BUILDING  
101 EAST GAINES STREET  
TALLAHASSEE, FLORIDA

REPORTED BY: SUE HABERSHAW JOHNSON  
CERTIFIED COURT REPORTER  
REGISTERED PROFESSIONAL REPORTER  
NOTARY PUBLIC

1 APPEARANCES:

2 DONNA L. CANZANO, ESQUIRE, FPSC Division of Legal  
3 Services, 101 East Gaines Street, Tallahassee, Florida  
4 32301, Telephone No. (904)487-2740, on behalf of the  
5 Commission staff.

6 PRENTICE P. PRUITT, ESQUIRE, FPSC General Counsel  
7 Office, 101 East Gaines Street, Tallahassee, Florida  
8 32399-0850, Telephone No. (904)488-7464, as counsel to the  
9 Commissioners.

10 TRACY W. HATCH, ESQUIRE, FPSC Division of Legal  
11 Services, 101 East Gaines Street, Tallahassee, Florida  
12 32301, Telephone No. (904)487-2740, on behalf of the  
13 Commission staff.

14 EVERETT BOYD, ESQUIRE, Ervin, Varn, Jacobs, Odom  
15 and Ervin, P. O. Drawer 1170, Tallahassee, Florida 32302,  
16 appearing on behalf of Sprint.

17 PHILLIP CARNER, ESQUIRE, 150 West Flagler Street,  
18 Suite 1910, Miami, Florida 33101, appearing on behalf of  
19 Southern Bell.

20 KIMBERLY CASWELL, ESQUIRE, P. O. Box 110,  
21 FLTC0007, Tampa, Florida 33601, representing GTE Florida.

22 PETER M. DUNBAR, ESQUIRE, Pennington & Haben, P.A.,  
23 2nd Floor, 215 South Monroe Street, P. O. Box 10095,  
24 Tallahassee, Florida 32302-2095, Telephone (904)222-3533,  
25 appearing on behalf of Time Warner A&S of Florida.

1 APPEARANCES, CONTINUED:

2           DAVID B. ERWIN, ESQUIRE, Young, Van Assenderp,  
3 Varnadoe & Benton, P.A., P. O. Box 1833, Tallahassee, Florida  
4 32302-1833, on behalf of Quincy Telephone Company and  
5 Northeast Florida Telephone Company.

6           JOHN FONS, ESQUIRE, MacFarlane, Ausley, Ferguson  
7 & McMullen, 227 South Calhoun Street, P. O. Box 391,  
8 Tallahassee, Florida 32302, Telephone No. (904)222-7560,  
9 on behalf of United Telephone Company and Central Telephone  
10 Company of Florida.

11           KENNETH A. HOFFMAN, ESQUIRE, Rutledge, Ecenia,  
12 Underwood, Purnell & Hoffman, P. O. Box 1551, 215 South  
13 Monroe Street, Suite 420, Tallahassee, Florida 32302-0551,  
14 appearing on behalf of Teleport Communications Group, Inc.

15           RICHARD MELSON, ESQUIRE, Hopping, Boyd, Green &  
16 Sams, P. O. Box 6526, Tallahassee, Florida 32314,  
17 appearing on behalf of MCI.

18           RACHEL ROTHSTEIN, ESQUIRE, Wiley, Rein and  
19 Fielding, 1776 "K" Street, N.W., Washington, D.C. 20006,  
20 on behalf of Interexchange Access Coalition.

21           MICHAEL TYE, ESQUIRE, Suite 1410, 106 East College  
22 Avenue, Tallahassee, Florida 32301-7733, appearing on  
23 behalf of AT&T Communications of the Southern States, Inc.

24           J. JEFFRY WAHLEN, ESQUIRE, MacFarlane, Ausley,  
25 Ferguson & McMullen, Post Office Box 391, Tallahassee,

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1 APPEARANCES, CONTINUED:

2 Florida 32301, appearing on behalf of ALLTEL.

3 PATRICK K. WIGGINS, ESQUIRE, Wiggins & Villacorta,  
4 P.A., Post Office Drawer 1657, Tallahassee, Florida 32302,  
5 appearing on behalf of Intermedia Communications, Inc.

6 LAURA WILSON, ESQUIRE, Post Office Box 10383,  
7 Tallahassee, Florida 32302, appearing on behalf of Florida  
8 Cable Television Association, Inc.

9 \* \* \* \* \*

10 OTHER APPEARANCES ON BEHALF OF PUBLIC SERVICE COMMISSION:

11 LANS CHASE  
12 ANNE MARSH  
13 RUBY NORTON  
14 EARL POUCHER

15 \* \* \* \* \*

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1 Company of Florida.

2 MS. ROTHSTEIN: Rachel Rothstein, from the law  
3 firm of Wiley, Rein and Fielding, 1776 "K" Street, N.W.,  
4 Washington, D.C. 20006, on behalf of the Interexchange  
5 Access Coalition.

6 MR. WAHLEN: Jeff Wahlen of the MacFarlane, Ausley,  
7 Ferguson & McMullen law firm, P. O. Box 391, Tallahassee,  
8 Florida, on behalf of ALLTEL Florida, Inc.

