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BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In The Matter of	:	DOCKET NO. 891194-TL
Proposed tariff filings by	:	
SOUTHERN BELL TELEPHONE AND	:	<u>PREHEARING CONFERENCE</u>
TELEGRAPH COMPANY clarifying	:	
when a non-published number	:	
can be disclosed and intro-	:	
ducing Caller ID to	:	
TouchStar Service.	:	

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FPSC, Hearing Room 106
Fletcher Building
101 East Gaines Street
Tallahassee, Florida 32399

Thursday, November 15, 1990

Florida Public Service Commission
Met pursuant to notice at 9:30 a.m.

BEFORE: COMMISSIONER BETTY EASLEY
Prehearing Officer

APPEARANCES:

DAVID M. FALCOUST, Southern Bell Legal
Department, 4300 Southern Bell Center, 675 West
Peachtree Street, Northeast, Atlanta, Georgia 30375,
Telephone No. (404) 529-3865, appearing on behalf of
Southern Bell Telephone and Telegraph Company.

DOCUMENT NO. 10395-90 11-20-90

1 APPEARANCES CONTINUED:

2 E. BARLOW KEENER, Southern Bell Legal
3 Department, 150 West Flagler Street, Suite 1910, Miami,
4 Florida 33130, Telephone No. (305) 530-5558, appearing
5 on behalf of Southern Bell Telephone and Telegraph
6 Company.

7 THOMAS R. PARKER, Associate General Counsel, GTE
8 Florida Incorporated, Post Office Box 110, Mail Code 7,
9 Tampa, Florida, 33601, Telephone (813) 224-4001, appearing
10 on behalf of GTE Florida Incorporated.

11 ALAN N. BERG, Post Office Box 5000, Altamonte
12 Springs, Florida, 32716-5000, Telephone No. (407)
13 889-6018, appearing on behalf of United Telephone Company
14 of Florida.

15 RICHARD E. DORAN, Director, Criminal Appeals,
16 Department of Legal Affairs, the Capitol, Tallahassee,
17 Florida 32399-1050, Telephone No. (904) 488-0600,
18 appearing on behalf of the Attorney General of Florida.

19 PETER A. ANTONACCI, Statewide Prosecutor,
20 Office of Statewide Prosecution, the Capitol, PL-01,
21 Tallahassee, Florida 32399-1540, Telephone No. (904)
22 487-2807, appearing on behalf of the Office of
23 Statewide Prosecution.

24

25

1 APPEARANCES CONTINUED:

2 MICHAEL RAMAGE, Florida Department of Law
3 Enforcement, Post Office Box 1498, Tallahassee, Florida
4 32302, Telephone No. (904) 488-8323, appearing on
5 behalf of the Florida Department of Law Enforcement.

6 JEFFREY L. COHEN, Florida Medical Association,
7 Post Office Box 2411, Jacksonville, Florida 32203,
8 Telephone No. (904) 356-1571, appearing on behalf of the
9 Florida Medical Association.

10 CHERYL R. PHOENIX, Director, Florida
11 Coalition Against Domestic Violence, Post Office Box
12 532041, Orlando, Florida 32853-2041, Telephone No.
13 (407) 277-1295, appearing on behalf of the Florida
14 Coalition Against Domestic Violence.

15 A. REBECCA DUNN, Florida Coalition Against
16 Domestic Violence, Post Office Box 790, Lakeland,
17 Florida 33809, Telephone No. (813) 682-7270, appearing
18 on behalf of the Florida Coalition Against Domestic
19 Violence.

20 STEPHEN S. MATHUES, Department of General
21 Services, Office of General Counsel, Knight Building,
22 Suite 309, Koger Executive Center, 2737 Centerview
23 Drive, Tallahassee, Florida 32399-0950, Telephone No.
24 (904) 487-1082, appearing on behalf of the Department
25 of General Services.

1 APPEARANCES CONTINUED:

2 LEE L. WILLIS, Ausley, McMullen, McGehee,
3 Carothers and Proctor, Post Office Box 391, Tallahassee,
4 Florida, 32302, Telephone (904) 224-9115, appearing on
5 behalf of Central Telephone Company of Florida.

6 CHARLES J. BECK, Office of the Public
7 Counsel, Claude Pepper Building, Room 812, 111 West
8 Madison Street, Room 801, Tallahassee, Florida
9 32399-1400, Telephone No. (904) 488-9330, appearing on
10 behalf of the Citizens of the State of Florida.

11 ANGELA B. GREEN, FPSC, Division of Legal
12 Services, 101 East Gaines Street, Tallahassee, Florida
13 32399-0863, Telephone (904) 487-2740, appearing on
14 behalf of the Commission Staff.

15 CYNTHIA MILLER, FPSC Office of General
16 Counsel, Division of Appeals, 101 East Gaines Street,
17 Tallahassee, Florida 32309-0863, Telephone No. (904)
18 488-7464, Counsel to the Commissioners.

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REPORTED BY: JOY KELLY, CSR, RPR
SYDNEY C. SILVA, CSR, RPR
Official Commission Reporters

P R O C E E D I N G S

(Hearing convened at 9:35 a.m.)

COMMISSIONER EASLEY: Good morning.

Counselor, would you read the notice, please.

MS. GREEN: Pursuant to notice, a Prehearing Conference was convened on November 15th, 1990, in Tallahassee, Florida. This is Docket No. 891194-TL, Proposed Tariff Filings by Southern Bell.

COMMISSIONER EASLEY: Take appearances, please.

MR. FALGOUST: David Falgoust --

THE REPORTER: Would you turn on your microphone, please, sir?

COMMISSIONER EASLEY: Yeah. And the rule is when you have to move the mike, you turn it off, move the mike and then turn it on.

MR. FALGOUST: Thank you. David Falgoust, 675 West Peachtree Street Northeast, Atlanta, Georgia, 30375, on behalf of Southern Bell.

MR. KEENER: E. Barlow Keener, on behalf of Southern Bell Telephone and Telegraph Company, Suite 1910, 150 West Flagler Street, Miami, Florida 33130.

MR. PARKER: Thomas R. Parker, Post Office Box 110, Mail Code 7, Tampa, Florida 33601 on behalf of GTE Florida Incorporated.

1 MR. COHEN: Jeff Cohen on behalf of the
2 Florida Medical Association. The address is 760
3 Riverside, Jacksonville, Florida, 32204.

4 MR. BERG: Alan Berg, Post Office Box 5000,
5 Altamonte Springs, Florida, 32716-5000, appearing on
6 behalf of United Telephone Company of Florida.

7 MR. MATHUES: Stephen S. Mathues, 2737
8 Centerview Drive, Suite 309, Tallahassee, 32399-0950,
9 on behalf of the Florida Department of General
10 Services.

11 MS. PHOENIX: Cheryl Phoenix from the Florida
12 Coalition Against Domestic Violence, Post Office Box
13 532041, Orlando, Florida, 32853-2041.

14 MS. DUNN: Beck Dunn, representing the
15 Florida Coalition Against Domestic Violence, 1625 Pine
16 Glen Road, Lakeland, Florida, 33809.

17 MR. DORAN: Richard Doran, Director of
18 Criminal Appeals Division, Florida Department of Legal
19 Affairs, the Capitol, Tallahassee, Florida, on behalf
20 of Robert Butterworth, Attorney General.

21 MR. BECK: Charles J. Beck, Office of the
22 Public Counsel, 111 West Madison Street, Room 801,
23 Tallahassee, Florida, 32399-1400, appearing on behalf
24 of Florida Citizens.

25 MR. ANTONACCI: I'm Peter Antonacci. I

1 represent the Office of Statewide Prosecution, PL-01,
2 the Capitol, Tallahassee, Florida.

3 MR. RAMAGE: Michael Ramage, Deputy General
4 Counsel, Florida Department of Law Enforcement, Post
5 Office Box 1489, Tallahassee, Florida, 32302.

6 COMMISSIONER EASLEY: Is that called an
7 offhand? Thank you.

8 MR. RAMAGE: Left-hand remark.

9 COMMISSIONER EASLEY: There you go. There
10 you go. Okay.

11 MS. GREEN: Angela B. Green, Florida Public
12 Service Commission, 101 East Gaines Street,
13 Tallahassee, on behalf of the Commission Staff.

