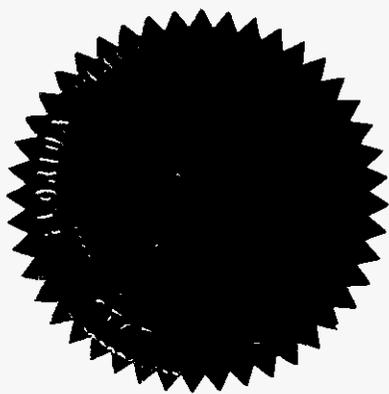


BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

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In the Matter of
Resolution of petition(s) to
establish nondiscriminatory
rates, terms and conditions for
interconnection involving local
exchange companies and
alternative local exchange
companies pursuant to Section
364.162, Florida Statutes.

: DOCKET NO. 950985-TP
:
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PROCEEDINGS: PREHEARING CONFERENCE

BEFORE: COMMISSIONER J. TERRY DEASON
Prehearing Officer

DATE: Monday, October 9, 1995

TIME: Commenced at 10:10 a.m.
Concluded at 12:07 p.m.

PLACE: Betty Easley Conference Center
4075 Esplanade Way
Hearing Room 148
Tallahassee, Florida 32399-0850

REPORTED BY: JOY KELLY, CSR, RPR
Chief, Bureau of Reporting,
Official Commission Reporter

1 APPEARANCES:

2 ROBERT V. ELIAS, DONNA L. CANZANO and TRACY HATCH,
3 Florida Public Service Commission, Division of Legal
4 Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida
5 32399-0870, Telephone No. (904) 413-6199, appearing on behalf
6 of the Commission Staff.

7 J. PHILLIP CARVER, c/o Nancy H. Sims, 150 South
8 Monroe Street, Room 400, Tallahassee, Florida 32302, Telephone
9 No. (904) 222-1201; NANCY B. WHITE, BellSouth
10 Telecommunications, Inc., 4300 Southern Bell Center, 675 West
11 Peachtree Street, Northeast, Atlanta, Georgia 30375-0001,
12 Telephone No. (404) 614-4045, appearing on behalf of
13 BellSouth Telecommunications, Inc. d/b/a Southern Bell
14 Telephone and Telegraph Company.

15 PATRICK K. WIGGINS and MARSHA RULE, Wiggins &
16 Villacorta, P. A., Post Office Drawer 1657, Tallahassee,
17 Florida 32302, Telephone No. (904) 222-1574, appearing on
18 behalf of Intermedia Communications of Florida, Inc.

19 FLOYD R. SELF, Messer, Vickers, Caparello, Madsen,
20 Goldman & Metz, P. O. Box 1876, Tallahassee, Florida
21 32302-1876, Telephone No. (904) 222-0720, appearing on behalf
22 of McCaw Communications of Florida, Inc. and its Florida
23 regional affiliates.

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1 **APPEARANCES CONTINUED:**

2 **DONALD L. CROSBY**, 7800 Belfort Parkway, Suite 270,
3 Jacksonville, Florida 32256-6925, Telephone No. (904)
4 731-8810, appearing on behalf of **Continental**
5 **Cablevision-Southeastern Region.**

6 **PETER DUNBAR** and **CHARLES W. MURPHY**, Pennington and
7 Haben, P. O. Box 10095, Tallahassee, Florida 32302-2095,
8 Telephone No. (904) 222-3533, and **SUE WEISKE**, 160 Inverness
9 Drive West, Englewood, Colorado, appearing on behalf of **Time**
10 **Warner AxS of Florida, L.P. and Digital Media Partners.**

11 **MICHAEL W. TYE**, 106 East College Avenue, Suite 1410,
12 Tallahassee, FLorida 32301, Telephone No. (904) 425-6360, and
13 **ROBIN D. DUNSON**, 1200 Peachtree Street, N. E., Promenade I,
14 Room 4038, Atlanta, Georgia 30309, Telephone No. (404)
15 810-8689, appearing on behalf of **AT&T Communications of the**
16 **Southern States.**

17 **LAURA WILSON**, 310 North Monroe Street, Tallahassee,
18 FLorida 32301, Telephone No. (904) 681-1990, appearing on
19 behalf of **Florida Cable Telecommunications Association, Inc.**