9 MR. TYE: Michael W. Tye, 106 East College  
10 Avenue, Suite 1410, Tallahassee, Florida 32301,  
11 appearing on behalf of AT&T Communications of the  
12 Southern States, Inc.

13 MS. WILSON: Laura Wilson, appearing on behalf of  
14 Florida Cable Television Association, Post Office Box  
15 10383, Tallahassee, Florida 32302.

16 MS. CASWELL: Kim Caswell, GTE Florida, P. O. Box  
17 110, Mail Code 7, Tampa, Florida 33601.

18 MR. HOFFMAN: Kenneth A. Hoffman of the law firm  
19 of Rutledge, Ecenia, Underwood, Purnell & Hoffman,  
20 Post Office Box 1551, 215 South Monroe Street,  
21 Tallahassee, Florida, appearing on behalf of Teleport  
22 Communications Group, Inc.

23 Mr. Chairman, I would also enter an appearance for  
24 Teresa Marrero, Regulatory Counsel, Telecommunications  
25 Group, Inc., One Teleport Drive, Suite 301, Staten Island,

1 New York 10311, also on behalf of Teleport.

2 MR. DUNBAR: Peter Dunbar, Pennington and Haben  
3 law firm, 215 South Monroe Street, Tallahassee,  
4 Florida 32301, appearing on behalf of Time Warner  
5 AxS of Florida, L.P.

6 Mr. Chairman, I would also like to enter an  
7 appearance for Mr. David Swafford at that same  
8 address, a Class B practitioner.

9 MR. MELSON: Commissioner, Richard Melson of the  
10 law firm Hopping, Boyd, Green and Sams, Post Office  
11 Box 6526, Tallahassee, appearing on behalf of MCI  
12 Telecommunications Corporation.

13 I would also like to enter an appearance for  
14 Mr. Michael J. Henry of MCI in Atlanta.

15 MR. BOYD: Mr. Chairman, I'm Everett Boyd of  
16 the Ervin, Varn, Jacobs, Odom and Ervin law firm, 305  
17 South Gadsden Street, Tallahassee 32301, appearing on  
18 behalf of Sprint Communications Company Limited  
19 Partnership.

20 I would also like to enter an appearance for  
21 Chanthina R. Bryant of Sprint's office in Atlanta at  
22 3065 Cumberland Circle, Atlanta, Georgia 30339.  
23 Thank you.

24 CHAIRMAN DEASON: Could I get that name again,  
25 please?

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MR. BOYD: Sir?

CHAIRMAN DEASON: The second person. I know your name.

MR. BOYD: Chanthina.

CHAIRMAN DEASON: Is that listed in the prehearing order?

MR. BOYD: I believe it is.

CHAIRMAN DEASON: Oh, okay. Then that will be fine then.

MS. CANZANO: Donna L. Canzano and Tracy Hatch, Florida Public Service Commission, 101 East Gaines Street, Tallahassee, Florida 32399-0863, appearing on behalf of the Commission staff.

MR. PRUITT: And I'm Prentice Pruitt, same address, counsel for the Commission.

CHAIRMAN DEASON: Ms. Canzano, is there any preliminary matters?

CHAIRMAN DEASON: Yes, sir, there are several. On July 26th Teleport filed a motion for protective order, requesting that it not be required to respond to certain Southern Bell interrogatories nor produce certain documents in response to Southern Bell's request for PODs.

The last day for Southern Bell to respond to Teleport's motion was Monday, August 8th. No response



1 has been filed.

2 CHAIRMAN DEASON: Do the parties wish to address  
3 that situation?

4 MR. HOFFMAN: Mr. Chairman, Ken Hoffman on  
5 behalf of Teleport.

6 We have been in discussions with Southern Bell  
7 concerning some of the issues raised by our motion for  
8 protective order, and I have discussed the issues with  
9 counsel for Southern Bell this morning.

10 I think that I can state on both of our behalvs  
11 that it is our wish that you defer ruling on our  
12 objections and motion for protective order, because we  
13 believe we have made some progress towards a settlement  
14 of the issues raised by our motion.

15 CHAIRMAN DEASON: Very well. I will defer ruling  
16 and just request that you advise the Commission just as  
17 quickly as possible as to either a resolution or the  
18 inability to reach a resolution so I can rule.

19 MR. HOFFMAN: Thank you, Mr. Chairman.

20 MR. CARNER: Mr. Chairman, one thing I would note  
21 is the objections were filed previously, but their  
22 document production is not actually due until I believe  
23 it's the 17th, so we will probably need to look at what  
24 they actually produced before we will know whether  
25 that's adequate for our purposes, so I anticipate that

1 it will be the 17th before we know whether or not  
2 there's a problem.

3 CHAIRMAN DEASON: Very well.

4 MS. CANZANO: And I would just like to add that  
5 the discovery cutoff as set forth in the order of status  
6 and procedure is August 15th.