14 MS. MILLER: Cindy Miller, Florida Public
15 Service Commission, same address, on behalf of the
16 Commission.

17 COMMISSIONER EASLEY: Thank you very much.
18 Any preliminary matters, counsel? Preliminary matters?

19 MS. GREEN: There has been an additional
20 filing since this Prehearing Order was drafted. It's a
21 filing dated November 13th, 1990, by Southern Bell; and
22 this is an amendment to the prehearing statement to
23 drop the witness David Regal or Regale. (Pause)

24 COMMISSIONER EASLEY: Let me find that in
25 here.

1 MS. GREEN: He is shown on Page 4 of your
2 draft order as a rebuttal witness.

3 COMMISSIONER EASLEY: All right. Mr. David
4 Regal will be dropped. All right. Anything else?

5 MS. GREEN: Not to my knowledge.

6 COMMISSIONER EASLEY: We show three pending
7 motions. Should they be dealt with at this time?

8 MS. GREEN: That would be at your pleasure,
9 or you could do it after the issues.

10 COMMISSIONER EASLEY: All three are by OPC.
11 What is your request? And then we'll decide.

12 MR. BECK: Either way, they're all pending.
13 It doesn't matter to me whether we do it now or after
14 the issues.

15 MS. GREEN: It would probably be more
16 productive, then, to proceed through the other matters
17 and save this to the end.

18 COMMISSIONER EASLEY: I agree. All right.
19 You all have a copy of the draft of the Prehearing
20 Order. Is there any comment, correction, to the
21 background statement on Pages 2 and 3 by any of the
22 parties? Hearing none.

23 The witness list, outside of the change by
24 Southern Bell? Any changes?

25 MR. PARKER: I don't have a change,

1 Commissioner, I just have a question. Are we going to
2 have people up and down on direct and rebuttal or are
3 they going to appear one time? It appears from looking
4 at this the idea is to have them appear once.

5 COMMISSIONER EASLEY: It would be my
6 inclination to have them appear once unless someone can
7 persuade me otherwise.

8 MS. GREEN: I would say that the order that
9 is listed here is not of any particular order, it just
10 matches the order that was given to the positions. And
11 if someone has a suggestion or request, we could
12 entertain that as to a specific order.

13 MR. BECK: For my two witnesses, I prefer to
14 have Dean Kurtz precede Mark Cooper. I think it'll
15 flow better having, you know, we go Southern Bell,
16 Gentel, United, then have Centel. My witness works
17 for Centel.

18 COMMISSIONER EASLEY: All right. So Dean
19 Kurtz, for strictly rebuttal, would precede Dr. Cooper?

20 MR. BECK: Yes.

21 COMMISSIONER EASLEY: All right. Anything
22 else?

23 MS. GREEN: Now, as far as trying to assign
24 dates for the witnesses, we have not had an opportunity
25 to talk and discuss how long people think their

1 witnesses might take. If you'd like, we can save that
2 toward the end and let people think about that.

3 COMMISSIONER EASLEY: All right, we'll do
4 that. The statements of basic position, beginning on
5 Page 6?

6 MR. WILLIS: Commissioner Easley, before you
7 go to that, I'm Lee Willis, I represent Central
8 Telephone Company of Florida. As Mr. Beck mentioned,
9 Mr. Kurtz is an employee of Central Telephone Company
10 of Florida; and while we have not intervened and do not
11 seek to become a party, I would like, without
12 objection, to be able to come to the counsel table
13 while Mr. Kurtz is testifying during the hearing.

14 COMMISSIONER EASLEY: Does anyone have an
15 objection to doing that? I think that's appropriate.
16 All right.

17 Basic positions. Southern Bell, is yours as
18 stated in the Draft Prehearing Order, correct?

19 MR. FALGOUST: A quick perusal, Commissioner,
20 it seems to indicate that it is, yes.

21 COMMISSIONER EASLEY: All right. GTE?

22 MR. PARKER: No problem.

23 COMMISSIONER EASLEY: United?

24 MR. BERG: Ours are fine.

25 COMMISSIONER EASLEY: OPC?

1 MR. BECK: Fine.

2 COMMISSIONER EASLEY: Attorney General?

3 Statewide Prosecutor? PD -- I'm just going to call the
4 Attorney General's Office.

5 MR. DORAN: No objection from the Attorney
6 General.

7 COMMISSIONER EASLEY: That was --

8 MR. DORAN: Richard Doran.

9 COMMISSIONER EASLEY: FMA?

10 MR. COHEN: No objection.

11 COMMISSIONER EASLEY: FCADV?

12 MS. PHOENIX: No objections.

13 COMMISSIONER EASLEY: DGS?

14 MR. MATHUES: No objections.

15 COMMISSIONER EASLEY: Staff, yours will
16 remain the same?

17 MS. GREEN: Yes, ma'am.

18 COMMISSIONER EASLEY: All right. Position or
19 Issue 1, informational? Let me ask you a question,
20 Sydney?

21 THE REPORTER: Yes, ma'am.

22 COMMISSIONER EASLEY: The order I just took
23 the responses in is the order as it appears in the
24 Prehearing Statement rather than the order in which
25 counsels are making their appearances. Would it be

1 easier to go down the table, or would it be easier for
2 you just to take it in the order as shown in the
3 Prehearing Statement, or do you care?

4 THE REPORTER: It's at your pleasure as long
5 as we don't go too fast.

6 COMMISSIONER EASLEY: Okay. Then I'll stay
7 with the order in the Prehearing Statement then. Okay.

8 All right. Issue 1? And what I'm looking
9 for is any changes or corrections. Southern Bell?

10 MR. FALGoust: No changes.

11 COMMISSIONER EASLEY: GTE?

12 MR. PARKER: No change.

13 COMMISSIONER EASLEY: United?

14 MR. BERG: No changes.

15 COMMISSIONER EASLEY: OPC?

16 MR. BECK: No change.

17 COMMISSIONER EASLEY: Attorney General?

18 MR. DORAN: No change.

19 COMMISSIONER EASLEY: FMA?

20 MR. COHEN: No changes.

21 COMMISSIONER EASLEY: FCADV?

22 MS. PHOENIX: No changes.

23 COMMISSIONER EASLEY: DGS?

24 MR. MATHUES: No change.

25 COMMISSIONER EASLEY: And Staff?

1 MS. GREEN: No change.

2 COMMISSIONER EASLEY: Issue 2 is a legal
3 issue. Southern Bell?

4 MR. FALGOUST: No changes, Commissioner.

5 COMMISSIONER EASLEY: GTE?

6 MR. PARKER: No, the issue is stated or the
7 answer is stated correctly.

8 COMMISSIONER EASLEY: United?

9 MR. BERG: We have no change, but we will
10 expand on our response in our brief.

11 COMMISSIONER EASLEY: All right. Do you wish
12 the Prehearing Order to reflect that?

13 MR. BERG: I don't think it needs to reflect
14 that, ma'am.

15 COMMISSIONER EASLEY: OPC?

16 MR. BECK: No change.

17 COMMISSIONER EASLEY: Attorney General?

18 MR. DORAN: No change.

19 COMMISSIONER EASLEY: FMA?

20 MR. COHEN: No changes.

21 COMMISSIONER EASLEY: FCADV?

22 MS. PHOENIX: No changes.

23 COMMISSIONER EASLEY: DGS?

24 MR. MATHUES: No change at this time.

25 COMMISSIONER EASLEY: And Staff?

1 MS. GREEN: No change.

2 COMMISSIONER EASLEY: I'm sitting here
3 delaying because with I'm trying to think a faster way
4 to do this without being too confusing. Until we get a
5 little further down or unless we start running into
6 trouble, I'm just going to call off the issue. If
7 anyone has any problem with their response, please
8 identify their party for the court reporter's benefit
9 and jump in, instead of going down the line like this.

10 Issue 3 is the legal issue of violation of
11 the federal law. Does anyone have a change in their
12 position or correction? Hearing none.

13 Issue 4, it is also a legal issue. Any
14 change? Hearing none.

15 Issue 5 on Page 20, the benefits and
16 detriments to Florida customers of Caller ID. Any
17 change on this issue? Hearing none.

18 Issue 6, which is on Page 26, any change?
19 All right, hearing none.

20 Issue 7 on Page 30, any change?

21 Issue 8, Page 33? There is none.

22 Issue 9 on Page 37? Okay. I guess I could
23 have really shortened this thing down.

24 Issue 10 on Page 40?

25 Moving right along to Issue 11 on Page 42,

1 any changes? If there are any typographical errors
2 that come to your attention, you can call those to
3 Staff's attention after the hearing, if necessary, or
4 later on.

