

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: the Primary Jurisdiction)	DOCKET NO. 880815-TL
Referral From the Circuit Court)	
For the Sixth Judicial Circuit,)	ORDER NO. 20915
Pinellas County, Florida, in)	
Circuit Civil No. 87-14199-7)	ISSUED: 3-17-89

Pursuant to Notice, a Prehearing Conference was held on February 9, 1989, in Tallahassee, Florida, before Commissioner John T. Herndon, as Prehearing Officer.

APPEARANCES:

On behalf of Home Shopping Network, Inc.:

CHESTER T. KAMIN, ROSS B. BRICKER, ROBERT W. KENT, JR., Jenner & Block, One IBM Plaza, Chicago, IL 60611.

THOMAS E. ACEY, JR., Deputy General Counsel, Home Shopping Network, Inc. 12000 25th Court North, St. Petersburg, FL 33716.

PATRICK K. WIGGINS, Ranson & Wiggins, Post Office Drawer 1657, Tallahassee, FL 32302.

On behalf of GTE Florida Incorporated:

JAMES V. CARIDEO & THOMAS R. PARKER, GTE Florida Incorporated, One Tampa City Center, Post Office Box 110 - MC7, Tampa, FL 33601.

On behalf of Commission Staff:

TRACY HATCH, Esquire and DONALD L. CROSBY, Esquire, Florida Public Service Commission, 101 East Gaines Street, Tallahassee, Florida 32399-1850.

Counsel to the Commissioners:

PRENTICE PRUITT, Esquire, Florida Public Service Commission, 101 East Gaines Street, Tallahassee, Florida 32399-0850.

PREHEARING ORDERI. BACKGROUND

On June 2, 1988, the Honorable Howard P., Rives, Circuit Judge in Pinellas County, Florida, ordered that Count XII of the First Amended Complaint of Home Shopping Network, Inc. (HSN) in the case of Home Shopping Network, Inc. v. GTE Corporation, General Telephone Company of Florida and GTE Communications Corporation, Civil Case No. 87-14199-7, be

ORDER NO. 20915
DOCKET NO. 880815-TL
PAGE 2

referred to the Commission for findings. Count XII alleged that the defendants had failed to meet their obligations to provide reasonable and sufficient telephone facilities and equipment as required by Section 364.03, Florida Statutes. The Court premised this referral on Florida case law, empowering courts to refer technical matters to the Commission for findings. See Southern Bell Tele. and Tele. Co. v. Mobile America Corp., 291 So.2d 199, 201 (Fla. 1974).

Following Court's order, GTE Florida Incorporated (GTEFL), filed a petition with the Commission on June 11, 1988 (the Petition), requesting that the Commission initiate proceedings concerning the referral. HSN Petitioned to intervene and moved to stay the requested proceedings on June 11, 1988.

On July 6, 1988, HSN moved to withdraw Count XII of its complaint in the Circuit Court. GTEFL filed a Cross Motion in the Court on August 1, 1988, seeking a referral of the majority of the factual allegations relating to quality of service to the Commission on the grounds of the Commission's primary jurisdiction.

The parties met on September 13, 1988, to frame issues for the Commission to consider on the referral of Count XII of the First Amended Complaint. GTEFL proposed three issues of law and eight issues of fact on this date; HSN did not propose any issues. Due to the uncertainty as to what was before the Commission and the disputes over issues proposed by the parties, Commission Staff scheduled a hearing before the Prehearing Officer to hear HSN's motion for a stay and to rule on the disputed issues; that hearing was held on September 21, 1988. By Order No. 20083, issued September 28, 1988, the Prehearing Officer granted HSN's stay request, pending a ruling on the referral. On September 29, 1988, Judge Rives issued an order (the Referral Order) granting in limited part GTEFL's Cross Motion for primary jurisdiction referral to the Commission. In the Referral Order, HSN's motion to withdraw Count XII was also granted. On November 22, 1988, Judge Rives denied HSN's Motion for Reconsideration of the primary jurisdiction referral.

In the Referral Order, Judge Rives referred several questions relating to three specific paragraphs of HSN's Second Amended Complaint. Paragraph 34 of this complaint states:

In late 1986, HSN anticipated a substantial increase in call volume as the result of market expansion through the acquisition of UHF television stations and the further addition of cable affiliates. During this period GTE Florida and GTE Communications repeatedly told HSN that GTE's telecommunications systems and the OMNI equipment were capable of processing HSN's anticipated increased volume of calls and were in fact operating effectively in all respects. This representation was false.

ORDER NO. 20915
DOCKET NO. 880815-TL
PAGE 3

Based on this paragraph, the Court proposed the following question:

Were GTE's telecommunications system and OMNI equipment capable of processing HSN's: (1) Then-present volume; (2) its anticipated volume; and (3) Was the equipment then operating effectively? All as contemplated by F.S. 364.03 and/or applicable rules and regulations of the Florida Public Service Commission, if any.

Paragraph 35 of HSN's Second Amended Complaint states:

In late 1986, HSN became concerned about whether it was receiving all of the customer calls that were being placed to HSN, and raised this question with GTE Florida and GTE Communications. GTE Florida and GTE Communications told HSN that all customer calls were being passed to HSN and that any problems that existed were solely the result of HSN's operator staffing decisions, and not due to GTE's equipment or services. These statements were false.

The Court proposed the following question with respect to the above allegations:

Did the equipment and service employed by the Defendants in the within cause comply with standards under F.S. 364.03 and/or applicable P.S.C. rules, if any?

Paragraph 62 of HSN's Second Amended Complaint states:

By making fraudulent statements, selling deficient equipment and then failing to service the equipment, willfully concealing the equipment's flaws, failing to advise HSN of the problems that the local and long distance networks had in handling the volume of HSN calls, and the other misconduct described above, defendants acted in bad faith and breached and violated their duties to HSN.

Based on these allegations, the Court referred the following three questions to the Commission:

- (1) Was there a breach of duty under F.S. 364.03 of "selling deficient equipment"?
- (2) Was there a breach of duty under F.S. 364.03 in the service of any equipment so sold?
- (3) Was there a breach of either (1) or (2) above under any rule, regulation or applicable requirement of the P.S.C. with respect to said equipment?

On October 21, 1988, the parties met to frame issues with respect to the questions set forth in the Court's Referral Order. HSN objected to the Commission considering any issues. Without waiving its objections, HSN proposed on this date seven issues of law and three issues of fact. GTEFL chose not to modify the list of eleven proposed issues that it had submitted previously.