7 CHAIRMAN DEASON: Obviously parties can mutually  
8 agree among themselves.

9 MS. CANZANO: Okay.

10 CHAIRMAN DEASON: Further preliminary matters?

11 MS. CANZANO: Yes. Time Warner had filed a  
12 motion to strike certain portion of John Carroll's  
13 testimony. The order granting Time Warner's motion has  
14 been signed and will be issued today.

15 CHAIRMAN DEASON: Very well.

16 MS. CANZANO: There are various motions pending for  
17 Phase I. On August 4th staff filed a recommendation  
18 that the Commission is set to hear the August 16th  
19 agenda conference.

20 Also there are several...

21 CHAIRMAN DEASON: I'm sorry. You lost me there.

22 MS. CANZANO: Just one of the parties had stated  
23 that there were pending motions for Phase I, and staff  
24 has addressed what we think ought to be done with those  
25 motions, and that will be addressed by the Commission

1 has been filed.

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3 that situation?

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5 behalf of Teleport.

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22 MS. CANZANO: Just one of the parties had stated  
23 that there were pending motions for Phase I, and staff  
24 has addressed what we think ought to be done with those  
25 motions, and that will be addressed by the Commission

1 August 16th.

2 CHAIRMAN DEASON: Very well.

3 MS. CANZANO: And one of the parties also noted  
4 that there are pending requests for confidential  
5 classification of materials produced to Commission  
6 staff in response to staff discovery.

7 CHAIRMAN DEASON: And that's going through the  
8 normal procedure?

9 MS. CANZANO: You bet.

10 CHAIRMAN DEASON: Any parties have any preliminary  
11 matters?

12 MR. ERWIN: Mr. Chairman, I have something. I  
13 tend to agree with the treatment that was given to the  
14 motion by Time Warner to strike the testimony of  
15 Mr. Carroll or at least portions of it.

16 CHAIRMAN DEASON: I'm glad you agree.

17 MR. ERWIN: I think he raised a good point.  
18 He wouldn't have had to raise that point if the  
19 procedures weren't the way that they are, but let me  
20 just sort of run through briefly what occurred here.

21 We filed testimony, and then at some subsequent  
22 date it was appropriate for us to take a position on  
23 the issues, but that time had not arisen when we filed  
24 the testimony.

25 And I guess what I tried to do was to bring some

1 sort of life into the position on the issues in the  
2 prehearing matter and to incorporate those to give them  
3 that life in the testimony of Mr. Carroll, and that  
4 has been deemed not to be appropriate.

5 I think it raises an interesting question, and that  
6 is is there really any life in this prehearing statement  
7 and the issues taken by someone.

8 I note with interest now that all of a sudden done  
9 that Time Warner has not decided to present any  
10 witness or any exhibits in this matter, and consequently  
11 I have of course had no opportunity to do exactly the  
12 same thing that he was complaining about when he filed  
13 his motion to strike portions of my testimony, which is  
14 that he would not be able to cross examine on these  
15 issues that we had raised and took a position on, and  
16 I can't do that, either, with regard to his prehearing  
17 statement, because he has no witnesses and no exhibits.

18 I think it's only appropriate just to raise the  
19 point I'm trying to make, that I move to strike his  
20 prehearing statement, and I would do so at this time.

21 CHAIRMAN DEASON: Mr. Erwin, I'm sure you realize  
22 that a prehearing statement is not evidence in the  
23 record, and it's just that, it's a statement of position.

24 But nevertheless you have made a request to have  
25 a prehearing statement, and that's on behalf of Time

1 Warner? You wish to have their prehearing statement  
2 stricken?

3 MR. ERWIN: Yes, that's correct. I mean, they've  
4 got a lot of argument in here, assertions of fact,  
5 assertions in the nature of expert testimony as to what  
6 you should and should not do. I don't see any point in  
7 your even seeing this kind of argument and language prior  
8 to the hearing.

9 We should be concerned with taking evidence in  
10 this proceeding and not making arguments that are not  
11 able to be questioned into at this stage of the proceedings.

12 I mean, if he wants to argue about what sorts of  
13 effects the evidence has once it's presented to you  
14 in a posthearing brief or something I can understand  
15 that, but to do it the way that we're doing it seems to  
16 be questionable, and I wouldn't have raised this except  
17 that he seems to have called my attention to this  
18 defect in your procedures.

19 CHAIRMAN DEASON: Mr. Dunbar, do you care to  
20 respond to Mr. Erwin?

21 MR. DUNBAR: Well, Mr. Chairman, I think you  
22 correctly stated the purpose of the prehearing statement  
23 is for us to state our position. We are not compelled  
24 to offer witnesses for evidence but simply to  
25 participate.

1           Quite honestly, I was prepared to withdraw this  
2 motion this morning. The only reason we filed it was  
3 to protect ourselves, because what was coming in in  
4 the prehearing statement we had no knowledge of and no  
5 opportunity to respond to. When it did come in we  
6 had no objection to it.