5 Issue 12 on Page 43?

6 Issue 13 on Page 45? And that appears to get
7 us back to the beginning.

8 MS. GREEN: Commissioner Easley, there is one
9 other matter that properly should be brought to your
10 attention. There was a late-filing of direct testimony
11 by the Center Against Spouse Abuse, Inc., and that's
12 the testimony of Ms. Joyce Brown. That was filed
13 October 2nd, along with a request to accept such
14 late-filed testimony. The deadline having been
15 September the 26th.

16 There have been no objections filed to this,
17 and I believe that, procedurally, you should give your
18 okay or not.

19 COMMISSIONER EASLEY: If there is no
20 objection, the testimony will be accepted.

21 MS. GREEN: Thank you.

22 COMMISSIONER EASLEY: All right, that brings
23 us to the pending motions.

24 MS. GREEN: We have some changes to the
25 exhibit list. Do that first?

1 COMMISSIONER EASLEY: Oh, I beg your pardon.

2 All right.

3 MS. GREEN: Or Staff does. Perhaps we should
4 see if anyone else does first.

5 COMMISSIONER EASLEY: All right. The exhibit
6 list on Page 49, any parties have any changes? Staff?

7 MS. GREEN: Mr. Long will be distributing a
8 typed-up list of Staff's proposed exhibits.

9 COMMISSIONER EASLEY: All right.

10 MS. GREEN: And parties, although we do not
11 have packets prepared at this time, all parties should
12 be in possession of the items that are referred to
13 here. They've all been served on everyone at various
14 times. And we would ask that we be allowed to number
15 these Staff Exhibits 1 through 8 and include them in
16 the Prehearing Order.

17 MR. PARKER: I have no objection,
18 Commissioner, subject to reviewing those depositions
19 and including any necessary deposition pages that we
20 may want to include.

21 COMMISSIONER EASLEY: Sounds reasonable.
22 Anybody else?

23 MR. BERG: I have one, Commissioner. We have
24 an Exhibit 1 -- let me start over.

25 Exhibit 6 is our witness' items, it's Mr. Jones,

1 from his deposition on 10/26. There's an Exhibit 1 listed
2 there. I objected to this exhibit at the time of the
3 deposition; and the stipulation we were under was that
4 objections would be reserved until the time of hearing,
5 and we will object to that exhibit at the time it's moved.

6 COMMISSIONER EASLEY: All right.

7 MS. GREEN: Could you refresh my memory as to
8 what that was?

9 MR. BERG: It was an exhibit that was
10 proffered by Mr. Mathues that our witness didn't
11 recognize. Mr. Mathues couldn't tell us where it came
12 from. Nobody knew what it was, and nobody could
13 explain it.

14 MS. GREEN: That may -- okay, Staff agrees to
15 withdraw that at this time.

16 COMMISSIONER EASLEY: All right. So we will
17 strike the reference to Exhibit 1 at the end of the
18 listing for Exhibit 6?

19 MS. GREEN: Yes, Commissioner.

20 COMMISSIONER EASLEY: All right.

21 MR. BECK: Commissioner?

22 COMMISSIONER EASLEY: Yes, Mr. Beck?

23 MR. BECK: It's my understanding that the
24 Staff is doing this as a courtesy and nobody is
25 agreeing that any of this should come into evidence.

1 MS. GREEN: No.

2 COMMISSIONER EASLEY: No, that was not the
3 intent. But I was giving everybody the opportunity to
4 look at it and do what we just did with that one, if
5 necessary.

6 MS. GREEN: In the best of all possible and
7 ideal worlds, this list would have been with our
8 Prehearing Statement.

9 COMMISSIONER EASLEY: Since we haven't had
10 the best of all possible and ideal worlds in a good
11 long while? Yes, sir?

12 MR. FALGOUST: Commissioner Easley, with
13 respect for Staff's First Set of Interrogatories to
14 Southern Bell, the answers to those interrogatories are
15 not yet due. We have made an informal commitment to
16 Staff we will provide those answers as quickly as
17 possible and we intend to do that.

18 However, on information and belief, some of
19 those answers will constitute confidential proprietary
20 business information and Southern Bell intends to file
21 the appropriate motion at the appropriate time to cover
22 that. However, I want to bring that to the Chair's
23 attention that at least one of those answers will
24 constitute what Southern Bell considers to be
25 proprietary business information.

1 COMMISSIONER EASLEY: All right. We will
2 deal with that when we get there. All right. We'll
3 show Staff's exhibits numbered Staff's 1 through 8.

4 MS. GREEN: Thank you.

5 COMMISSIONER EASLEY: All right. Anything
6 else until we get to pending motions? All right, the
7 first motion that is on the list is a Motion to Compel
8 and Request for in camera inspection by Public Counsel.
9 Mr. Beck?

10 MR. BECK: Yes, Commissioner. I filed this
11 motion on August 7th, and it has a number of sections
12 to it. I'm not going to try to reread or do it, just
13 point out the sections to it.

14 The first one concerns Southern Bell's claim
15 of privilege in their response to our document request.
16 Southern Bell simply said they wouldn't give us
17 anything that they considered privileged, but failed to
18 identify it or otherwise show how these documents that
19 they were withholding might be privileged.

20 Just before the Prehearing Conference, I
21 spoke to the attorney for Southern Bell. There's a
22 probability that we'll be able to work out any dispute
23 on that item of the Motion to Compel. But that's just
24 based on a casual conversation just before the
25 beginning of this Prehearing Conference.

1 The second portion of the Motion to Compel
2 deals with Southern Bell's objection to anything they
3 consider irrelevant. In their objections to our
4 documents request, they say they're withholding
5 anything they think is irrelevant, but don't identify
6 what the documents are nor provide a basis for stating
7 why these undisclosed documents are irrelevant. I
8 think that should be stricken; that they should
9 identify any responsive documents that they feel are
10 irrelevant and then should have the burden of showing
11 why they're irrelevant. As it stands, they just say,
12 "We're not giving you anything that's irrelevant. We're
13 not going to tell you what it is, and we're not going
14 to tell you why."

15 The third item concerns the purging of the
16 documents that Southern Bell did produce. There are at
17 least a few known instances where Southern Bell purged
18 out-of-state information from the documents,
19 notwithstanding the fact that in this case Southern
20 Bell has paid for witnesses to come from out of state
21 to appear before the Commission and they rely on
22 evidence of out-of-state proceedings. Notwithstanding
23 that, the documents concerning surveys in their own
24 states, for example, they purged out the documents from
25 other state information. We don't believe that is

1 correct.

2 We also, from the documents produced, don't
3 know what else they may have purged. Some of the
4 documents have big empty spaces in them, and I have no
5 way of knowing whether that's because they've redacted
6 it or whether the documents were simply created that
7 way. So we're asking you to look at the unredacted
8 versions, see what has been purged and determine
9 whether it should be produced.

10 The last portion of the Motion to Compel
11 concerns the documents from BellSouth Corporation. I
12 think the test on whether BellSouth Corporation should
13 produce documents in this case is whether it acts as
14 one with Southern Bell in accordance with the
15 Medivision Case, which we have argued before the
16 Commission many times. The Commission has accepted
17 that in a number of instances -- for example, in the
18 cost allocation docket -- as a rationale for obtaining
19 documents from Bell South.

20 Attached to the motion, I've shown you a
21 number of documents showing BellSouth's involvement in
22 Caller ID, going back to November of '88 when Southern
23 Bell had a different policy about per-call blocking
24 than they have now; how that issue went up to the
25 Regional Marketing Council that had people from all

1 Southern Bell, South Central Bell and BellSouth in
2 there; that the Company then as a Bell South policy
3 changed their policy -- or created a policy, I should
4 say, about no blocking on Caller ID.

5 Then showing you, attached to the motion also
6 is a copy of a document from a Bell South officer, if I
7 can find that, from a person P. H. Casey, Vice
8 President and Comptroller of BellSouth Corporation to
9 an officer of South Central Bell discussing Caller ID
10 and the marketing efforts, and making specific comments
11 and expressing certain opinions about their Caller ID
12 marketing effort. I think all of these things show the
13 intimate involvement of BellSouth on Caller ID and
14 that, therefore, BellSouth should be ordered to produce
15 the documents responsive to our document requests.

16 COMMISSIONER EASLEY: Mr. Falgoust?

17 MR. FALGOUST: Commissioner, as counsel
18 indicated, he and I did have a conversation concerning
19 that part of the motion dealing with privileged
20 documents. I believe that we can resolve that, if
21 given an opportunity to; and I would ask the Chair to
22 defer ruling on that part of the motion, if it's
23 acceptable to the Citizens, pending our effort to work
24 that out.