20 **RICHARD D. MELSON**, Hopping Green Sams and Smith,
21 Post Office Box 6526, Tallahassee, Florida 32314, Telephone
22 No. (904) 222-7500, appearing on behalf of **MCI**
23 **Telecommunications Corporation**

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1 **APPEARANCES CONTINUED:**

2 **RICHARD M. RINDLER**, Swidler & Berlin, Chartered,
3 3000 K Street, N. W, Suite 300, Washington, D. C. 20007,
4 Telephone No. (202) 424-7771 appearing on behalf of
5 **Metropolitan Fiber Systems of Florida, Inc.**

6 **EVERETT BOYD, JR.**, Ervin, Varn, Jacobs, Odom &
7 Ervin, P. O. Drawer 1170, Tallahassee, Florida 32302,
8 Telephone No. (904) 224-9135, appearing on behalf of **Sprint**
9 **Communications Company Limited Partnership.**

10 **KENNETH A. HOFFMAN** Rutledge, Ecenia, Underwood,
11 Purnell & Hoffman, P. A., Post Office Box 551, Tallahassee,
12 Florida 32302, appearing on behalf of **Teleport Communications**
13 **Group, Inc.**

14 **PRENTICE P. PRUITT**, Florida Public Service
15 Commission, Office of the General Counsel, 2540 Shumard Oak
16 Boulevard, Tallahassee, Florida 32399-0870, Telephone No.
17 (904) 413-6248, appearing on behalf of the **Commission Staff.**

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P R O C E E D I N G S

(Hearing convened at 10:10 a.m.)

COMMISSIONER DEASON: We can now move into 950985. We need to begin by having the notice read.

MR. ELIAS: Notice issued by the Clerk of the Florida Public Service Commission on September 19th, 1995, advises that this time and place has been reserved for prehearing conference in Docket No. 950985-TP, that is the resolution of petitions to establish nondiscriminatory rates, terms and conditions for interconnection involving local exchange companies and alternative local exchange companies pursuant to Section 364.162, Florida Statutes.

COMMISSIONER DEASON: Thank you. Take appearances.

MR. CROSBY: Don Crosby, appearing as regulatory counsel for Continental Cablevision-Southeastern Region, 7800 Belfort Parkway, Suite 270, Jacksonville, Florida.

MS. WILSON: Laura Wilson and Charles F. Dudley, appearing on behalf of the Florida Cable Telecommunications Association, 310 North Monroe Street, Tallahassee, Florida 32301.

MR. RINDLER: Richard Rindler, appearing on behalf of Metropolitan Fiber Systems of Florida, Inc., Swidler & Berlin, 3000 K. Street Northwest, Washington, D.C. 20008.

MR. DUNBAR: Peter Dunbar and Charles Murphy, Pennington & Haben P. O. Box 10095, Tallahassee, appearing on

1 behalf of Time Warner AxS and Digital Media Partners.

2 **MS. WEISKE:** Sue Weiske, for Time Warner
3 Communications, 160 Inverness Drive West, Englewood, Colorado.

4 **MR. MELSON:** Richard Melson of the law firm Hopping
5 Green Sams & Smith, P. O. Box 6526, Tallahassee, appearing on
6 behalf of MCI Metro Access Transmission Services, Inc. With
7 me at the hearing will be Michael J. Henry of MCI in Atlanta.

8 **MS. WHITE:** Nancy White and Phillip Carver on
9 because of BellSouth Telecommunications, 675 West Peachtree
10 Street, Room 4300, Atlanta, Georgia 32302.

11 **MR. SELF:** Floyd Self and Norman Horton of the
12 Messer law firm, P. O. Box 1876, Tallahassee, Florida,
13 appearing on behalf of McCaw Communications of Florida, Inc.

14 **MR. HOFFMAN:** Kenneth A. Hoffman and William B.
15 Willingham of the firm of Rutledge Ecenia Underwood Purnell &
16 Hoffman, Post Office Box 551, Tallahassee, Florida 32302.

17 Commissioner Deason, I'll also enter an appearance
18 for Mrs. Jody Donovan-May, 1133 21st Street N.W, Suite 400,
19 Washington D.C 20036, all on behalf of the petitioner,
20 Teleport Communications Group, Inc.