7           I do think that the Chairman ruled correctly. I  
8 think it puts everyone in an awkward position not being  
9 able to respond to something that's incorporated to be  
10 filed at a later time, but we didn't really object when  
11 we ultimately saw it.

12           But the issue now being raised to strike the  
13 prehearing statement I don't find any foundation in the  
14 rules for, and I also noticed there was no rule cited in  
15 support of that argument.

16           I'm sorry if we have upset someone by trying to  
17 protect our rights so that we have engendered this kind  
18 of response, but I don't think it's appropriate, and I  
19 do not think it's founded in the rules anywhere. I  
20 think we have properly filed our prehearing statement,  
21 and we are entitled to put our position in the record.

22           CHAIRMAN DEASON: The motion is denied. I find  
23 the prehearing statements are just that, they're  
24 statements of positions, and they are not evidence in the  
25 proceeding.

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1           The purpose of those is to put all parties on  
2 notice as well as the Commission as to what their  
3 positions are that are being taken, and that can change  
4 during the course of the hearing, and sometimes it does  
5 change, and the burden on the Commission is to ascertain  
6 whether the evidence is going to be produced during the  
7 hearing that will support the position taken in the  
8 prehearing statement, and if that evidence is not  
9 produced obviously that statement position cannot  
10 prevail.

11           Anything further?

12           MR. WIGGINS: Mr. Chairman, I don't know if this  
13 is the appropriate time to approach this or not, but there  
14 there seem to be some questions to some issues, such as  
15 what kind of central offices should, what should be  
16 required to provide colocation and others that we  
17 might be able to stipulate to, if the parties had  
18 some time to go over them and see if we could come up  
19 with reasonable language.

20           I don't know when, I have not spoken to everyone  
21 about this, but it seems like it's worth a try. I don't  
22 know with today's schedule how that would be best  
23 approached, but I wanted to initiate that thought.

24           CHAIRMAN DEASON: That's an interesting prospect.  
25 What type time frame do you envision as being required

1 to look at that possibility?

2 MR. WIGGINS: Well, I am really not into pointless  
3 self-flaggelation over this stuff. I figure if we  
4 could take maybe 30 minutes or an hour we could just  
5 zip through them, and either there would be easy agreement  
6 or there wouldn't, and then when we got to the hearing  
7 maybe the Commissioners would be okay with that, or maybe  
8 they wouldn't. You know how that goes.

9 CHAIRMAN DEASON: Is staff aware of this?

10 MS. CANZANO: Yes, we are. Maybe about half an  
11 hour?

12 MR. WIGGINS: Half an hour would be fine.

13 CHAIRMAN DEASON: Let me explain a possible  
14 difficulty, and that is that I am scheduled to continue  
15 the fifth day of a two-day hearing, that seems to be the  
16 norm these days, beginning at 1:30 this afternoon. I have  
17 put the parties on notice in that hearing that if this  
18 prehearing conference goes beyond that that they would  
19 just simply have to start without me and that I would  
20 review the record, and they are agreeable to doing  
21 that.

22 But obviously I would not like that prospect.  
23 I would like to do everything I can to enable myself to  
24 be there at the beginning of that hearing at 1:30, so  
25 my question I guess to staff is I'm not opposed to

1 taking half an hour, but what is the anticipated time  
2 for completing this prehearing conference? Is that  
3 something that's very difficult to predict?

4 MS. CANZANO: It's always difficult to predict  
5 time around here. I think we can definitely, I don't  
6 see any problem finishing it before lunch time.

7 CHAIRMAN DEASON: Okay. If any parties wish to  
8 add anything to the possibility of taking 30 minutes  
9 of time to address the central office question that  
10 was raised by Mr. Wiggins, Mr. Erwin?

11 MR. ERWIN: Mr. Chairman, along that same line I  
12 guess with the smaller companies there was a specific  
13 decision made in Phase I of this that the smaller  
14 companies would not be required to file tariffs and do  
15 various other things and would simply commit to  
16 negotiating a fair and reasonable kind of colocation  
17 arrangement with anyone who might ask for that, and  
18 failing successful negotiations the parties would  
19 then come before the Commission for a decision. That  
20 seemed to be acceptable to the small companies in the  
21 earlier Phase I proceeding, and certainly would be  
22 acceptable here, and I'm wondering if there isn't some  
23 possibility of stipulating to such a result in this  
24 proceeding so that we can simply withdraw and get out  
25 of this hearing.

1           CHAIRMAN DEASON: Well, hopefully Mr. Wiggins will  
2 give you part of his 30 minutes to address that  
3 possibility.

4           MR. ERWIN: Thank you.

5           CHAIRMAN DEASON: In the spirit of cooperation and  
6 trying to address some of these matters we're going to  
7 take a little bit more than 30 minutes. We will  
8 reconvene at 10:30.

9           (WHEREUPON, THE HEARING WAS RECESSED FROM 9:53 A.M.  
10 TO 10:45 A.M.)

11          CHAIRMAN DEASON: We will call the prehearing  
12 back to order.

13          MR. POUCHER: Mr. Chairman, Earl Poucher  
14 appearing on behalf of Public Counsel.

15          CHAIRMAN DEASON: Glad to have you with us.  
16 Ms. Canzano, do you want to bring us up to date to where  
17 we are this morning?