25 COMMISSIONER EASLEY: Okay. Let's identify

1 very specifically what --

2 MR. FALGOUST: Counsel has represented to me,
3 Commissioner Easley, that if I can essentially identify
4 the nature of the documents in question and make a
5 representation that they constitute legal advice, that
6 he will -- it's my understanding, Mr. Beck, that you
7 will then drop that part of the Motion to Compel?

8 MR. BECK: Yeah, if we can work that out.
9 But that's -- you know, up to date, they haven't done
10 that. But I think, based on our discussion beforehand,
11 we probably can. I believe we can work it out.

12 MR. FALGOUST: We continue to assert the
13 legal position we asserted in the response,
14 Commissioner, that we're under know obligation to
15 identify those documents. But in an effort to work
16 these disputes out, we will try to do so.

17 COMMISSIONER EASLEY: Let me understand. I
18 have no objection to you all trying to work it out.
19 I'm concerned a little bit about the time situation.
20 At what point do you think we would be working this
21 out? Are we talking about today?

22 MR. FALGOUST: I don't think that I can get
23 the documents in my possession today. I think it will
24 be next week. But prior to Thanksgiving, I can give
25 the representation to Mr. Beck that he's asked for.

1 COMMISSIONER EASLEY: All right.

2 MR. BECK: Commissioner Easley, that's
3 agreeable to me on that. There's still three other
4 portions where we're in dispute, though.

5 COMMISSIONER EASLEY: All right. I will
6 defer ruling on that portion of the request. I want to
7 be able to identify that portion of the request so I
8 know precisely what I have just deferred. Would you
9 like to point me to a page number?

10 MR. BECK: Yes. In paragraphs -- or on Page
11 2, Paragraphs No. 2, 3, that's it. Paragraphs 2 and 3
12 on Page 2.

13 COMMISSIONER EASLEY: All right. Then those
14 portions of the motion will be deferred. Now, let's
15 get a little more specific. The documents as to
16 Southern Bell deeming irrelevancy are Paragraphs 4, 5?

17 MR. BECK: Yes.

18 COMMISSIONER EASLEY: Do you wish to speak to
19 that, Mr. Falgoust?

20 MR. FALGOUST: Yes. With respect to the
21 characterization of the request, Commissioner Easley,
22 perhaps Mr. Beck and I characterized it differently.
23 In Southern Bell's response to his Motion to Compel, I
24 believe the way that Southern Bell approached the
25 characterization was in two parts.

1 First being an order -- he was requesting an
2 order requiring Southern Bell to produce documents in
3 the possession, custody or control of BellSouth
4 Services Incorporated and BellSouth Corporation. And
5 secondly, he was requesting an in camera inspection by
6 the Commission of all documents or portions of
7 documents withheld by Southern Bell based on a claim of
8 attorney/client privilege or irrelevancy.

9 So it seems to me that we are now down to one
10 issue, and that is with respect to -- well, we're down
11 to two issues: irrelevancy and the documents from
12 BellSouth Services and BellSouth Corporation. If I may
13 address the question of relevancy first?

14 Southern Bell has not asserted that it was
15 refusing to produce responsive documents because they
16 were irrelevant. Southern Bell simply objects to
17 producing those portions of responsive documents that
18 contain information regarding Southern Bell's
19 operations in other states. The Commission has
20 previously considered this issue in Docket 880069 and
21 held that other states information is not relevant.
22 Order Nos. 19421 and 19681 dealt with that issue.

23 Nevertheless, as Southern Bell stated in its
24 response both to the Request for Production of
25 Documents and in Southern Bell's Response to the Motion

1 to Compel, Southern Bell will produce the information
2 which has been removed for an in camera inspection by
3 the Commission if the Commission so desires. Although
4 Southern Bell will produce this information for in
5 camera inspection if ordered to do so, as previously
6 explained, all of the information in question relates
7 to other states and a review of that information
8 contained in these documents will not assist the
9 Commission in determining whether such information is
10 relevant to this proceeding. Therefore, it's Southern
11 Bell's position that an in camera inspection will be of
12 no benefit.

13 This is not a new issue, Commissioner Easley,
14 I don't believe.

15 COMMISSIONER EASLEY: I understand. Mr. Beck,
16 what do you mean by an in camera inspection by the
17 Commission?

18 MR. BECK: That you would look at the
19 documents --

20 COMMISSIONER EASLEY: Commissioners or me or
21 who?

22 MR. BECK: I imagine you, initially, and that
23 would be subject to appeal either by Southern Bell or
24 our office to the full Commission.

25 COMMISSIONER EASLEY: Would that be the same

1 kind of in camera inspection that would be normally
2 done for determining any confidentiality?

3 MR. BECK: Yes.

4 COMMISSIONER EASLEY: You're not talking
5 about a closed hearing?

6 MR. BECK: Not on relevancy. It would be
7 only on confidentiality. Where you'd look at it.
8 Well, I guess it would be closed to me. I wouldn't see
9 what they're claiming is irrelevant.

10 Although, Commissioner, I'm constrained to
11 answer, you know, there is so much other state
12 information in this document or in this docket. You
13 know, look at Gentel's testimony from their Dr. Elsewi,
14 all it is is about surveys from Kentucky. Southern Bell
15 itself relies on out-of-state information. You know, it's
16 just completely baseless for Southern Bell to rely on
17 other state information and then say you can't have it
18 when it's in our documents -- I'll stop.

19 COMMISSIONER EASLEY: Thank you. Cindy?

20 MS. MILLER: Commissioner Easley, I just
21 would point out that in your new law that was passed by
22 the 1990 Legislature, in Section 364.18, it does extend
23 somewhat the Commission's access to records in that it
24 states, in 364.18 and also .183 that, "The Commission
25 shall have reasonable access to all company records."

1 And then it added, "And to the records of the
2 telecommunications company's affiliate companies,
3 including its parent company, regarding transactions or
4 cost allocations among the telecommunications company
5 and such affiliated companies and such records
6 necessary to ensure that a telecommunication company's
7 ratepayers do not subsidize a company's unregulated
8 activities."

9 Now, this does not expressly refer to out-
10 of-state companies. However, there appears to me to be
11 some basis where the company is an affiliate or a
12 parent to extend to the out-of-state company.

13 COMMISSIONER EASLEY: I want to be real clear
14 that I understand what is being requested.

15 MR. BECK: Commissioner, these are Southern
16 Bell documents. I mean Southern Bell I guess is a
17 Georgia corporation.

18 COMMISSIONER EASLEY: Not so much the
19 documents, but my understanding is that you may have
20 access to material deemed by the Company to be
21 confidential.

22 MR. BECK: That's a separate question.
23 Irrelevance is not a claim of confidentiality, those
24 are separate issues.

25 COMMISSIONER EASLEY: But you're claiming you

1 cannot tell whether it's irrelevant unless you see it;
2 and the Company is telling you, you can't see it
3 because it's out of state, is that correct?

4 MR. BECK: Yes.

5 COMMISSIONER EASLEY: So I'm relating that
6 claim that it's out of state to being confidential.

7 MR. BECK: It's not just out of state
8 documents their producing but they are whitening out any
9 work that refers to another state. For example, there
10 are some survey information that has parts of other
11 BellSouth states in its

12 What they would do is white out portions of
13 those documents had information about other states.
14 That's the type of information I'm seeking. As well as
15 anywhere else where in the documents they produced it
16 is whited out, because they don't tell -- they don't
17 tell you "Here we're whitening out stuff", they just do
18 it. And then you get the document and it's up to --
19 you know, it's our guess whether they did it or not.

20 MR. FALGOUST: Commissioner Easley, taken to
21 it's logical conclusion, the Citizens' request would
22 require us to produce each and every document in
23 Southern Bell's possession because, clearly, there are
24 millions and millions of documents that are there and
25 are not relevant to the issue at hand.

1 COMMISSIONER EASLEY: Well, my understanding
2 is the request was for specific documents.

3 MR. BECK: It's for the portions of documents
4 they did produce where they went out of their way to
5 white out information about other states. So it's the
6 documents they did produce based on that -- what took
7 that extra step and whited out the information. Also
8 any other documents they didn't give us, because I
9 don't know what they did give us based upon that
10 objection.

11 COMMISSIONER EASLEY: Well, they probably --
12 I have to tell you -- they probably didn't give you a
13 whole lot of documents; whether or not you asked for
14 them is something else again.