21 **MR. WIGGINS:** Patrick K. Wiggins, law firm of
22 Wiggins & Villacorta, Post Office Box 1657, Tallahassee 32302,
23 appearing on behalf of Intermedia Communications of Florida,
24 Inc.

25 **MR. TYE:** Michael W. Tye, 106 East College Avenue,

1 Suite 1410, Tallahassee, Florida 32301, appearing on behalf of
2 AT&T Communications of Southern States, Inc.

3 **MS. DUNSON:** Robin Dunson, 1200 Peachtree Street,
4 Room 4038, Atlanta, Georgia 30309, appearing on behalf of
5 AT&T.

6 **MR. ELIAS:** Robert V. Elias, and with me is Donna L.
7 Canzano, on behalf of the Florida Public Service Commission
8 Staff.

9 **MR. PRUITT:** And I'm Prentice Pruitt, Counselor to
10 the Commissioners.

11 **COMMISSIONER DEASON:** Okay. Thank you all.
12 Preliminary matters.

13 **MR. ELIAS:** Perhaps one.

14 Late Friday afternoon, Continental Cablevision of
15 Florida filed a petition, a motion for leave to file
16 prehearing statement out of time and a prehearing statement in
17 this docket. Their petition seeks to establish
18 nondiscriminatory rates, terms and conditions for
19 interconnection with BellSouth.

20 I'm not sure that everybody else has seen it or had
21 an opportunity to react to it, but because of the impact that
22 it may have on this proceeding, I think that some indication
23 from some of the parties is appropriate.

24 **COMMISSIONER DEASON:** Very well. Have the parties
25 had ample time to review this petition, which was filed on

1 Friday? That being the case, we'll take a 15-minute recess.
2 I'm sorry, Mr. Crosby?

3 MR. CROSBY: I have about 40 copies with me this
4 morning I'd like to distribute.

5 COMMISSIONER DEASON: Okay. I would encourage you
6 to do that. To allow parties time to review this, we're going
7 to take a 15-minute recess and we'll address it when we
8 reconvene. Thank you.

9 (Brief recess.)

10 - - - - -

11 COMMISSIONER DEASON: Call the prehearing conference
12 back to order.

13 Mr. Elias.

14 MR. ELIAS: After consideration the Staff has the --
15 timing of Teleport's --

16 COMMISSIONER DEASON: Not Teleport's.

17 MR. ELIAS: -- Continental's petition. To wit: We
18 have been given 120 days by the legislature to resolve any
19 petitions to establish nondiscriminatory rates, terms and
20 conditions for interconnection. This petition was filed
21 something about 36 days into that 120-day clock as far as
22 ALECs that were qualified on July 1st.

23 The order establishing procedure in this docket
24 indicates that if a petition hasn't been filed, these dates
25 may be modified for late-filed petitions. We've not had, and

1 will not have, an opportunity to do effective discovery
2 concerning Continental's requests. And on that basis, we
3 believe the petition should be considered separately in
4 another proceeding, or in another hearing, to establish
5 nondiscriminatory rates, terms and conditions for
6 interconnection, and gives the Commission the full benefit of
7 the statutory time granted by the legislature to resolve this
8 petition.

9 **COMMISSIONER DEASON:** Mr. Crosby. Mr. Crosby, do
10 you care to respond?

11 **MR. CROSBY:** Commissioner, we had no intention to
12 delay this proceeding, nor did we wish to have a separate
13 proceeding.

14 Our reading of the statute indicates that we could
15 have a rate in place by January 1st because we were --
16 AlterNet was an AAV and, therefore, became a qualified party
17 to negotiate, and did so. And we're filing our petition late.
18 We're certainly willing to take this proceeding as we find it,
19 but our principle intent is to have an interconnection rate in
20 place by the end of this year. And so we're opposed to a
21 separate proceeding in that it would push us beyond the
22 December 31st date for establishing an interconnection
23 proceeding, and yet keep competition for us from occurring
24 when the legislature intended it for.

25 We want to participate in this proceeding. We

1 wanted to raise the level of our participation in this
2 proceeding. We have relied on the excellent representation by
3 the Florida Telecommunication -- Cable Telecommunications
4 Association up until this time, but our belief was that we
5 needed to raise that level of participation in our particular
6 case.

7 It is not currently Continental's intent to have a
8 separate rate established for Continental unless as a result
9 of the witnesses and the testimony and exhibits in this case
10 one is deemed to be appropriate, in which event we would ask
11 for it. But that is not our position at this moment.