ORDER NO. 20915
DOCKET NO. 880815-TL
PAGE 4

Each of the questions referred by Judge Rives seeks a determination of the responsibilities of GTE Communications Corporation, GTE Corporation and GTEFL for providing service pursuant to Section 364.03, Florida Statutes, and related Commission Rules. Since GTEFL is the only entity providing telecommunications services pursuant to Chapter 364, Florida Statutes, issues proposed by HSN as to the Commission's jurisdiction over GTEFL's affiliates were deleted by the Prehearing Officer in Order No. 20083. Based on Staff's recommendation, the Prehearing Officer limited the issues to those specifically addressing GTEFL's actions. Also based on Staff's recommendation, the Prehearing Officer deleted the issue proposed by HSN with respect to whether the Commission has jurisdiction over the OMNI PABX equipment that HSN purchased, on the ground that the FCC has preempted Commission jurisdiction over customer premises equipment. The final issues list was provided to the parties attached to Order No. 20343, issued November 21, 1988.

On November 18, 1988, HSN moved to dismiss GTEFL's petition regarding the referral. GTEFL moved to strike HSN's motion to dismiss on December 5, 1988. At the Agenda Conference on March 7, 1989, the Commission denied HSN's motion to dismiss.

II. TESTIMONY AND EXHIBITS

Upon insertion of a witness's testimony, exhibits appended thereto may be marked for identification. After opportunity for opposing parties to object and cross-examine, the document may be moved into the record. All other exhibits will be similarly identified and entered at the appropriate time during hearing. Exhibits shall be moved into the record by exhibit number at the conclusion of a witness's testimony.

Witnesses are reminded that on cross-examination, responses to questions calling for a yes or no answer shall be answered yes or no first, after which the witness may explain the answer.

In order to efficiently organize the numbering and presentation of exhibits the parties have been assigned the following witness identification number sequences:

GTEFL	10-19
HSN	20-39

III. ORDER OF WITNESSES

<u>Witness</u>	<u>Witness No.</u>	<u>Appearing For</u>	<u>Date</u>	<u>Issues</u>
<u>DIRECT TESTIMONY</u>				
Bryan, P. (Direct and Surrebuttal)	10	GTEFL	3/23/89	1 -13
Hicks, B.	11	GTEFL	3/23/89	6, 10, 11, 13
Stewart, R.	12	GTEFL	3/23/89	6, 10, 11
Pilcher, B.	13	GTEFL	3/23/89	7, 8, 9

ORDER NO. 20915
DOCKET NO. 880815-TL
PAGE 5

<u>Witness</u>	<u>Witness No.</u>	<u>Appearing For</u>	<u>Date</u>	<u>Issues</u>
<u>REBUTTAL TESTIMONY</u>				
Adler, N.	20	HSN	3/23/89	1, 6-16
Craig, R.	21	HSN	3/23/89	1, 6-16
Speer, R.	22	HSN	3/23/89	1, 6-16
Paxson, L.	23	HSN	3/23/89	1, 6-16
Bohart, C.	24	HSN	3/23/89	1, 6-16
Speer, R.	25	HSN	3/23/89	1, 6-16
Rucker, L.*	26	HSN	3/23/89	1, 6-16
Bryan, P.*	27	HSN	3/23/89	1, 6-16
Hicks, B.*	28	HSN	3/23/89	1, 6-16
Stewart, R.*	29	HSN	3/23/89	1, 6-16
Pilcher, B.*	30	HSN	323/89	1, 6-16

* HSN has identified Messrs. Rucker, Bryan, Hicks, Stewart, and Pilcher as adverse witnesses employed by GTEFL. No testimony has been prefiled for these witnesses as adverse witnesses.

IV. BASIC POSITIONS

GTEFL'S BASIC POSITION: This proceeding was initiated on June 17, 1988, as a result of the entry of a June 1, 1988, order issued by Howard P. Rives, Circuit Judge for the Sixth Judicial Circuit of Pinellas County, in Home Shopping Network, Inc. vs. GTE Corporation, General Telephone Company of Florida, and GTE Communications Corporation (Case No. Cir. Civ. 87-14199-7). The Judge's June 1, 1988, order made a primary jurisdiction referral to the Florida Public Service Commission requesting that the Commission make certain findings regarding technical matters contained in the civil litigation. Judge Rives' June 1, 1988, order was subsequently superceded by his September 29, 1988, order entitled: "Order for Withdrawal of Count XII and Order Granting Referral Of Primary Jurisdiction for the Questions as Set Forth Below." In such order, Judge Rives specifically delineated those factual areas of the civil litigation which the Commission is to enter findings for the benefit of the Court.

This civil litigation in Pinellas County initiated by HSN against GTEFL originally sought damages of \$1.5 billion based on allegations pertaining to two distinct areas. One specific area is the alleged failure of GTE OMNIs sold to HSN by defendant GTE Communications Corporation and installed on HSN's premises to distribute calls to HSN-employed telephone operators once those calls reached HSN. The other distinct

ORDER NO. 20915
DOCKET NO. 880815-TL
PAGE 6

area is the alleged inadequacy of regulated network telephone service provided to HSN by defendant GTEFL. The Court's September 29, 1988, order requests that the Commission enter findings regarding both of these areas.

In regard to legal matters, it is GTEFL's position that this Commission possesses the requisite statutory authority and jurisdiction to produce the requested findings sought by Judge Rives.

In regard to factual matters, GTEFL will demonstrate that the Company has complied with all pertinent Commission rules and regulations regarding the design, construction and operation of the public switched network. GTEFL will further demonstrate that its public switched network delivered to HSN at virtually all times more traffic than HSN was capable of answering. In addition, GTEFL will demonstrate that when traffic volumes increased to a point where alternative network arrangements might be more efficient, GTEFL submitted to HSN various network alternatives which would satisfy this customer's potential needs. However, this advice was ignored by HSN. Finally, GTEFL will demonstrate that any problems associated with incoming call volumes were directly attributable to HSN's own internal operator staffing decisions which created an inability to answer the traffic delivered by GTEFL.

HSN'S BASIC POSITION: The backdrop for this proceeding involves a civil suit that HSN filed in the Circuit Court of the Sixth Judicial Circuit, Pinellas County against defendants GTEFL, GTE Communications Corp., and GTE Corp. (See Home Shopping Network, Inc. v. GTE Corp., et. al., No. 87-14199-7.) In that action, HSN seeks to recover damages for defendants' breach of contract, breach of relationship of trust and confidence, fraud, and other tortious conduct which occurred during the period of time while defendants provided telecommunications equipment and services to HSN.