15 The problem I'm having, gentlemen, and let me
16 be clear about the problem I'm having is that I'm not
17 sure that the arguments I'm hearing are covered by the
18 confidentiality side. If all you are asking me to do
19 is rule on relevancy first, then -- if you're not
20 claiming confidentiality then I'm not sure where we are
21 in this argument because it would seem to me that we
22 could look at the documents and determine relevancy on
23 a separate objection so I'm having a little bit of
24 trouble -- that's why I keep coming back to
25 confidentiality, I'm trying to apply a specific rule to

1 what it is you're asking.

2 MS. GREEN: Commissioner, if I could speak to
3 that. I believe the argument, as I see it, is that ---
4 at least now from the Bell portion, is that the
5 information is not relevant, therefore, it's not
6 discoverable, period.

7 COMMISSIONER EASTLEY: All right.

8 MS. GREEN: Public Counsel is saying, "I
9 don't know that unless I see it." And the standard for
10 discovery, as I understand, is not that the evidence is
11 admissible but that it may lead to admissible
12 information, and relevancy has to do with whether or
13 not information might tend to prove or disprove a
14 material fact. So it would seem that the relevance is
15 conditional, at this point, and could only be
16 determined based upon how that was going to be used in
17 a evidentiary fashion, which I don't know that you
18 would know that until in the hearing, how it would be
19 used. But it's staff's view that other state
20 information has been brought into this proceeding. It
21 has become relevant because it is being used to prove
22 or disprove material facts, and prima facie probably is
23 relevant or potentially relevant and, therefore,
24 discoverable.

25 COMMISSIONER EASTLEY: All right. I'm going

1 to take five minutes and get with my counsel over here
2 and I'm going to read these motions and we'll come
3 back.

4 (Brief recess.)

5 COMMISSIONER EASLEY: In the interest of
6 time, we're going to defer on the Motion to Compel and
7 Request for a few minutes. But we're going to continue
8 with the next two, petition and motion, until Angela
9 gets back. So we'll rule on that this morning but
10 we're checking on the great ghuru upstairs.

11 All right. Petition to require offering of
12 Call Trace. OPC?

13 MR. BECK: That petition, it would be my
14 intention the Commission would rule on that after the
15 hearing.

16 COMMISSIONER EASLEY: Thank you. That's
17 precisely what I was getting ready to tell you. All
18 right. Motion to Consolidate Consideration.

19 MR. PARKER: Excuse me, Commissioner. How do
20 you rule on that after the hearing, in all seriousness?

21 COMMISSIONER EASLEY: In all seriousness, the
22 reason that I had -- was going to listen to arguments
23 but if he's going to request that -- I see that as
24 possibly prejudging the issue. The issue of Call Trace
25 being a substitute for Caller ID along with other

1 services, other options is at issue within the stated
2 issues in this procedure.

3 To then take it on further and say at
4 reasonable usage-based rates, there isn't even enough
5 information in this proceeding. I think we would have
6 to have cost information to make that determination.
7 It just seemed to me that it would -- to deal with that
8 now would put the Commissioners in a position of having
9 part of the decision already made for them.

10 MR. PARKER: Okay. I think I agree with what
11 you just said. So is this petition -- I don't mean to
12 put words in your mouth -- really not a part of this
13 proceeding. You'll rule on it and have another hearing
14 after the order is entered in this proceeding.

15 COMMISSIONER EASLEY: I'm not even going to
16 go that far. What I'm saying is to take this position
17 now is inappropriate because I think it would prejudice
18 the issue that is stated as: "Are there other offerings
19 available that are alternatives to Caller ID, one. And
20 two, the part about being reasonable usage based on
21 rates filed, I think that part of it is not really in
22 the docket. I don't think we have any testimony
23 concerning cost of that particular service.

24 So -- but that's a determination that I would
25 prefer for the full Commission to make for the

1 prejudging side plus the cost information side. Does
2 that clarify it a little bit?

3 MR. PARKER: Yeah. I mean I agree. Our
4 problem is is that there isn't testimony, at least in
5 the position of my client, there are substantial
6 technical and cost matters, and I didn't want the
7 Commission resulting in an order at the end of this
8 hearing saying, "Please go do this" and then General
9 Telephone shows up and says, "We can't."

10 COMMISSIONER EASLEY: Well, I think that part
11 of it will be taken care of within the issue that deals
12 with alternatives to Caller ID. To the extent that the
13 Commission wishes to go any further with that, I will
14 leave it to the Commission. I'm not going to make that
15 decision as Prehearing Officer. Mr. Falgoust?

16 MR. FALGOUST: A question, Commissioner
17 Easley. Do you anticipate the parties would be given
18 the opportunity to argue orally this petition prior to
19 the Commission ruling on it?

20 COMMISSIONER EASLEY: Again, it would be up
21 to the Chair as to -- the Chairman as to whether or not
22 he wishes to do oral arguments per se. The petition
23 will be shown as a pending matter. And if it's
24 appropriate, again depending upon the Commissioner's
25 desires, I will explain the reason for my deferral, and

1 I suspect that you would be having the opportunity to
2 talk about at least the offering of Call Trace as an
3 alternative to Caller ID at the time we reach that
4 issue. And I don't remember what the issue number is
5 right now. But it's there, it's identified very
6 clearly in one of the issues along with other services.

7 MR. FALGOUST: May I put a request on the
8 record on behalf of Southern Bell now that Southern
9 Bell be given an opportunity to make oral argument on
10 this petition prior to it being ruled on by the
11 Commission.

12 COMMISSIONER EASLEY: We'll show that as a
13 portion of the pending matter.

14 MR. FALGOUST: Thank you.

15 COMMISSIONER EASLEY: Anybody else wish to be
16 shown?

17 MR. PARKER: GTE would join in that request,
18 Madam Chairman.

19 MR. ANTONACCI: The Attorney General and the
20 Office of Statewide Prosecution would join in that.

21 COMMISSIONER EASLEY: All right. Then I
22 suggest we show it as a pending matter and show
23 "parties will request" instead of going through the --
24 and that will leave it open to all parties who wish to
25 orally argue if an oral argument becomes appropriate.

1 MR. PARKER: Thank you.

2 COMMISSIONER EASLEY: All right. Otherwise,
3 we'll defer ruling on the petition at this time. The
4 Motion to Consolidate. Mr. Beck.

5 MR. BECK: Yes, ma'am. The Motion to
6 Consolidate is fairly short pleading. It recites the
7 fact that Centel has filed a Caller ID tariff with
8 different blocking terms than Southern Bell is seeking.
9 And they filed that on August 6th.

10 We have had interventions by GTE-Florida and
11 United Telephone Company of Florida but not Centel.

12 It's our belief that the Commission should
13 receive evidence from all the telephone companies in
14 the state that are seeking or will seek to offer Caller
15 ID service; that before you make a decision on Southern
16 Bell, it's become obvious that Southern Bell -- this is
17 not a generic proceeding, at least it is highly -- it's
18 going to set a precedent for what you'll do is. And
19 that's evidenced by the interventions by GTE-Florida
20 and United.

21 I feel that the Commission would be best
22 served by having a diversity of views before it so you
23 can make the best decision that will affect the
24 citizens in Florida. And, that therefore, you should
25 consolidate Centel's filing with Southern Bell's so

1 you'll have all the evidence that exists to make the
2 best decision possible.

3 COMMISSIONER EASLEY: Let me ask you a
4 question on that, Mr. Beck. If your motion were
5 granted, what do you see as being the procedural
6 outcome?

7 MR. BECK: That Centel would file testimony
8 in support of their tariff and its provisions.

9 COMMISSIONER EASLEY: With the hearing
10 schedule being the same?

11 MR. BECK: That would be agreeable to us,
12 certainly.

13 COMMISSIONER EASLEY: Do you think that's
14 physically possible?

15 MR. BECK: Well, of course, we filed this
16 some seven weeks ago, but one possible --

17 COMMISSIONER EASLEY: What about the customer
18 testimony and the opportunity to notice the customers
19 of those companies?

20 MR. BECK: That would be -- the preferred
21 action, of course, would be to do that and have a
22 hearing here in Centel's territory. Obviously, it is
23 very late, you know, and we think this -- we wish this
24 had been done earlier.

25 One way to perhaps address it is, is in a

1 move of almost desperation, I took the deposition of
2 Dean Kurtz of Centel, and have filed that deposition
3 and an attachment as rebuttal testimony, which is
4 something -- you know, we have never done anything like
5 that before. Perhaps that could be used as Centel's
6 direct testimony, and get commitments from the other
7 parties here that they are not going to move to strike
8 that, and at least that would get the evidence before
9 you that we're seeking to get.