12 We read the statute's nondiscriminatory requirement
13 as requiring whatever rate is established here, essentially be
14 it offered to other parties as well, unless they can show some
15 differences, and the petition procedure was established for
16 that purpose to illustrate those differences. We don't see
17 them at this point and so we were willing to join this
18 proceeding and accept the level of discovery as it has gone on
19 here.

20 We're not newcomers to this proceeding. The Cable
21 Telecommunications Association of Florida had signalled its
22 intent to offer a witness from our company, and that witness
23 has been available for deposition for some time. We attempted
24 to adopt as much of the current status and procedure in this
25 case as we could, to the extent that we adopted the prehearing

1 statement positions as espoused by the Florida Cable
2 Association, and our witnesses adopted his testimony. So we
3 don't see how anything new is being brought to this
4 proceeding.

5 I understand Staff's concern to be one of
6 determining if there are any differences in our company's
7 projected cost study because at this moment it's a matter of
8 projections. We're not in this business of being an
9 alternative LEC, and can't go into it until January 1st, and
10 won't be able to go into it on January 1st if we don't have an
11 interconnection rate established with BellSouth.

12 So our position has been to join this proceeding as
13 it is, to take whatever extraordinary steps you might decide
14 are necessary to bring Staff the level of comfort that it
15 needs to participate in this proceeding, but in no event to
16 delay the establishment of our December 31st effective date
17 for the interconnection agreement.

18 **COMMISSIONER DEASON:** Any other parties have
19 comments? Ms. White.

20 **MS. WHITE:** Yes, Commissioner. Nancy White for
21 BellSouth Telecommunications.

22 We join in Staff's concerns regarding Continental's
23 petition filing and object to it strenuously. The procedural
24 order came out on August 30, 1995. Teleport filed its
25 petition on September 1st, '95. Apparently Continental made a

1 conscious choice at that time to participate in this matter as
2 part of the Florida Cable Telecommunications Association and
3 not individually. At any time between then and now they could
4 have filed a petition, but they chose to wait until one week
5 before the hearing.

6 The procedural schedule set out an extremely
7 expedited schedule of six weeks to prepare this case for
8 hearing. They are now trying to push it down into one.

9 Their attorney states that there's been no discovery
10 taken of them or of their supposed witness right now. That's
11 because they were an intervenor. This was essentially a
12 dispute between Teleport and BellSouth. Now they want to be a
13 player and want it to be a dispute between Continental and
14 BellSouth. The discovery cut off is October 18th, therefore,
15 there's no time left for written discovery. Yes, I guess we
16 could, if pressed, attempt to take their deposition. However,
17 as you know we have the universal service hearings and the
18 number portability hearings scheduled for next week, and there
19 are depositions pretty much scheduled every day of this week.
20 So we would be very hard pressed to accomplish any discovery
21 between now and the hearings.

22 They're adopting the FCTA's testimony as their own.
23 However, that testimony was a panel, so I'm not sure which
24 part of that testimony belongs to Mr. Schleiden, their
25 witness. They say they are adopting the list of issues that

1 the Staff put out in the issue ID meeting. However, the panel
2 testimony of the FCTA does not go to all of the issues and,
3 again, the discovery problems as I've said earlier.
4 Therefore, we do not object to Continental filing a petition
5 as such. We do object to it trying to get it into this
6 hearing that is set for the 23rd. I just don't think that's
7 fair. I think the party, BellSouth, would be prejudiced by
8 that. Thank you.

9 **COMMISSIONER DEASON:** Any other comments? Mr.
10 Hoffman.

11 **MR. HOFFMAN:** Commissioner Deason, I discovered the
12 petition over the weekend when I was in my office. It was
13 evidently faxed to me on Friday.

14 I have to tell you that I have not been able to
15 discuss it with my client, so I cannot give you a position,
16 Teleport's position, on an issue as important as this. I did
17 not hear from Florida Cable or from Continental before the
18 petition was faxed, and if I had, I might have had an
19 opportunity to discuss this issue with my client. But I think
20 that's something that I need to do, and report back to the
21 Staff or to you, in terms of what Teleport's position is on
22 Continental's position.

23 **COMMISSIONER DEASON:** Mr. Tye.