18          MS. CANZANO: Yes. The parties have reached a  
19 tentative agreement on certain issues, although they  
20 need to consult their clients, on Issues 1, 2, 9, 10,  
21 11, and 13, and we should know by Monday whether or not  
22 these issues have been agreed to.

23          CHAIRMAN DEASON: That will give you sufficient  
24 time to incorporate the stipulations if they are  
25 approved through the order?

1 MS. CANZANO: Yes.

2 CHAIRMAN DEASON: Very well. Any other preliminary  
3 matters?

4 MS. CANZANO: None that I'm aware of.

5 CHAIRMAN DEASON: Okay. Then we will proceed  
6 through the draft for hearing order, and we will begin  
7 with Section 1, which is case background. Any changes  
8 or corrections in the case background?

9 Posthearing procedures? I'm sorry. Section 2,  
10 procedure for handling confidential information. That's  
11 standard.

12 Section 3 addresses prefiled testimony and exhibits.

13 MS. ROTHSTEIN: Mr. Chairman, oh, I'm sorry, I have  
14 a comment on number four.

15 CHAIRMAN DEASON: Okay, we will address Section 4,  
16 order of witnesses.

17 MS. ROTHSTEIN: Yes. I think our rebuttal witnesses  
18 were inadvertently left off the list here. They will  
19 be offering rebuttal testimony. That would be Kirk Lee  
20 and Ed Bowbag, and I think staff is already aware of that.

21 CHAIRMAN DEASON: Okay. They will be adding those  
22 to the list?

23 MS. CANZANO: Yes.

24 MS. ROTHSTEIN: Thank you.

25 MR. HOFFMAN: Mr. Chairman, Mr. Andriatti has asked

1 me to communicate his request to appear before the  
2 Commission on Wednesday, August 24th, which is the  
3 third day of the proceeding.

4 He has some previous commitments. They could be  
5 broken if necessary, but he's asking for that  
6 accommodation if it's feasible for the Commission and  
7 for the parties.

8 CHAIRMAN DEASON: Is that for both his direct  
9 and his rebuttal?

10 MR. HOFFMAN: Yes, sir, if possible.

11 CHAIRMAN DEASON: Any objection?

12 MR. WIGGINS: I certainly don't have any  
13 objection, but I'm, a major portion of this proceeding  
14 is going to be dedicated to local transport issues.

15 I have not been on the traveling road show with  
16 them, but I understand this is not the first time the  
17 witnesses will be presenting this testimony or cross  
18 will be given, so with that amount of rehearsal that  
19 has gone on in other jurisdictions I'm really wondering  
20 how long this proceeding is going to last, and maybe  
21 I need to check my calendar, but was that the 24th,  
22 you said?

23 MR. HOFFMAN: Yes.

24 MR. WIGGINS: That would be the third day, right,  
25 22nd, 23rd, 24th? Do we think this is going to go

1 three days? That's my question.

2 CHAIRMAN DEASON: You are very optimistic then.

3 MS. ROTHSTEIN: Mr. Chairman, I'm also optimistic  
4 as well that this can be accomplished in three days,  
5 four days at the longest.

6 I have been involved in many of these road shows  
7 that Mr. Wiggins referred to, and we have been finishing  
8 them up in about that time frame.

9 CHAIRMAN DEASON: Great. Mr. Hoffman, obviously  
10 if we get to the point to where all witnesses have  
11 been heard and your witness is the only remaining  
12 witness and he's not present, we're not going to  
13 give him that much accommodation, but to the extent that  
14 we are here on the 24th I believe there should be no  
15 problem in hearing him on that day.

16 MR. HOFFMAN: Thank you, Mr. Chairman. I suspect  
17 that we'll be able to have a better handle on that by  
18 the end of the first day or towards the end of the  
19 first day. Thank you.

20 CHAIRMAN DEASON: Any other questions or concerns  
21 about the proposed order of witnesses?

22 MR. BOYD: Yes, Mr. Chairman, Sprint filed  
23 rebuttal testimony of Mr. Rock as well that was  
24 omitted from the list.

25 CHAIRMAN DEASON: I'm sure staff will add that.

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1 MS. CANZANO: Yes, and I believe Ms. Rothstein  
2 had something to add.

3 MS. ROTHSTEIN: Yes, Mr. Chairman, the  
4 Interexchange Access Coalition witnesses also filed  
5 rebuttal testimony, and we would like the opportunity  
6 to be able to present that to the Commission as well,  
7 and also I have been asked to communicate by Mr.  
8 Gilland that he has a very tight schedule the week of  
9 the hearings as well but can be made available the days  
10 of the 23rd and the 24th, which is the second and third  
11 days, and if possible we can try and accommodate that  
12 he would greatly appreciate it.