In substance, HSN alleges that "[i]n soliciting HSN's business, GTE Florida told HSN that, as a member of the GTE Corp. family, it could and would employ all of the resources of GTE Corp.'s vertically-integrated telecommunications system to assess and meet HSN's telecommunications needs." (HSN's Second Amended Complaint, ¶19.) "HSN relied on GTE Florida, along with GTE Corp., GTE Communications, and other GTE Corp. subsidiaries, to recommend the purchase of equipment and other facilities, to identify HSN's existing problems and future needs, to work on HSN's behalf with other vendors of telecommunications services, and to serve as HSN's representative to the telecommunications industry." (Id. at ¶22.) Having become HSN's agent and sole consultant and gained HSN's trust and confidence, the GTE companies thereafter lied to HSN, broke their promises, and wrongfully failed to disclose to HSN crucial information about the number of HSN customer calls that were not being processed by HSN as a result of equipment and services that HSN was using pursuant to the GTE companies' advice.

The statutory and administrative standards regulating the GTE companies' conduct have no bearing on HSN's state court

ORDER NO. 20915
DOCKET NO. 880815-TL
PAGE 7

action. HSN's claims do not implicate, challenge or allege a violation of the GTE companies' regulated standards, rates or general practices. Nor do these standards shield defendants from liability for their fraud, breach of contract, or any other misconduct alleged in HSN's Complaint. HSN's circuit court action concerns the GTE companies' fraudulent statements, their failure to honor their oral and written contractual obligations to HSN, and their breach of the duties they undertook when they became HSN's telecommunications consultant and provider of services and equipment.

Furthermore, the issues relating to the adequacy or inadequacy of GTEFL's local network are irrelevant to this litigation. In its Complaint, HSN does not challenge the adequacy of GTEFL's local switching network or whether that network performed properly. Rather, the issue is why GTEFL chose to funnel HSN's calls through the local network, when other more efficient and economical means of delivering those calls existed.

HSN asserts that the Commission's consideration of the Court's referral is inappropriate and beyond the Commission's jurisdiction. Among other jurisdictional defects, the Court's referral asks the Commission to evaluate services and equipment that are outside the Commission's jurisdiction, including the OMNI call-answering equipment that the GTE companies sold to HSN. Accordingly, HSN has moved to dismiss this proceeding for lack of jurisdiction.

GENERAL POSITIONS

1. HSN objects to all issues of law and fact for the reasons set forth in HSN's Motion to Dismiss. The Commission does not have jurisdiction to proceed with the Court's referral, and should dismiss this proceeding in its entirety.

2. If the Commission decides to proceed with the referral, HSN objects to any issues of law except for those relating to whether the Commission has jurisdiction. The Court did not ask the Commission to render any legal rulings, and the Commission should not offer any.

3. If the Commission decides to proceed with the referral, HSN objects to any issues of fact except for those that are both within the Commission's jurisdiction and responsive to the Court's referral. The only factual issues appropriate for consideration are Issues of Fact 7(b) (first part), 7(c) (first part), 8, 9, 10 and 11.

4. GTEFL has failed to submit any evidence on Issues of Fact 1, 2, 3, 4, 5, 6, 7 (second part of A, B and C), 8, 9, 10, 11, and 13, in direct violation of the Commission's Order on Prehearing Procedure, and should be barred from filing during the remainder of this proceeding any evidence on these issues.

STAFF'S BASIC POSITION: No position.

ORDER NO. 20915
DOCKET NO. 880815-TL
PAGE 8

V. ISSUES AND POSITIONS:

ISSUES OF FACT

ISSUE 1: Did GTEFL design, construct and operate its portion of the public switched network in conformance with Commission requirements?

GTEFL'S POSITION: Yes.

HSN'S POSITION: HSN objects to this issue of fact on the ground that it is not relevant either to the issue whether the Commission has jurisdiction to consider this referral or to the questions identified in the Court's referral. The facts alleged in the paragraphs of the Complaint on which the Court based its referral support HSN's tort and breach of contract claims, and do not explicitly or implicitly allege a regulatory violation. HSN does not allege anywhere in its Complaint that GTEFL violated any regulatory statute or rule, and whether GTEFL achieved regulatory compliance has no bearing upon whether GTEFL, GTE Corp. and GTE Communications Corp. individually or jointly breached the specific contract and tort duties that they owed to HSN. Alternatively, HSN states that it does not have information sufficient to formulate a position on this issue because some of the necessary information is within the sole possession of GTEFL.

STAFF'S POSITION: No position.

ISSUE 2: Did GTEFL perform the required usage studies to provide the Commission required grade of service during the average busy season busy hour as required by Commission Rule 25-4.071?

GTEFL'S POSITION: Yes.

HSN'S POSITION: HSN objects to this issue of fact on the ground that it is not relevant either to the issue whether the Commission has jurisdiction to consider this referral or to the questions identified in the Court's referral. The facts alleged in the paragraphs of the Complaint on which the Court based its referral support HSN's tort and breach of contract claims, and do not explicitly or implicitly allege a regulatory violation. HSN does not allege anywhere in its Complaint that GTEFL did not perform required usage studies, and whether GTEFL achieved regulatory compliance has no bearing upon whether GTEFL, GTE Corp. and GTE Communications Corp. individually or jointly breached the specific contract and tort duties that they owed to HSN. Alternatively, HSN states that it does not have information sufficient to formulate a position on this issue because that information is within the sole possession of GTEFL.

STAFF'S POSITION: No position.

ISSUE 3: Did GTEFL meet the interruption of service standards required by Commission Rule 25-4.070?

GTEFL'S POSITION: Yes.

ORDER NO. 20915
DOCKET NO. 880815-TL
PAGE 9

HSN'S POSITION: HSN objects to this issue of fact on the ground that it is not relevant either to the issue whether the Commission has jurisdiction to consider this referral or to the questions identified in the Court's referral. The facts alleged in the paragraphs of the Complaint on which the Court based its referral support HSN's tort and breach of contract claims, and do not explicitly or implicitly allege a regulatory violation. HSN does not allege anywhere in its Complaint that GTEFL failed to meet interruption of service standards, and whether GTEFL achieved regulatory compliance has no bearing upon whether GTEFL, GTE Corp. and GTE Communications Corp. individually or jointly breached the specific contract and tort duties that they owed to HSN. Alternatively, HSN states that it does not have information sufficient to formulate a position on this issue because that information is within the sole possession of GTEFL.

STAFF'S POSITION: No position.

ISSUE 4: Did GTEFL adopt and pursue a maintenance program which achieved an efficient operation of its network and which rendered safe, adequate and continuous service at all times as required by Commission Rule 25-4.069?

GTEFL'S POSITION: Yes.