10 COMMISSIONER EASLEY: Other parties?

11 MR. PARKER: I have no objection to Mr. Kurtz
12 appearing here as long as he's subject to cross
13 examination or if my portion of the deposition goes
14 into the record.

15 COMMISSIONER EASLEY: I'm sorry, we're on the
16 Motion to Consolidate. Did you wish to speak on the
17 Motion to Consolidate? That's just part of it.

18 MR. PARKER: I have no objection.

19 COMMISSIONER EASLEY: You have no objection?

20 MR. FALGOUST: No objection, Madam Chairman.

21 MR. BECK: I forget to mention one thing.

22 COMMISSIONER EASLEY: Uh-huh.

23 MR. BECK: No party filed an opposition to
24 our motion.

25 MR. WILLIS: Commissioner Easley, Lee Willis

1 representing Centel.

2 I think that Mr. Beck has probably come up
3 with a compromise that will work here, in that while we
4 are -- had not really wanted to come to this dance, we
5 have been brought here through Mr. Kurtz' deposition.
6 And his testimony has been filed and it's a practical
7 solution or compromise or alternative to consolidating
8 Centel here. And I think that's the solution that you
9 should reach here to allow him to testify, but not to
10 consolidate this and complicate the procedure of this
11 proceeding any further.

12 COMMISSIONER EASLEY: Staff?

13 MS. GREEN: I'm not sure I understood exactly
14 what Mr. Beck said at the end regarding Mr. Kurtz.

15 MR. BECK: It's just the practicalities. I
16 realize it's not practical to consolidate the case at
17 this point. And as one possibility of having something
18 workable, it seemed to me it would be best to have
19 Mr. Kurtz testify in the position he is, after United,
20 and probably have Mr. Willis call him, and treat it as
21 direct testimony, what we filed. You know, what I
22 filed is that three pages of a deposition, very short
23 questions, with an attachment that shows Centel's
24 position. That would be a practical way to resolve
25 this.

1 COMMISSIONER EASLEY: Well, now, wait. Are
2 you saying that as an alternative to consolidating?

3 MR. BECK: Yes. I mean, we wish it to be
4 consolidated but it doesn't seem very practical at this
5 point to do that.

6 MS. GREEN: Well, in response to one of your
7 points that there was no opposition filed to this, of
8 course, it was not served on any of the other LECs.
9 And I'm not sure I understand exactly what you mean by
10 "consolidate." If you mean just the LECs who have
11 filed a tariff? Do you mean LECs that are thinking
12 about filing tariffs? That might file them? As I read
13 it initially, I thought that your intention was to
14 bring in all 13 of the local exchange companies.

15 MR. BECK: That would be the preferred
16 action. I was trying to come up with something
17 practical, Angela. And if that's not -- I don't mean
18 to cause more problems than I'm trying to solve. And
19 if you'd rather, I'll just stick with the Motion to
20 Consolidate. Because I think that would be the
21 preferred action. Have a generic proceeding; have all
22 13 LECs in here, bring in Southern Bell's polling line
23 identification tariff as well, as we referenced in the
24 motion, basically that's basically a Caller ID for
25 multiline business customers, and do it all in one

1 generic proceeding where statewide policy would be
2 implemented.

3 MS. GREEN: But your motion actually asks to
4 bring Centel in. That's actually what it's asking for.

5 MR. BECK: It asks to bring Centel in, and it
6 asks the Commission to conduct a generic proceeding.

7 MS. GREEN: Well, the Staff would oppose
8 broadening this beyond the tariff that's before the
9 Commission. When the Commission enters its ruling in
10 this docket, the Commission will be setting a policy
11 based on the evidence before it; and other tariffs that
12 might be pending, the Commission will consider each of
13 those in turn.

14 COMMISSIONER EASLEY: Ms. Miller?

15 MS. GREEN: Mr. Beck's alternative does
16 sound, though, to be perhaps a suitable way of meeting
17 his concerns.

18 MR. ANTONACCI: Commissioner Easley, may I be
19 heard on the motion?

20 COMMISSIONER EASLEY: Yes, sir.

21 MR. ANTONACCI: Thank you.

22 Our interest here all along has been the
23 safety of law enforcement officers and others who work
24 in our behalf. The uniformity of the communications
25 system in Florida is our interest, and to the extent

1 that the Commission can accommodate those interests,
2 particularly with the life-and-death aspects of it, we
3 would ask that you grant Public Counsel's motion and to
4 hold generic proceedings on the issue, recognizing the,
5 perhaps, late filing of it or untimeliness of it,
6 Certainly, there is no exigent circumstance which is
7 grinding this proceeding forward.

8 COMMISSIONER EASLEY: I make a couple of
9 observations. I think in some ways there have already
10 been generic hearings when it comes to law enforcement
11 and some of the outside parties outside of the normal
12 telephone company types. I think that through the
13 public testimony we have heard a great deal of generic
14 response, and I think that will continue throughout
15 this hearing.

16 I'm concerned about broadening it beyond a
17 tariff that is in front of us for several reasons.
18 Other tariffs that have been filed are different from
19 that of Southern Bell. And while we'll be setting some
20 precedent, obviously, within this particular docket, I
21 don't see that it is prejudicial or even a bad move in
22 any way from a policy point of view to those other
23 Gockets because -- or to those other tariffs because
24 they either have the opportunity to amend those
25 tariffs, withdraw those tariffs, or continue to file

1 them the way they are, depending upon the decisions
2 that would be made in this specific docket.

3 There is no objection, apparently, to Mr. Kurtz
4 being a witness in the manner that Public Counsel has
5 offered. In fact, I was under the impression that that
6 had kind of been resolved when we first went down the
7 witness list, so that I'm not sure that's even an issue.

8 I'm going to deny the Motion to Consolidate.
9 I think the other Commissioners would kill me. (Laughter)

10 all right, back on the motion --

11 MS. GREEN: Commissioner Easley, before we
12 get quite past that, is Mr. Beck going to present Mr.
13 Kurtz as one of his rebuttal witnesses, then?

14 MR. BECK: That's the way I have done it and
15 I will be glad to do that.

16 MS. GREEN: Okay, thank you.

17 COMMISSIONER EASLEY: All right. Back on the
18 Motion to Compel? Ms. Miller?

19 MS. MILLER: Yes. On the relevancy issue, it
20 seems that as long as the materials are reasonably
21 calculated to lead to something relevant, that there
22 should be some access to the information. Also, it
23 seems on the in camera inspection that we wouldn't need
24 to do that unless there was a confidentiality matter
25 before us.

1 COMMISSIONER EASLEY: Yeah. I think that's
2 -- thank you, Ms. Miller. I think that is what was
3 confusing me to begin with. I couldn't figure out why
4 anybody was asking for in camera if there was not
5 confidentiality involved.

6 MR. FALGOUST: May I address that, please?

7 COMMISSIONER EASLEY: Sure.

8 MR. FALGOUST: There is a two-tier process
9 here, Commissioner Easley. First, documents that are
10 not relevant are not discoverable under the statute, so
11 the determination with respect to relevancy has to be
12 made first.

13 COMMISSIONER EASLEY: I understand.

14 MR. FALGOUST: Now, if the determination is
15 made that documents are indeed relevant, then you get
16 to whether they may be confidential.

17 COMMISSIONER EASLEY: Well, what I was
18 hearing -- and perhaps I misunderstood what I was being
19 asked to do. What I was hearing was that I was being
20 asked to order the production of the documents and then
21 make an in camera decision as to whether or not they
22 were relevant -- that I was being asked to examine the
23 documents in order to order production and do that in
24 camera, which would initially be on the relevancy
25 issue. Is that correct?

1 MR. BECK: That's what I have asked.

2 COMMISSIONER EASLEY: Why would I need to do
3 that in camera? That's what I don't understand.

4 MR. BECK: Because Southern Bell is unwilling
5 to show what the documents are, state what they are, or
6 -- so I would imagine, if you just order it, they will
7 feel like something has gotten out that they don't want
8 us to see. I don't know how you could order -- say you
9 were to deny the motion, I don't know how you could do
10 that without knowing what it is. You're saying --

11 COMMISSIONER EASLEY: Well, that's exactly
12 where I am. I don't know how I rule on relevancy when
13 I can't see them. But I also don't know why I have to
14 see them in camera in order to make that determination.