13 CHAIRMAN DEASON: Okay, we'll certainly endeavor  
14 to make that accommodation.

15 Any other comments concerning the order of  
16 witnesses?

17 MS. WILSON: Mr. Chairman, I'd just like to note  
18 our rebuttal witness, William Kinsley, will be  
19 addressing Issues 3, 4, 8, 12, and 23-A.

20 CHAIRMAN DEASON: Let me ask staff, the issues,  
21 are they going to be renumbered as a result of the  
22 stipulations, or are all issues going to keep the same  
23 numbers?

24 MS. CANZANO: We would like to keep the same  
25 numbers.



1 CHAIRMAN DEASON: Do you also require then of  
2 the parties who were sponsoring rebuttal witnesses  
3 the issue numbers that that rebuttal testimony will be  
4 addressing?

5 MS. CANZANO: Well, I would like all parties to  
6 then give me the numbers for the issues that their  
7 rebuttal witnesses will be addressing.

8 CHAIRMAN DEASON: Ms. Wilson just did that, but  
9 I notice there are a number of other witnesses who  
10 have not indicated that.

11 MS. CANZANO: That's correct.

12 CHAIRMAN DEASON: Will you need that in time to  
13 incorporate it in the order?

14 MS. CANZANO: Yes, about Monday?

15 CHAIRMAN DEASON: Any problem in getting that  
16 information to staff by Monday? Very well.

17 Section 5 addresses the basic positions. Any  
18 changes or corrections in those positions?

19 Section 6 addresses specific issues. I understand  
20 that for Issue 1 there is a proposed stipulation, and  
21 that has been agreed to as of today, is that correct?

22 MS. CANZANO: They are all tentative agreements,  
23 because the parties need to confer with their clients.

24 CHAIRMAN DEASON: Okay, so they are all tentative  
25 at this point, and you will receive that information by

1 Monday.

2 The question I have is that if there are stipulations  
3 reached or agreements reached by a number of the  
4 parties but not by all, how do you present that? Do you  
5 indicate a partial stipulation, or if one party objects  
6 there's no stipulation?

7 MS. CANZANO: That's correct. There would be  
8 no stipulation if one party objects.

9 CHAIRMAN DEASON: The parties have veto power?

10 MS. CANZANO: That's right.

11 CHAIRMAN DEASON: Very well. All the parties  
12 understand that.

13 Issue 2? There is also a proposed stipulation for  
14 Issue 2.

15 Issue 3. There's no proposed stipulation for 3  
16 or any changes or corrections, modifications to the  
17 positions as stated for Issue 3.

18 Issue 4? Issue 5?

19 MS. CANZANO: I would like to make a comment.  
20 Some, OPC, for example, has taken no position at this  
21 time on a number of issues. Since they are not saying  
22 that they're taking a position, I'm assuming this means  
23 no position, period.

24 CHAIRMAN DEASON: Mr. Poucher? Would you clarify?

25 MR. POUCHER: I believe we would like to retain the

1 position that we don't have a position at this time  
2 and hear the evidence. We'll take a position at the  
3 final hearing.

4 CHAIRMAN DEASON: Ms. Canzano, I don't think that's  
5 envisioned by our procedures, is that correct?

6 MS. CANZANO: That's correct.

7 CHAIRMAN DEASON: To have a position it needs to be  
8 stated...

9 MS. CANZANO: At this time.

10 CHAIRMAN DEASON: ...at the prehearing conference.  
11 Otherwise you are not allowed to have a position, and  
12 you must take no position. If that's not correct, let  
13 me know. I thought that was the procedure.

14 MS. CANZANO: That's the procedure.

15 CHAIRMAN DEASON: All right.

16 MR. POUCHER: We would prefer not to take a position  
17 at this time, but we would like to participate, cross  
18 examine witnesses, simply to make sure that the  
19 citizens are protected.

20 CHAIRMAN DEASON: Well, I think that you certainly  
21 will not only be allowed but be encouraged to  
22 participate in the hearing process and would have full  
23 ability to cross examine any and all witnesses, but  
24 it is necessary if you do have a position to state it  
25 at this time, and if you're still formulating that

1 position I suppose for now you have to state "No  
2 position", and then that raises a question do they have  
3 the opportunity to formulate a position or are they  
4 pretty well required to keep no position.

5 MR. ERWIN: Mr. Chairman, I disagree that's the  
6 position stated by your rules. I think that if you  
7 don't take a position at this time the only prohibition  
8 is against presenting testimony or adopting some issue  
9 that some other party hasn't adopted at the time.

10 But I don't believe there's anything in your rules  
11 that says you're precluded from taking a further  
12 position. I don't think, you're precluded from taking  
13 a brief, but...

14 CHAIRMAN DEASON: That's the very question that  
15 I have also, and I'm asking that to Mr. Hatch.

16 MR. HATCH: Mr. Erwin is correct essentially. If  
17 you fail to take a position you're precluded from  
18 offering witnesses and presenting direct evidence  
19 yourself as to a specific issue under our rules.

20 CHAIRMAN DEASON: Okay. Does anyone else wish to  
21 add anything?

22 MR. HATCH: I just would add it doesn't preclude  
23 actual participating in the hearing itself, to make the  
24 difference.