HSN'S POSITION: HSN objects to this issue of fact on the ground that it is not relevant either to the issue whether the Commission has jurisdiction to consider this referral or to the questions identified in the Court's referral. The facts alleged in the paragraphs of the Complaint on which the Court based its referral support HSN's tort and breach of contract claims, and do not explicitly or implicitly allege a regulatory violation. HSN does not allege anywhere in its Complaint that GTEFL failed to adopt and pursue a sufficient maintenance program, and whether GTEFL achieved regulatory compliance has no bearing upon whether GTEFL, GTE Corp. and GTE Communications Corp. individually or jointly breached the specific contract and tort duties that they owed to HSN. Alternatively, HSN states that it does not have information sufficient to formulate a position on this issue because that information is within the sole possession of GTEFL.

STAFF'S POSITION: No position.

ISSUE 5: Did GTEFL provide the transmission levels required by Commission Rule 25-4.072?

GTEFL'S POSITION: Yes.

HSN'S POSITION: HSN objects to this issue of fact on the ground that it is not relevant either to the issue whether the Commission has jurisdiction to consider this referral or to the questions identified in the Court's referral. The facts alleged in the paragraphs of the Complaint on which the Court based its referral support HSN's tort and breach of contract claims and do not explicitly or implicitly allege a regulatory violation. HSN does not allege anywhere in its Complaint that GTEFL failed to provide adequate transmission levels, and

ORDER NO. 20915
DOCKET NO. 880815-TL
PAGE 10

whether GTEFL achieved regulatory compliance has no bearing upon whether GTEFL, GTE Corp. and GTE Communications Corp. individually or jointly breached the specific contract and tort duties that they owed to HSN. Alternatively, HSN states that it does not have information sufficient to formulate a position on this issue because that information is within the sole possession of GTEFL.

STAFF'S POSITION: No position.

ISSUE 6: Did GTEFL provide the necessary plant and equipment based on realistic forecasts of growth to meet the requirements of Commission Rule 25-4.073?

GTEFL'S POSITION: Yes.

HSN'S POSITION HSN objects to this issue of fact on the ground that it is not relevant either to the issue whether the Commission has jurisdiction to consider this referral or to the questions identified in the Court's referral. The facts alleged in the paragraphs of the Complaint on which the Court based its referral support HSN's tort and breach of contract claims, and do not explicitly or implicitly allege a regulatory violation. HSN does not allege anywhere in its Complaint that GTEFL did not provide the necessary plant and equipment, and whether GTEFL achieved regulatory compliance has no bearing upon whether GTEFL, GTE Corp. and GTE Communications Corp. individually or jointly breached the specific contract and tort duties that they owed to HSN. Alternatively, HSN states that it does not have information sufficient to formulate a position on this issue because some of the necessary information is within sole possession of GTEFL.

STAFF'S POSITION: No position.

ISSUE 7: Was GTEFL's network capable of transporting all of HSN's traffic volume from AT&T/ATT-C's POP to HSN's demarcation during the periods of:

- (a) June 1, 1985 - August 30, 1986?
If not, was the network operating effeciently? *
- (b) September 1, 1986 - December 31, 1986?
If not, was the network operating efficiently? *
- (c) January 1, 1987 - June 15, 1988
If not, was the network operating efficiently? *

[* "Efficiently" will be interpreted as including, but not being limited to, compliance with regulatory statutes and rules.]

GTEFL'S POSITION: To the extent traffic was delivered to it by AT&T, GTEFL's network delivered to HSN an amont of traffic sufficient to exceed HSN's capability to answer calls on a particular network at virtually all times. This network capacity exceeded HSN's internal call handling capabilities and was consistent with Commission rules and requirements. The network was operating efficiently at all times. However, in certain instances HSN was not receiving all of the traffic

ORDER NO. 20915
DOCKET NO. 880815-TL
PAGE 11

volumes from AT&T's POP to HSN's Clearwater location. This situation arose in large part due to HSN's staffing of its internal operator positions. Quite simply, GTEFL cannot deliver traffic if the lines are already busy. This fact is demonstrated by the substantial amount of line busies issued by GTEFL's serving central offices.

HSN'S POSITION: (A) HSN objects to this issue of fact on the ground that it is not relevant either to the issue whether the Commission has jurisdiction to consider this referral or to the questions identified in the Court's referral. As to the capabilities of GTEFL's network from June 1, 1985 to August 30, 1986, that time period is outside the time period at issue in the referral. As to the efficiency of GTEFL's network, the facts alleged in the paragraphs of the Complaint on which the Court based its referral support HSN's tort and breach of contract claims, and do not explicitly or implicitly allege a regulatory violation. Whether GTEFL achieved overall regulatory "efficiency" has no bearing upon whether GTEFL, GTE Corp. and GTE Communications Corp. individually or jointly breached the specific contract and tort duties that they owed to HSN. Alternatively, HSN states that it does not have information sufficient to formulate a position on this issue because some of the necessary information is within the sole possession of GTEFL.

(B) HSN states that, although definitive information about the capabilities of GTEFL's network between September 1, 1986 and December 31, 1986 is within the sole possession of GTEFL, the information in HSN's possession shows that GTEFL's network was not capable of transporting all of HSN's traffic from AT&T/ATT-C's POP to HSN's point of demarcation during this period. As to the efficiency of GTEFL's network, HSN objects to this issue on the ground that it is not relevant either to the issue whether the Commission has jurisdiction to consider this referral or to the the questions identified in the Court's referral. The facts alleged in the paragraphs of the Complaint on which the Court based its referral support HSN's tort and breach of contract claims, and do not explicitly or implicitly allege a regulatory violation. Whether GTEFL achieved overall regulatory "efficiency" has no bearing upon whether GTEFL, GTE Corp. and GTE Communications Corp. individually or jointly breached the specific contract and tort duties that they owed to HSN. Alternatively, HSN states that it does not have information sufficient to formulate a position on the efficiency of GTEFL's network during this time period because some of the necessary information is within the sole possession of GTEFL.

(C) HSN states that, although definitive information about the capabilities of GTEFL's network between January 1, 1987 to June 15, 1988 is within the sole possession of GTEFL, the information in HSN's possession shows that GTEFL's network was not capable of transporting all of HSN's traffic from AT&T/ATT-C's POP to HSN's point of demarcation during this period. As to the efficiency of GTEFL's network, HSN objects to this issue on the ground that it is not relevant either to the issue whether the Commission has jurisdiction to consider this referral or to the questions identified in the Court's referral. The facts alleged in the paragraphs of the Complaint

ORDER NO. 20915
DOCKET NO. 880815-TL
PAGE 12

on which the Court based its referral support HSN's tort and breach of contract claims, and do not explicitly or implicitly allege a regulatory violation. Whether GTEFL achieved overall regulatory "efficiency" has no bearing upon whether GTEFL, GTE Corp. and GTE Communications Corp. individually or jointly breached the specific contract and tort duties that they owed to HSN. Alternatively, HSN states that it does not have information sufficient to formulate a position on this issue because some of the necessary information is within the sole possession of GTEFL.