15 MR. BECK: I guess I'm concerned on the
16 eventuality that you were to deny the motion in that
17 respect, I don't know how you would deny the motion if
18 you didn't know what it was that Southern Bell was --

19 COMMISSIONER EASLEY: How many documents are
20 we talking about, gentlemen?

21 MR. BECK: I don't know.

22 COMMISSIONER EASLEY: Mr. Falgoust, do you
23 know?

24 MR. FALGOUST: I can make a ballpark estimate
25 for you, Commissioner. The documents that were

1 produced, I think, constituted three or four cardboard
2 boxes full. Some of those were redacted to exclude
3 information that pertained to other states' costs; for
4 example, things that we would assert were proprietary
5 and confidential, if they were deemed relevant. Now,
6 that's why I argue the two-tier test. If it is not
7 relevant, we don't need to get to the proprietary
8 confidential nature of it.

9 Now, if Mr. Beck can tell me with some
10 specificity what it is that he would like to see, it
11 would make this process a lot easier. However, when
12 the request is drafted in very broad terms,
13 Commissioner Easley, quite frankly, we get into one of
14 these fishing-expedition scenarios and that's where the
15 problem arises.

16 COMMISSIONER EASLEY: Somebody once asked me
17 what in my background best qualified me to do all this
18 stuff? I said, "Raising five kids." (Laughter)

19 What specifically did you ask for, Mr.
20 Beck?

21 MR. BECK: I didn't bring the actual document
22 requests with me. But what I've asked for in the
23 Request for Production of Documents, and Southern Bell
24 -- I guess where the issue is is there are documents
25 responsive to my document request that Southern Bell

1 says are irrelevant, but they won't identify them. In
2 addition --

3 COMMISSIONER EASLEY: Did you ask for
4 specific documents by name --

5 MR. BECK: No.

6 COMMISSIONER EASLEY: -- or by subject
7 matter?

8 MR. BECK: Subject matter.

9 COMMISSIONER EASLEY: Did you respond with,
10 "We've got a list of documents on this subject matter
11 that are three boxes long and ten of them contain
12 this"? What was your response? "I'm just not going to
13 give them to you because they're irrelevant"?

14 MR. FALGOUST: Our response was that, if it
15 pertained to other states' information that was not
16 relevant to this proceeding, that it was not
17 discoverable.

18 COMMISSIONER EASLEY: Then you turn around
19 and ask for a list of those documents that he said were
20 not relevant.

21 MR. BECK: I filed the motion, yes.

22 COMMISSIONER EASLEY: And you didn't give him
23 that list?

24 MR. FALGOUST: No, he didn't ask for the
25 list. He filed the Motion to Compel.

1 COMMISSIONER EASLEY: Oh, okay.

2 MR. BECK: Because they should have given a
3 list the first time stating what was irrelevant and why
4 it was irrelevant.

5 COMMISSIONER EASLEY: There's no way I can
6 rule on relevancy without seeing the documents, if
7 that's what you're asking me to do.

8 Would it solve the problem for you to provide
9 a list -- first of all, I'm not going to let you just
10 ask for everything they've got.

11 MR. BECK: There are specific -- what I'm
12 asking for are documents that are responsive to my
13 document requests. And there are specific documents
14 requests that they have withheld because,
15 notwithstanding their being responsive, they think they
16 are irrelevant.

17 COMMISSIONER EASLEY: All right. Did you
18 provide some documents that were redacted?

19 MR. FALGOUST: Yes.

20 COMMISSIONER EASLEY: Could you provide him
21 with information as to why you redacted certain
22 portions of those documents?

23 MR. FALGOUST: Yes.

24 COMMISSIONER EASLEY: Would you do that?

25 MR. FALGOUST: Yes.

1 MR. BECK: And we've already argued one of
2 those points, the out-of-state information.

3 COMMISSIONER EASLEY: I understand that. But
4 that will give you the information you said you could
5 not get, will it not?

6 MR. BECK: Yes, it will.

7 COMMISSIONER EASLEY: That at least his
8 reason for redacting those portions of those documents.

9 MR. BECK: Yes.

10 MS. GREEN: I have a document request --

11 COMMISSIONER EASLEY: Okay. I don't care
12 what they put down on paper anymore.

13 Once you get that, what are you going to do
14 with it?

15 MR. BECK: Well, I think we have already gone
16 past that point with the Motion to Compel. And what
17 I've asked you to do --

18 COMMISSIONER EASLEY: No, I'm about to compel
19 him to give you the list that you asked for.

20 MR. BECK: Then I would move the Commission
21 to compel Southern Bell to produce that information
22 because it is reasonably likely to lead to the
23 discovery of admissible evidence.

24 MR. PALGOUST: Commissioner Easley?

25 COMMISSIONER EASLEY: Now, we're back to my

1 looking at it, aren't we?

2 MR. FAIGOUST: Right. My response to that
3 would be that in the posture that we're in now with
4 respect to the relevancy question, I suppose the next
5 issue would be an objection to the breadth of Mr.
6 Beck's request. Because I can give you an example, and
7 this, I think, is representative of the types of
8 requests: "Please provide each document in your
9 possession, custody or control discussing, evaluating,
10 or otherwise commenting on the use of recurring or
11 nonrecurring rate structures for Call Trace."

12 MR. BECK: They have already had their
13 opportunity to object and they can't raise new issues.
14 And I would also say that it's too late for them to
15 start arguing confidentiality, too. That should have
16 been raised in their response.

17 COMMISSIONER LASLEY: Well, one of the things
18 that's bothering me, it's a little bit late in the
19 whole process. I'm not sure what you're going to do
20 with it when you get it, and I'm not sure who is going
21 to benefit either way by even going through this
22 exercise right now. You're not going to be able to use
23 it.

24 MR. BECK: Well, I might in cross
25 examination. Had I had it at the time I asked for it

1 and when it was due, we could have used it in our
2 testimony that we filed.

3 COMMISSIONER EASLEY: Yeah. Maybe.

4 MR. FALGUST: May I, just for the chair's
5 information?

6 COMMISSIONER EASLEY: Yes.

7 MR. FALGUST: The Southern Bell employee who
8 worked on compiling these documents died unexpectedly
9 several weeks ago. And that ---

10 COMMISSIONER EASLEY: I'm sorry about that.

11 I'm not laughing about that.

12 MR. FALGUST: --- may exacerbate an effort to
13 get this information to Mr. Beck before Thanksgiving.

14 COMMISSIONER EASLEY: All right. Cindy,
15 where are we in the light of all this?

16 MS. MILLER: Well, it seems that Public
17 Counsel is entitled to something here as long as it's a
18 reasonable request and it's reasonably calculated to
19 lead to the admissible evidence. And so how do we get
20 to that point? And I guess you were suggesting perhaps
21 that we go the route of a list being prepared and a
22 reason as to why those particular things would not fit
23 that standard?

24 COMMISSIONER EASLEY: But I'm hearing Mr.

25 Beck say that that doesn't --- that we're already past

1 that, in effect. That he --

2 MR. BECK: To the extent their answer is
3 going to be, "This gives information about Georgia,"
4 you know, I think we're already past that. If there's
5 other reasons that they haven't disclosed, because all
6 they did is say, "We're not going to give you anything
7 we think is irrelevant." And they don't tell me what
8 their other reasons might be. I think we have discussed
9 and moved to the point about the out-of-state --

10 COMMISSIONER EASLEY: Mr. Falgoust, would you
11 have an objection at this point if, when you provide
12 that list, stating the purpose for which it was
13 redacted with more specificity than, "It refers to an
14 out-of-state company"?

15 MR. FALGOUST: No, ma'am. I think that
16 implicit in the statement that it refers to an
17 out-of-state company would be, again, that it's simply
18 not relevant to the issues at hand in the Florida
19 Caller ID docket.

20 COMMISSIONER EASLEY: I would wish to know --
21 I'm trying to avoid going through three boxes of
22 material.

23 MR. FALGOUST: I understand.

24 COMMISSIONER EASLEY: I would wish to know,
25 number one, would it be considered confidential,

1 proprietary information, regardless of whether it was
2 in-state or out-of-state? Number two, why is it
3 irrelevant? I think the fact that it's out-of-state is
4 not in and of itself irrelevancy. There's too much
5 material in this docket right now that would be
6 irrelevant if that were the case. So I need a little
7 bit more than just, "It's out-of-state."

8 MR. FALGOUST: Southern Bell will be glad to
9 do that, Commissioner.

10 COMMISSIONER EASLEY: All right. I'm going
11 to grant the motion to provide that list. We will then
12 deal with the subsequent action of that list at that
13 time.