24 **MR. TYE:** Commissioner Deason, going through the
25 issues here it's apparent that every issue in this case has

1 been identified as Teleport and Southern Bell. I guess my
2 problem -- I think I'm coming down on the side of Staff and
3 Southern Bell here. My problem is that suppose TCG and
4 Southern Bell reach a settlement. You know, it's been our
5 view since the day we had the issue ID conference here, that
6 if that happened, this case goes away, and I think it should.
7 And I'm concerned that if we allow another party to come in
8 now and expand these issues beyond what testimony has been
9 prepared on, what discovery has been conducted on and then
10 we're forced to try a case that should have gone away, we're
11 going to come out with a bad result.

12 We're trying a lot of cases here in a short period
13 of time. They are complex issues, and to the extent that
14 settlements can be reached, I think they should be. And
15 parties coming in late, I think, is just not a good idea at
16 this juncture.

17 **COMMISSIONER DEASON:** Mr. Crosby, I have a question,
18 and that is, you indicated that you're not seeking a separate
19 interconnection rate for your client specifically, but that if
20 you're not allowed to intervene as a separate entity and
21 pursue your interest, that you will not have an
22 interconnection rate which will allow you to effectively
23 compete come January 1. And I'm trying to understand that
24 position when you're not seeking a rate specific for your
25 company. Can you explain that to me further, please?

1 **MR. CROSBY:** We believe we will be satisfied with
2 the rate that either TCG or BellSouth agrees between
3 themselves if we're given an adequate opportunity to review
4 that and sign off on it. In which event, all of the issues in
5 this case will be resolved, and at that point we think there
6 will be a global settlement achieved and TCG can withdraw its
7 petition and that, I assume, is the end of the proceeding.

8 Now, my assumption was this proceeding was commenced
9 prior to TCG filing its petition. Staff takes the view that
10 is an umbrella proceeding under which a number of different
11 petitions could be filed, and each one would have its own
12 track. There would be different discovery schedules, petition
13 by petition. That had not been my understanding of the way it
14 was going to be set up.

15 If we're forced out of this proceeding into our own
16 proceeding, then we won't be able to -- 120 days from now will
17 be well beyond the January 1st, 1996, date, which I think is
18 in answer to your question, Commissioner.

19 **COMMISSIONER DEASON:** I guess the difficulty I'm
20 having is it appears obvious to me it was your intent to be
21 able to be in a position to compete come January 1, and you
22 thought you would be able to do that either through
23 negotiations or having your interest represented through the
24 Florida Cable Telecommunications Association. And now you're
25 not so comfortable with that, and you believe that you will

1 not be able to have an interconnection rate come January 1.
2 And I'm trying to understand what has happened since the
3 petition was initially filed, and today, which necessitates
4 you having to have your own separate intervention and your own
5 separate rights being presented and protected.

6 **MR. CROSBY:** Commissioner, we had a negotiating
7 session with BellSouth. I'm not at liberty to divulge what
8 took place at that session because we've all agreed to keep
9 the negotiations confidential.

10 **COMMISSIONER DEASON:** I'm not seeking any type of
11 confidential information of that nature. It seems to me that
12 you had an obligation, if you wanted it, that you should have
13 maintained the time frames that were contemplated within the
14 procedural order. And I'm trying to understand why there
15 needs to be an exception made to that.

16 **MR. CROSBY:** I believe the correct thing to do would
17 be for us to intervene in this docket, but to maintain our
18 petition as a separate proceeding. If the Commission will
19 allow that, that will permit us to participate, hopefully to
20 settlement. It's my company's wish to reach settlement of
21 these issues. And if we reach settlement --

22 **COMMISSIONER DEASON:** But regardless of your status
23 in this proceeding, whether it is as a separate entity or as a
24 member of a larger organization, you have the right to
25 negotiate with Southern Bell as an individual entity; is that

1 correct?

2 **MR. CROSBY:** That's a matter of question. I'm not
3 certain of that.

4 We've entered into negotiations and the negotiations
5 have continued a pace. We are hopeful they will bear fruit.
6 If they don't bear fruit, then I don't know what will happen,
7 I don't know what procedures will apply at that point.

8 Again, our principle interest is having an
9 interconnection rate either agreed to by the parties or set by
10 the Commission by December 31st. We don't wish to do anything
11 that would prevent that from occurring.