STAFF'S POSITION: No position.

ISSUE 8: How many of HSN's customer's calls were delivered by AT&T/ATT-C to GTEFL from September, 1986 through December, 1986?

GTEFL'S POSITION: GTEFL is unable to quantify with any degree of specificity the number of calls delivered by AT&T to GTEFL from September 1986 through December 1986. However, due to HSN's internal staffing decisions, such a number is totally irrelevant as HSN did not have the capacity to answer the actual call volumes being delivered to the serving central office.

HSN'S POSITION: HSN states that it does not yet have information sufficient to formulate a position on this issue because such information is within the sole possession of AT&T or GTEFL. HSN has requested this information in discovery in HSN v. GTE Corp., et al., No. 87-014199-7 (Pinellas County Circuit Court), but neither AT&T nor GTEFL has produced this information.

STAFF'S POSITION: No position.

ISSUE 9: How many of the calls delivered by AT&T/ATT-C to GTEFL were delivered to HSN?

GTEFL'S POSITION: GTEFL is not able to quantify with any degree of specificity how many calls were delivered by GTEFL to HSN. Any such data is kept on a "real-time" basis and is not retained in the normal course of business for any substantial period of time. However, a substantial percentage of the calls delivered to GTEFL by AT&T were routed to HSN's lines, and virtually always in a number which exceeded HSN's internal call handling capability, as is indicated in part by the substantial amount of line busies issued by GTEFL's serving central office.

HSN'S POSITION: HSN states that it does not yet have information sufficient to formulate a position on this issue because that information is within the sole possession of AT&T or GTEFL. HSN has requested this information in discovery in HSN v. GTE Corp. et.al., No. 87-014199-7 (Pinellas County Circuit Court), but neither AT&T nor GTEFL has produced this information.

STAFF'S POSITION: No position.

ORDER NO. 20915
DOCKET NO. 880815-TL
PAGE 13

ISSUE 10: Were there any alternate means of routing AT&T/ATT-C's POP calls delivered by AT&T/ATT-C between the long distance terminal and HSN's facility other than the means chosen by GTEFL?

GTEFL'S POSITION: Initially, GTEFL objects to the inherent assumption in this issue that GTEFL was choosing or directing HSN's selection of network functionality and transport. HSN's decision to utilize any particular telecommunications solution was entirely HSN's prerogative. However, having stated the foregoing objection, GTEFL answers that alternative network solutions were presented by GTEFL to HSN when HSN's estimates of WATS lines indicated that alternative solutions might become appropriate. These alternative solutions included dedicated access and a nationwide nodal network to deliver traffic.

HSN'S POSITION: There were alternate means of routing HSN's traffic between the long distance terminal and HSN's facility other than those chosen by GTEFL.

STAFF'S POSITION: No position.

ISSUE 11: If the response to Issue 20 is affirmative, when did these alternate means become available, and would any of these alternate means have allowed for the delivery of more calls to HSN?

GTEFL'S POSITION: The Megacom type solution for all of HSN's traffic did not become available from AT&T until December 23, 1986. Specially dedicated nationwide networks would be available depending upon the time HSN selected such a solution and the required time to complete the project. However, none of the foregoing alternatives would have allowed for the delivery of more calls to HSN unless HSN changed its own internal staffing decisions. For example, due to the peaked nature of HSN's traffic and the length of time required to handle a call, HSN could not answer 10,000 calls in 1 hour with 100 operators. In fact, given HSN's traffic pattern, 10,000 calls may arrive within a short interval with very low levels of traffic being present for the remainder of the hour.

HSN'S POSITION: Alternative means of routing HSN's calls, including dedicated facilities to a toll switch and services such as MegaCom, were or could have been available during the relevant time period, and would have allowed for the delivery of more calls to HSN.

STAFF'S POSITION: No position.

ISSUE 12: Overall, did GTEFL deliver to HSN all the traffic that HSN could answer during the period GTEFL provided regulated network service?

GTEFL'S POSITION: Yes.

HSN'S POSITION: HSN objects to this issue of fact on the ground that is not relevant either to the issue whether the Commission has jurisdiction to consider this referral or to the questions identified in the Court's referral. HSN further

ORDER NO. 20915
 DOCKET NO. 880815-TL
 PAGE 14

objects to the Commission being forced by the terms of the referral to extend itself beyond its jurisdiction. In order to determine the amount of traffic HSN "could answer," the Commission will be required to consider services and equipment provided by the GTE companies to HSN which are outside the Commission's regulatory jurisdiction, including the capabilities of the OMNI equipment that GTE Corp., GTEFL and GTE Communications Corp. sold to HSN. The Commission also will have to consider the extent to which HSN would have enlarged its call answering capability if the GTE companies had informed HSN about the number of customer calls that HSN was not receiving, an issue which also is beyond the Commission's purview. Alternatively, HSN states that it does not have information sufficient to formulate a position on this issue at this time because some of the necessary information is within the sole possession of GTEFL.

STAFF'S POSITION: No position.

ISSUE 13: Did GTEFL provide adequate telephone service to HSN during the period of June 1, 1985 through June 15, 1987? *

[* "Adequate" will be interpreted as including, but not being limited to, compliance with regulatory statutes and rules.]

GTEFL'S POSITION: Yes.

HSN'S POSITION: HSN objects to this issue of fact on the ground that is not relevant either to the issue whether the Commission has jurisdiction to consider this referral or to the questions identified in the Court's referral. HSN does not allege in its Complaint that GTEFL's regulated services were inadequate, and whether GTEFL achieved regulatory compliance has no bearing upon whether GTEFL, GTE Corp. and GTE Communications Corp. individually or jointly breached the specific contract and tort duties that they owed to HSN. Alternatively, HSN states that it does not have information sufficient to formulate a position on this issue at this time because some of the necessary information is within the sole possession of GTEFL.

STAFF'S POSITION: No position.

ISSUES OF LAW

ISSUE 14: Were GTE's telecommunications system and OMNI equipment capable of processing HSN's: (1) Then-present volume; (2) its anticipated volume; and (3) Was the equipment then operating effectively? All as contemplated by Florida Statutes 364.03 and/or applicable rules and regulations of the Florida Public Service Commission, if any.