25 MR. WAHLEN: Mr. Chairman, I may have a

1 misrecollection of the rule, but I believe the rule is  
2 if you do not take a position in your posthearing  
3 filing you have waived your position.

4 MR. HATCH: But that's also in the posthearing  
5 rules, but in the procedural, prehearing portion is  
6 also that provision.

7 MR. WAHLEN: But it's also my understanding if  
8 you don't have a position during the hearings you're  
9 not precluded from taking one in your posthearing  
10 filing.

11 CHAIRMAN DEASON: With that understanding I will  
12 allow then Public Counsel's Office to state no position  
13 at this time, allow that with the understanding that  
14 you're not proposing to sponsor any witnesses.

15 MR. FOUCHER: That's correct.

16 CHAIRMAN DEASON: All right, and you will be able  
17 to fully participate, and to the extent you formulate  
18 your position as a result of the hearing then you can  
19 incorporate that in your posthearing filing.

20 MR. FOUCHER: Thank you, Mr. Chairman.

21 CHAIRMAN DEASON: Issue 6, changes or corrections?  
22 Issue 7?

23 MR. WIGGINS: Intermedia has a change. I'd like to  
24 change the answer as follows, "Yes, given federal  
25 precedent." Excuse me just a moment. I want to make

1           sure I'm referring to Intermedia the same way  
2           everywhere.

3           "Intermedia nevertheless maintains that state  
4           mandated occupation," and it reads the same.

5           So it would be, "Yes, given federal precedent,  
6           Intermedia," and the word mandated is no longer  
7           capitalized.

8           For clarification, the issue, Mr. Chairman, asks  
9           whether there are Constitutional questions about  
10          taking raised by the physical colocation. It's obvious  
11          under federal precedent that there are such issues  
12          raised.

13          CHAIRMAN DEASON: Any other changes or corrections  
14          to positions on Issue 7?

15          I understand there is not a stipulation for  
16          Issue 8. Any changes or corrections to the positions  
17          for Issue 8?

18          Issue 9, there is a possible stipulation. If it is  
19          reached it will be incorporated.

20          I take it that if the stipulation is not reached,  
21          then all the positions as stated will simply be  
22          incorporated into the prehearing order?

23          MS. CANZANO: That's right.

24          CHAIRMAN DEASON: Issue 10 also is subject to a  
25          possible stipulation, as is Issue 11.

1 Issue 12, there's no potential stipulation there.  
2 Is there any change or correction to the positions?

3 MS. CANZANO: We would like to ask Sprint if  
4 their position is correct on number 12? Is that what  
5 they meant to say? Specifically the first sentence.

6 MR. BOYD: I believe so, but I will have to check,  
7 and I can get that to you by Monday.

8 CHAIRMAN DEASON: Very well. Issue 13 is subject  
9 to a possible stipulation.

10 Issue 14, changes or corrections? Issue 15?

11 MR. WIGGINS: I have an additional change. I have  
12 an editorial change.

13 Towards the end of the position, the long position  
14 statement, the one, two, three, four, fifth line up  
15 from the bottom, I'd like to insert the words  
16 "to handle" before the word "both", so that the sentence  
17 now reads, "Rather the Commission should aggressively  
18 explore ways under the current statutory scheme to  
19 allow AAVs to handle both telecommunication products  
20 over their respective high capacity transport  
21 facilities."

22 CHAIRMAN DEASON: Any other changes for Issue 15?  
23 Issue 16? Issue 17? Issue 18? Issue 19?

24 MR. TYE: Mr. Chairman, ALLTEL has taken the  
25 position on 19 through 23 that it doesn't have a

1 position.

2 At this time it has offered a very brief bit of  
3 testimony by Harriet Eudy, and we're in the process  
4 right now of updating our positions on those issues,  
5 and we'll be glad to give them to Donna by Monday.

6 CHAIRMAN DEASON: Very well, and that will  
7 preserve your ability then to respond to that  
8 testimony.

9 MR. TYE: Okay. Thank you.

10 CHAIRMAN DEASON: Issue 20? 21? 22?

11 MS. WILSON: Mr. Chairman, on Issue 22 FCTA took  
12 no position at this time. We have distributed a  
13 memorandum taking a position on Issues 22 and 23.

14 There's a typo in the memo. It says Issue 12.  
15 It should be 22. Basically our language mirrors  
16 that of Time Warner on both issues.

17 CHAIRMAN DEASON: Very well. Staff, do you have  
18 that language?

19 MS. CANZANO: Yes.

20 CHAIRMAN DEASON: Issue 23? Issue 24? I'm sorry,  
21 there's a 23-A.

22 MR. FONS: Mr. Chairman, on that I told Ms. Conzano  
23 that United and Centel neglected to file a position,  
24 and we will do so as soon as possible, prior to Monday.