14 I will deny a motion, if you push me to the
15 wall today, for any kind of in camera inspection.
16 Whatever we have to do will be done in whatever way is
17 necessary, but it will not be in camera. We'll treat
18 it -- if confidentiality is claimed and you still want
19 to get to it, we'll treat it as a confidentiality
20 request.

21 MR. BECK: I'm just trying to get the
22 documents, Commissioner; and however you deal with it,
23 that's --

24 COMMISSIONER EASLEY: I understand. I'm
25 trying to get us to the point where if we get

1 something, it's either usable or there's some reason
2 for making the request. I don't want a fishing
3 expedition; I don't want a stone wall. There's no
4 point in it. But I also don't want to go through this
5 exercise if what we're doing will result in no
6 additional information available to the Commissioners
7 at the time of the hearing; otherwise, I don't see any
8 point in doing any of it. So that's my purpose,
9 gentlemen, in going the route I'm going.

10 I guess what I have just done is deny in
11 part, grant in part and defer in part your motion.

12 MR. BERG: Which portion did you deny?

13 COMMISSIONER EASLEY: The motion for in
14 camera. Or do you want me to defer the motion for in
15 camera?

16 MR. BECK: Commissioner, it's up to you. I'd
17 always prefer you to defer it if the alternative is deny.

18 COMMISSIONER EASLEY: Now, Mr. Beck, I'm
19 really surprised you even asked me for an in camera. I
20 will treat -- I will do it this way: I will defer a
21 ruling on in camera inspection with the purpose that,
22 if the material must be examined by me for relevancy
23 and the claim is confidentiality, it will be done in
24 accordance with confidentiality procedures, period. So
25 that no document that is simply irrelevant or claimed

1 to be irrelevant but is not proprietary will be done in
2 an in camera proceeding. All right. Is that clear?

3 MR. BECK: I think so.

4 MS. GREEN: Would you like to assign a date
5 by which this needs to be done?

6 COMMISSIONER EASLEY: Yes. Something
7 reasonable but before Thanksgiving.

8 MR. FALGOUST: Commissioner Easley, may I
9 request the day after Thanksgiving, under the
10 circumstances? That would give me one extra day.

11 COMMISSIONER EASLEY: Is Friday an official
12 holiday?

13 MR. BECK: Yes.

14 COMMISSIONER EASLEY: That would take it to
15 Monday. Is that a problem?

16 MR. BECK: That's two days before the
17 hearing.

18 COMMISSIONER EASLEY: I know it is.

19 MS. GREEN: Under what circumstances are you
20 referring to?

21 MR. FALGOUST: The fact that the person who
22 had compiled the documents is no longer available to
23 sort them for me.

24 MS. GREEN: Is that someone different from
25 Chris?

1 MR. FALGOUST: No, I'm talking about --

2 MS. GREEN: That was several months ago,
3 Commissioner.

4 MR. FALGOUST: What was several months ago?

5 COMMISSIONER EASLEY: Mr. Falgoust, aim at
6 Wednesday. If you can't do it, get back to me and we
7 will deal with that, but I would like to have it by
8 close of business --

9 MR. FALGOUST: I will make a commitment to
10 you, Commissioner, that we will provide everything we
11 possibly can by Wednesday.

12 COMMISSIONER EASLEY: All right.

13 MS. GREEN: And is it fair to say that what
14 you're asking them to put on there is sufficient for
15 you to enter a ruling without the necessity of seeing
16 the documents itself?

17 COMMISSIONER EASLEY: I would prefer that,
18 gentlemen.

19 MS. GREEN: Okay.

20 COMMISSIONER EASLEY: All right. I think we
21 have done pending matters, haven't we? Have we
22 finished pending matters?

23 MS. GREEN: No, we need to -- the only thing
24 I know that's left is we need to set some tentative
25 dates for the witnesses' appearances.

1 COMMISSIONER EASLEY: Oh, yes. Yes, we did
2 talk about doing that.

3 MS. GREEN: We've had some discussions with
4 the parties during the break about expected time
5 frames. We would suggest assigning to day one the
6 witnesses beginning with Nancy Sims and going through
7 Mr. Kurtz, who would be before Dr. Cooper. And then
8 beginning day two with Dr. Cooper and continuing.

9 COMMISSIONER EASLEY: Mr. Beck, do you have
10 any problem? Did you hear that? I'm sorry.

11 MS. GREEN: Would you like me to repeat that?

12 COMMISSIONER EASLEY: Yeah, please. Because
13 it involves splitting up your witnesses, Mr. Beck, and
14 I want to be sure you're all right on that.

15 MS. GREEN: We had suggested ---

16 COMMISSIONER EASLEY: It's all right, Angela,
17 they have it. It's okay. All right. Anybody have any
18 problem with doing that? Mr. Cohen?

19 MR. COHEN: I have an unrelated matter.

20 COMMISSIONER EASLEY: We'll show through Mr.
21 Kurtz on day one, whatever date that is, and then we'll
22 begin with Dr. Cooper on day two. Okay.

23 Yes, sir?

24 MR. COHEN: Yes, Commissioner Easley. The
25 FMA is requesting at this time to be excused from

1 attending the final hearing while preserving its issues
2 and comments that have been stated in the public
3 information gathering.

4 COMMISSIONER EASLEY: Nobody told you that
5 once in you have to stay in until the bitter end?

6 MR. COHEN: We have the sinking feeling that
7 we're not going to add anything new after this time.

8 COMMISSIONER EASLEY: Anybody have any
9 problem? All right.

10 MR. COHEN: Thank you.

11 COMMISSIONER EASLEY: Anything else at this
12 point?

13 All right. So the rest of the witnesses will
14 be shown on day two in the order in which they appear
15 here?

16 MS. GREEN: Yes, ma'am.

17 COMMISSIONER EASLEY: Okay. All right.
18 Anything else?

19 MR. COHEN: One other question.

20 COMMISSIONER EASLEY: Yes, sir.

21 MR. COHEN: For clarification, do we need to
22 go ahead and file the brief, the legal memorandum that
23 we filed with our prehearing statement? Do we need to
24 do that as a post-hearing legal memorandum?

25 COMMISSIONER EASLEY: Yes. And the dates,

1 we're going to go down in just a second, right? You
2 have all those dates?

3 MS. GREEN: Yes, I have those dates.

4 MR. PARKER: Excuse me, Madam Chairman. I
5 guess I misunderstand. If FMA is withdrawing and then
6 they want to file a brief? I mean, you're out or
7 you're in, not --

8 COMMISSIONER EASLEY: They were being asked
9 to be excused from attending, sitting in.

10 MR. COHEN: That's correct.

11 COMMISSIONER EASLEY: But not excused as a
12 party, not withdrawing as a party.

13 Anybody got a problem with that? (Pause)

14 Frankly, all he'd have to do would be show up
15 in the morning and say, "Here I am," and leave. Isn't
16 that correct?

17 MR. PARKER: Not under Commissioner Gunter's
18 rules.

19 COMMISSIONER EASLEY: I understand. In fact,
20 you're reading my mind. I'm sitting here thinking that
21 the poor soul is lucky that he didn't have Gunter as a
22 Prehearing Officer. You get nailed to your chair. If
23 you leave, he gets to leave. You see, it's that sort
24 of thing. (Laughter)

25 Okay. Do you want to go down the --

1 MS. GREEN: The dates that remain for
2 hearing itself is scheduled November 28th and 29th.
3 Transcripts are due out by December the 14th. Briefs
4 from the parties are due to be filed with the
5 Commission no later than January 11th, '91. The Staff
6 recommendation to be filed by February the 4th, '91.
7 And the Special Agenda for the decision is scheduled
8 for February 11th, '91.

9 I have extra copies of this schedule; if
10 anyone needs it, they can pick it up here before
11 leaving.

12 COMMISSIONER EASLEY: Okay, thank you.

13 MS. GREEN: But as to FMA's procedural
14 question, I believe it would be most appropriate for
15 him to include his brief or his legal memorandum where
16 it most properly belongs and that's as part of the
17 post-hearing argument.

18 MR. COHEN: Thank you.

19 COMMISSIONER EASLEY: Anybody else have any
20 questions? Anything else for the good of the order?
21 Okay.

22 MS. GREEN: Since we have a number of parties
23 who have not traditionally practiced here before,
24 Staff's offer to assist them in any manner possible
25 remains open. So feel free to call upon either myself

1 or Mr. Long if you need anything.

2 COMMISSIONER EASLEY: Thank you very much.

3 This hearing is adjourned.

4 (Thereupon, hearing adjourned at 10:52 a.m.)

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