GTEFL'S POSITION: Yes. GTEFL's public switched network was capable of processing an amount of traffic sufficient to exceed HSN's call handling capability on a particular network at virtually all times and, therefore, was capable of processing HSN's call volumes. The network was operating effectively and

ORDER NO. 20915
DOCKET NO. 880815-TL
PAGE 15

was in conformance with all pertinent Commission requirements. GTEFL has never received "anticipated call volumes" from HSN; rather, GTEFL received orders for increased numbers of 800 lines. GTEFL suggested alternative network functionality when HSN projected a number of WATS lines which indicated that alternate solutions might be appropriate. However, it must be noted that the ability of the network to complete calls to HSN operators is directly dependent on HSN's ability to answer those calls.

In regard to the OMNI equipment, the equipment was capable of processing calls up to the capacity of the switch and was operating effectively. However, the requirements of Section 364.03 and applicable rules and regulation of the Florida Public Service Commission do not apply to CPE.

HSN'S POSITION: This issue is the first of three questions referred to the Commission by the Court. The Court based this question on Paragraph 34 of HSN's Second Amended Complaint, which states:

In late 1986, HSN anticipated a substantial increase in call volume as the result of market expansion through the acquisition of UHF television stations and the further addition of cable affiliates. During this period GTE Florida and GTE Communications repeatedly told HSN that GTE's telecommunications systems and the OMNI equipment were capable of processing HSN's anticipated increased volume of calls and were in fact operating effectively in all respects. This representation was false.

By using the words "if any" in its question, the Court is asking, as an initial matter: (1) whether there are any regulatory statutes or rules that apply to the OMNI PABX equipment that HSN purchased from the GTE companies; and (2) whether there are any regulatory statutes or rules that apply to the provision, arrangement or recommendation of telephone network service to a single commercial customer, all as alleged and explained in HSN's Second Amended Complaint. Both of these questions must be answered in the negative. The OMNI is not subject to regulation by the Commission, and all of the regulatory statutes and rules are systemwide in application. The duties owed to HSN jointly and severally by GTEFL, GTE Corp. and GTE Communications Corp. were based on their oral and written promises, the nature of their relationship with HSN, and the duties imposed by tort law; not the regulatory statutes and rules. Therefore, the Commission need not and should not receive evidence to frame its response to these inquiries by the Court. Alternatively, HSN submits that the answer to each of the subparts is "no."

STAFF'S POSITION:

ISSUE 15: Did the equipment and service employed by the Defendant in the within cause comply with standards under Florida Statutes 364.03 and/or applicable Public Service Commission rules, if any?

ORDER NO. 20915
 DOCKET NO. 880815-TL
 PAGE 16

GTEFL'S POSITION: Yes. GTEFL provided the required grade of service and met applicable Commission regulations and standards at all times. In addition, it should be noted that GTEFL surpassed Commission requirements in providing service to HSN.

The standards set forth in Section 364.03 and the Commission Rules do not apply.

HSN'S POSITION: This issue is the second of three questions referred to the Commission by the Court. The Court based this question on Paragraph 35 of HSN's Second Amended Complaint, which states:

In late 1986, HSN became concerned about whether it was receiving all of the customer calls that were being placed to HSN, and raised this question with GTE Florida and GTE Communications. GTE Florida and GTE Communications told HSN that all customer calls were being passed to HSN and that any problems that existed were solely the result of HSN's operator staffing decisions, and not due to GTE's equipment or services. These statements were false.

By using the words "if any" in its question, the Court is asking, as an initial matter: (1) whether there are any regulatory statutes or rules that apply to the OMNI PABX equipment that HSN purchased from the GTE companies; and (2) whether there are any regulatory statutes or rules that apply to the provision, arrangement or recommendation of telephone network service to a single commercial customer, all as alleged and explained in HSN's Second Amended Complaint. Both of these questions must be answered in the negative. The OMNI is not subject to regulation by the Commission, and all of the regulatory statutes and rules are systemwide in application. The duties owed to HSN jointly and severally by GTEFL, GTE Corp. and GTE Communications Corp. were based on their oral and written promises, the nature of their relationship with HSN, and the duties imposed by tort law; not the regulatory statutes and rules. Therefore, the Commission need not and should not receive evidence to frame its response to these inquiries by the Court. Alternatively, HSN submits that the answer to each of the subparts is "no."

STAFF'S POSITION:

ISSUE 16: (1) Was there a breach of duty under Florida Statutes 364.03 of "selling deficient equipment?"
 (2) Was there a breach of duty under Florida Statute 364.03 in the service of any equipment so sold? (3) Was there a breach of either (1) or (2) above under any rule, regulation or applicable requirement of the Public Service Commission with respect to said equipment?

GTEFL'S POSITION: No. There was no breach of duty. GTEFL is of the opinion that the OMNI equipment sold to HSN by GTE Communications Corporation, GTEFL's separate equipment subsidiary is not subject to any Commission statutes or rules. However, it is of vital importance that the Commission examine the entire "pipe" in making its findings regarding the

ORDER NO. 20915
DOCKET NO. 880815-TL
PAGE 17

performance of the network. This "pipe" runs from the point where a call is originated to the point where it is intended to reach and includes all points in between. The Commission cannot ignore HSN's internal call handling capabilities in reaching its assessment of the network. The Commission possesses ample authority and the necessary expertise to examine CPE and its effects on the network in making the requisite findings herein.

HSN'S POSITION: This issue is the third of three questions referred to the Commission by the Court. The Court based this question on Paragraph 62 of HSN's Second Amended Complaint, which states:

By making fraudulent statements, selling deficient equipment and then failing to service the equipment, willfully concealing the equipment's flaws, failing to advise HSN of the problems that the local and long distance networks had in handling the volume of HSN calls, and the other misconduct described above, defendants acted in bad faith and breached and violated their duties to HSN.

All parties agree that the OMNI PABX equipment purchased by HSN from the GTE companies is not regulated under either Florida Statutes 364.03 or any Commission rule. Each of the Court's inquiries relating to Paragraph 62 should be answered by advising the Court of this fact. The Commission need not and should not receive evidence to frame its response to these inquiries by the Court.

STAFF'S POSITION;

ISSUE 17: Are the applicable legal standards pertaining to the required sufficiency, adequacy and efficiency of service provided by GTEFL contained in Sections 364.03 and 364.14, Fla. Stat. (1987) and Commission Rules 25-4.069 through 25-4.077, Fla. Admin. Code?

GTEFL'S POSITION: Yes. The foregoing statutory sections and Commission rules set forth the legal requirements surrounding GTEFL's duty to provide sufficient, adequate and efficient service.