25 CHAIRMAN DEASON: That's for 23-A?



1 MR. FONS: Yes, sir.

2 CHAIRMAN DEASON: United and Centel. Does staff  
3 have something to add on 23-A?

4 MS. CANZANO: On 23-A?

5 CHAIRMAN DEASON: 23-A.

6 MS. CANZANO: No, we don't.

7 CHAIRMAN DEASON: Issue 24? That concludes the  
8 specific issues?

9 MS. CANZANO: Yes, it does.

10 CHAIRMAN DEASON: Section 7 addresses the exhibit  
11 list. Changes or corrections to the list?

12 And Section 8 addresses proposed stipulations, and  
13 to the extent there are proposed stipulations they  
14 will be incorporated.

15 MS. ROTHSTEIN: Mr. Chairman, can we move back  
16 through exhibits? I'm sorry. I understand Mr. Glun's  
17 deposition yesterday by staff, there was an additional  
18 exhibit that came up in the deposition that he has  
19 been asked to prepare, is that correct?

20 MS. CANZANO: Solely as a deposition exhibit.

21 MS. ROTHSTEIN: Oh, okay. It's not, he had given  
22 me it was staff's intent they wanted it introduced at  
23 the hearing. It's not?

24 MS. CANZANO: We might. We are not at this time.

25 MS. ROTHSTEIN: I just wanted to make sure we

1 reserved anything we needed so we could get it in.  
2 Great.

3 CHAIRMAN DEASON: I think that exhibit will be  
4 provided, and if staff wishes to utilize that at  
5 hearing that will be their option.

6 MS. ROTHSTEIN: Okay.

7 CHAIRMAN DEASON: And I suppose if any other  
8 party wishes to utilize it that will be their option  
9 as well.

10 MS. CANZANO: Yes.

11 MR. ERWIN: Let me indicate that on 23-A we  
12 didn't take a position, but I think we would have a  
13 position at this time for Northeastern Quincy, which  
14 would be that the Commission should not modify its  
15 order with regard to non-Tier 1 companies.

16 MS. CANZANO: Staff would like to request, and  
17 maybe this is an appropriate time, that all changes by  
18 all parties be due to staff in writing by Monday.

19 CHAIRMAN DEASON: Any problem with that request?

20 MR. WIGGINS: Even, I'm sorry, I'm confused. Even  
21 the ones we have read into the record today?

22 MS. CANZANO: Yes, just so I can make sure I  
23 incorporate all of them, just for double checking.

24 CHAIRMAN DEASON: Very well. Section 9 addresses  
25 pending motions. Are there any pending motions we have

1 not yet addressed earlier?

2 MS. CANZANO: None I'm aware of.

3 MR. CARNER: There's just one thing I'd like to  
4 note. Southern Bell's prehearing statement contained  
5 an error, and we said there were no pending motions by  
6 Southern Bell. In fact we do have some requests for  
7 confidential classifications, but those have been  
8 referred to in the statements, so I think that's taken  
9 care of.

10 CHAIRMAN DEASON: Very well, and I take it Section  
11 10 will address the ruling which you indicated earlier  
12 today?

13 MS. CANAZANO: Yes.

14 CHAIRMAN DEASON: Is there anything further to  
15 come before the Prehearing Officer at this time?  
16 Apparently the discussions were fruitful, Mr. Wiggins.

17 MR. WIGGINS: Staff work.

18 CHAIRMAN DEASON: Mr. Erwin, were you able to  
19 address your concern that you raised earlier?

20 MR. ERWIN: I think Monday they will be addressed.

21 CHAIRMAN DEASON: Very well. Anything further at  
22 this time? Hearing none this prehearing conference is  
23 adjourned. Thank you all.

24 (WHEREUPON, THE PREHEARING CONFERENCE WAS  
25 CONCLUDED AT 11:10 A.M.)

\* \* \* \* \*

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CERTIFICATE OF REPORTER

1  
 2 STATE OF FLORIDA )  
 3 COUNTY OF LEON ) SS

4 I, SUE HABERSHAW JOHNSON, Certified Court Reporter,  
 5 Registered Professional Reporter, and Notary Public in and  
 6 for the State of Florida at Large:

7 DO HEREBY CERTIFY that the foregoing prehearing conf.  
 8 was taken before me at the time and place designated; that  
 9 my shorthand notes were thereafter reduced to typewriting  
 10 under my supervision; and the foregoing pages, numbered 1  
 11 through 33, are a true and correct record of same.

12 I FURTHER CERTIFY that I am not a relative,  
 13 employee, attorney, or counsel of any of the parties, nor  
 14 relative or employee of such attorney or counsel.

15 CERTIFIED THIS 14TH DAY OF AUGUST, A.D. 1994,  
 16 IN THE CITY OF TALLAHASSEE, COUNTY OF LEON, STATE OF FLORIDA.

17 Sue Habershaw Johnson  
 18 SUE HABERSHAW JOHNSON

19 COUNTY OF LEON )  
 20 STATE OF FLORIDA )

21 The aforesaid instrument was acknowledged before me  
 22 this 14th day of August, 1994, by SUE HABERSHAW JOHNSON,  
 23 FL.Driver's Lic.#J525-788-43-804-0.

24  
 25