HSN'S POSITION: HSN objects to this legal issue on the ground that it is not relevant either to the issue of whether the Commission has jurisdiction to consider the referral or the questions identified in the Court's referral. HSN does not allege in its Complaint that defendants violated Fla. Stat. 364.03, Fla. Stat. §364.14 or any of Commission Rules 25-4.069 through 25-4.077. The facts alleged in the paragraphs of the Complaint on which the Court based its referral support HSN's tort and breach of contract claims, and do not explicitly or implicitly allege a regulatory violation.

STAFF'S POSITION: No position.

ISSUE 18: Is GTEFL required to design, construct and operate its public switched network in conformance with statutory and administrative rule requirements for the benefit of the general public?

ORDER NO. 20915
DOCKET NO. 880815-TL
PAGE 18

GTEFL'S POSITION: Yes. The public switched network is designed and operated to provide the general ratepaying public with maximum connectivity at a reasonable cost. The criteria set forth in the legal standards mentioned in Issue 1 are codifications of this basic principle. As a regulated telephone company subject to the jurisdiction of this Commission, GTEFL is required to meet these standards.

HSN POSITION: HSN objects to this legal issue on the ground that it is not relevant either to the issue whether the Commission has jurisdiction to consider the referral or to the questions identified in the Court's referral. HSN does not allege in its Complaint that defendants violated any statutory or administrative rule requirements. The facts alleged in the paragraphs of the Complaint on which the Court based its referral support HSN's tort and breach of contract claims, and do not explicitly or implicitly allege a regulatory violation.

STAFF'S POSITION: No position.

ISSUE 19: What are the legal and ratemaking consequences, if any, of GTEFL building excess capacity into its public switched network in addition to the standards and requirements set forth in Commission Rules 25-4.070 through 25-4.077, Fla. Admin. Code?

GETFL'S POSITION: A telephone company is required to design, construct and operate its network in such a manner as to satisfy the public interest. The public interest in regard to placement of network facilities connotes prudent management practices resulting in sufficient service at a reasonable cost. The foregoing principle is also codified in the Commission Rules set forth in Issue 1. If a company were to engage in practices where substantial excess capacity was built into its network contrary to Commission requirements, the telephone company would subject itself to potential ratemaking adjustments and adverse orders from this Commission.

HSN'S POSITION: HSN objects to this legal issue on the ground that it is not relevant either to the issue whether the Commission has jurisdiction to consider the referral or to the questions identified in the Court's referral. HSN does not allege in its Complaint that defendants should have or did violate Commission Rules 25-4.070 through 25-4.077, nor does HSN allege that GTEFL should have or did build excess capacity into its network. The facts alleged in the paragraphs of the Complaint on which the Court based its referral support HSN's tort and breach of contract claims, and do not explicitly or implicitly allege a regulatory violation.

STAFF'S POSITION: No position.

ISSUE 20: Does the Commission have jurisdiction over claims that GTEFL defrauded and breached its contractual obligations to HSN?

GTEFL'S POSITION: This Commission does not have jurisdiction to decide common law claims pertaining to fraud and breach of contractual obligations. However, such a purpose is not the thrust of Judge Rives' primary jurisdiction referral and this

ORDER NO. 20915
DOCKET NO. 880815-TL
PAGE 19

issue has been submitted by HSN to cloud the clear purpose of this case. Judge Rives made his primary jurisdiction referral to this Commission in order to obtain the Commission's expertise regarding the technical facts and legal requirements surrounding this controversy as it pertains to the Commission's jurisdiction. HSN's protest aside, the purpose of this referral is not to have the Commission adjudicate common law claims. Rather, the purpose of this referral is for the Commission to make its findings in order to aid the Court in resolving the civil litigation. The simple fact is that the common law claims cannot be neatly separated from their legal basis. It is the determination of the factual basis which is the subject matter of this proceeding.

HSN'S POSITION: The Commission does not have jurisdiction over HSN's litigation claims that the GTE companies defrauded and breached their contractual obligations to HSN. These claims are completely unrelated to the regulatory statutes and rules that define the Commission's jurisdiction, and are exclusively the province of the Court and a jury. In addition, the Court's referral does not in any way reach or include HSN's claims that the GTE companies defrauded and breached their contractual obligations to HSN.

STAFF'S POSITION: No position.

ISSUE 21: Does the Commission have jurisdiction over the unregulated activities of GTEFL?

GTEFL'S POSITION: No. However, GTEFL believes that the Court has referred issues regarding the GTECC OMNI equipment to the Commission in the event that the Commission deems it necessary to look at the OMNIs in order to answer network matters, as it may be somewhat difficult to understand fully how the network functioned without also considering, as background, how calls were distributed upon reaching HSN's premises.

HSN'S POSITION: The Commission does not have jurisdiction over GTEFL's unregulated activities, the services provided to HSN jointly by GTE Corp., GTEFL, and GTE Communications Corp., or the adequacy and performance of equipment provided to HSN by GTE Corp., GTEFL, and GTE Communications Corp.

STAFF'S POSITION: No position.

ISSUE 22: Does the APA authorize the Commission to issue nonbinding and nonappealable "answer[s] and/or recommendations" under the facts presented here?

GTEFL'S POSITION: The submission of this issue by HSN is nothing more than an attempt to create doubt where none is present concerning the Commission's authority and GTEFL objects to its inclusion as an issue in this case. This primary jurisdiction referral was issued by the Circuit Court of Pinellas County and the Court's utilization of the Commission's final order in this proceeding will be determined by the Court itself. The Commission need not concern itself with whether its order is "nonbinding" or "nonappealable."

ORDER NO. 20915
DOCKET NO. 880815-TL
PAGE 20

HSN'S POSITION: There is no authority under the Florida Administrative Procedure Act ("APA") for the Commission to issue non-binding and non-appealable "answer[s] and/or recommendations." The APA, which was enacted in 1974 after the Southern Bell case cited by the court, contemplates that the Commission will act by rule or order, both of which are binding and appealable. Section 120.50, Fla. Stat., et seq. There is no provision in the APA for the Commission to act as a special master issuing non-binding preliminary findings to be used as "evidence" at a trial. GTEFL improperly initiated the instant proceeding under Section 120.57(1) of the APA, which sets forth rules governing formal proceedings that necessarily result in binding and appealable orders. This is directly contrary to the Court's order requesting that the Commission issue "answer(s) and/or recommendations."

STAFF'S POSITION: No position.

VI. EXHIBIT LIST

<u>Witness</u>	<u>Proferring Party</u>	<u>Exh. No.</u>	<u>Title</u>
Bryan	GTEFL	10-A	<u>PCB-1/Direct:</u> Pertinent Commission rules regarding network performance and parameters <u>PCB-A/Surrebuttal:</u> HSN show host reports indicating operator staffing levels <u>PCB-B/Surrebuttal:</u> Average business day reports regarding GTEFL network grade of service
		Comp. Exh. 10-B	Blockage studies pursuant to access tariff
Hicks	GTEFL	11-A	<u>BH-1:</u> Line usage studies
Stewart	GTEFL	12-A	<u>RES-1:</u> November 19, 1986, letter from HSN President, Lowell Paxson, discussing future HSN projections
Alder	HSN	Comp. Exh. 20-A	<u>NJA-1:</u> GTE Network Control Logs <u>NJA-2:</u> AT&T NC Report, January 1-3, 1987 <u>NJA-3:</u> Rucker Synopsis, November 6, 1986 <u>NJA-4:</u> Rucker Follow-up Log <u>NJA-5:</u> GTE Tariff Excerpts <u>NJA-6:</u> Bryan Notes and Draft Synopsis

ORDER NO. 20915
DOCKET NO. 880815-TL
PAGE 21

<u>Witness</u>	<u>Proferring Party</u>	<u>Exh. No.</u>	<u>Title</u>
Alder	HSN	Comp. Exh. 20-A	NJA-7: Excerpts from deposition of Patricia C. Bryan NJ-8: Rucker Minutes of November 5, 1986 meeting NJ-9: Hicks January 20, 1986 Memorandum
Craig	HSN	21-A	RC-1: March 16, 1987 Letter from Brad Hicks to Willaim DeLany

VII. STIPULATIONS:

No issues have been stipulated at this time.

VIII. PENDING MOTIONS:

The following motions are currently pending:

1. HSN's Motion to Dismiss, filed November 18, 1988, and GTEFL's Motion to Strike HSN's Motion to Dismiss, filed December 5, 1988 was referred to the full Commission by the Prehearing Officer. [The Commission denied HSN's motion to dismiss at the March 7, 1989, Agenda Conference.]
2. On March 7, 1989, GTEFL filed a motion to strike HSN's amended Prehearing Statement to the extent that it identifies any adverse witnesses in this proceeding.

IX. RULINGS:

1. HSN's Motion to Strike certain of GTEFL's direct testimony, filed January 17, 1989, was denied by the Prehearing Officer on February 9, 1989, without prejudice to HSN's resubmission of the motion to the full Commission at a later date.
2. On February 9, 1989, GTEFL filed a motion to accept surrebuttal testimony. No response was received from HSN. GTEFL's motion to file surrebuttal testimony is granted.
3. The parties have agreed to and the Prehearing Officer has approved a procedure whereby, all cross-examination exhibits and exhibits to be used by HSN in the direct testimony of adverse witnesses will be exchanged and in the possession of the other party by the 17th of March, 1989.

ORDER NO. 20915
DOCKET NO. 880815-TL
PAGE 22

4. HSN's motion for leave to late file its amended prehearing statement is granted.
5. GTEFL's motion to strike HSN's "Redlined Version" of the Prehearing Order is granted in part and denied in part as reflected in the body of this Order.
6. GTEFL's motion to compel HSN to identify with specificity the areas of inquiry of the adverse witnesses called by HSN is granted. HSN is directed to provide GTEFL with a description of the direction of the specific areas of coverage of potential testimony.
7. HSN's request to amend its position statements on Issues 14-16 is granted.

X. PROCEDURE FOR HANDLING CONFIDENTIAL INFORMATION:

In the event it becomes necessary to handle confidential information, the following procedure will be followed:

1. The Party utilizing the confidential material during cross examination shall provide copies to the Commissioners and the Court Reporter in envelopes clearly marked with the nature of the contents. Any party wishing to examine the confidential material shall be provided a copy in the same fashion as provided to the Commissioners subject to execution of any appropriate protective agreement with the owner of the material.
2. Counsel and witnesses should state when a question or answer contains confidential information.
3. Counsel and witnesses should make a reasonable attempt to avoid verbalizing confidential information and, if possible, should make only indirect reference to the confidential information.
4. Confidential information should be presented by written exhibit when reasonably convenient to do so.
5. At the conclusion of that portion of the hearing that involves confidential information, all copies of confidential exhibits shall be returned to the owner of the information. If a confidential exhibit has been admitted into evidence, the copy provided to the Court Reporter shall be retained in the Commission Clerk's confidential files.

If it is necessary to discuss confidential information during the hearing the following procedure shall be utilized.

ORDER NO. 20915
DOCKET NO. 880815-TL
PAGE 23

After a ruling has been made assigning confidential status to material to be used or admitted into evidence, it is suggested that the presiding Commissioner read into the record a statement such as the following:

The testimony and evidence we are about to receive is proprietary confidential business information and shall be kept confidential pursuant to Section 364.093, Florida Statutes. The testimony and evidence shall be received by the Commissioners in executive session with only the following persons present:

- a) The Commissioners
- b) The Counsel for the Commissioners
- c) The Public Service Commission staff and staff counsel
- d) Representatives from the office of public counsel and the court reporter
- e) Counsel for the parties
- f) The necessary witnesses for the parties
- g) Counsel for all intervenors and all necessary witnesses for the intervenors.

All other persons must leave the hearing room at this time. I will be cutting off the telephone ties to the testimony presented in this room. The doors to this chamber are to be locked to the outside. No one is to enter or leave this room without the consent of the chairman.

The transcript of this portion of the hearing and the discussion related thereto shall be prepared and filed under seal, to be opened only by order of this Commission. The transcript is and shall be non-public record exempt from Section 119.07(1), Florida Statutes. Only the attorneys for the participating parties, Public Counsel, the Commission staff and the Commissioners shall receive a copy of the sealed transcript.

(AFTER THE ROOM HAS BEEN CLOSED)

Everyone remaining in this room is instructed that the testimony and evidence that is about to be received is proprietary confidential business information, which shall be kept confidential. No one is to reveal the contents or substance of this testimony or evidence to anyone not present in this room at this time. The court reporter shall now record the names and affiliations of all persons present in the hearing room at this time.

It is therefore,

ORDERED by Commissioner John T. Herndon, as Prehearing Officer, that this Prehearing Order shall govern the conduct of these proceedings as set forth above unless modified by the Commission.

ORDER NO. 20915
DOCKET NO. 880815-TL
PAGE 24

By ORDER of Commissioner John T. Herndon, as Prehearing
Officer, this 17th day of MARCH, 1989.

John T. Herndon
JOHN T. HERNDON, Commissioner
and Prehearing Officer

(S E A L)

TH