12 **COMMISSIONER DEASON:** There's one particular section
13 in your petition which I have a question also, that's on
14 Page 5, and it's at the bottom of Paragraph 5 which states
15 that you reserve the right to raise any additional issues and
16 you do not waive the right to do so. And I'm having some
17 difficulty with that as well.

18 I would think that if intervention is allowed, and
19 I'm not saying it is or is not going to be allowed, that you
20 would have an obligation to accept the issues as presented,
21 and did not expound upon those to perhaps derail any
22 particular negotiations or settlement that may come out in
23 regards to Teleport's petition.

24 **MR. CROSBY:** We certainly didn't wish to derail any
25 negotiations or settlements. Our only wish was to participate

1 in them. And this particular statement here is not intended
2 to expand these issues whatsoever, but is just a matter of
3 should some issue arise during testimony that you wish to
4 consider, we did not want to foreclose that, nor do we think
5 any other party in this proceeding would either. But that's
6 not meant to be any extension of the issues whatsoever. We
7 don't wish to expand the issues at all.

8 **MR. WIGGINS:** Mr. Chairman.

9 **COMMISSIONER DEASON:** Mr. Wiggins.

10 **MR. WIGGINS:** Yes, sir, for Intermedia.

11 I would just like clarification from Mr. Crosby as
12 to whether his client is seeking to intervene or whether his
13 client has filed a petition of its own, which the resolution
14 of which would be res judicata.

15 I don't think Intermedia will take a position one
16 way or the other as to whether you should grant or deny the
17 request for participation in this docket. What is of
18 essential concern to me is that because of the way this
19 procedure has been set up, we're all confused, I think, as to
20 exactly what the legal effect will be on Intermedia, for
21 example, if this goes through trial, and the Commission issues
22 an order determining the interconnection arrangements for TCG,
23 with Intermedia having participated as a party on those
24 issues. Will that be res judicata? In other words, will that
25 be a thing adjudicated as to Intermedia and its negotiations

1 with Southern Bell. I would, of course, say no, wanting more
2 than one bite at the apple.

3 But we filed for intervention, and I would think
4 that any party can come in and intervene up to the day of the
5 hearing, taking the case as it is, adopting positions of other
6 parties. But what I'm confused about, and maybe Mr. Crosby
7 can help me, it looks as though he's asking for the Commission
8 to take his petition for determination of his company's
9 interconnection arrangements into this proceeding, and I'd
10 like a clarification on that.

11 **COMMISSIONER DEASON:** Mr. Crosby.

12 **MR. CROSBY:** Commissioner, our position is simple.
13 If we can get a 12-31 start date for an interconnection rate
14 either agreed to by all of the parties to this proceeding, one
15 of which being us as an intervenor, then we wish to be a
16 party. If we cannot, we do not.

17 We don't know the answer to Mr. Wiggins' question
18 about what happens to ICI if BellSouth and TCG enters into an
19 agreement binding only those two parties, the consequence of
20 which is that TCG withdraws its petition.

21 I assume at that point the Commission would be
22 interested in taking a look at the agreement and would be
23 interested in determining its applicability to other parties
24 as well. I assume ICI would be interested in participating in
25 that proceeding.

1 I think ICI also wants a 12-31 start date for the
2 interconnection rate, although Mr. Wiggins did not say that
3 and I don't mean to put words in his mouth.

4 **COMMISSIONER DEASON:** I have a question then for
5 Staff. Maybe this is a legal question that will have to be
6 resolved at some point, and maybe it's not something that is
7 clear on its face.

8 Given that the legislature allowed for there to be
9 negotiations between separate entities, and to have a separate
10 rate and that rate not be binding or be, perhaps, made
11 available to any other entity, what is going to be the result
12 just for the sake of argument here, that there is a
13 stipulation reached between Teleport and Southern Bell? Does
14 that have any bearing upon any of other negotiations, or is
15 that deemed to be then a rate which is applicable to all other
16 parties or every party has to stand to their own and do their
17 own negotiations or also file their own petition and get a
18 resolution of that specifically for them by the Commission?

19 **MR. HATCH:** It's some of both, Commissioner. The
20 problem you're running into is the statute allows everybody to
21 negotiate individually but it also requires that you have
22 nondiscriminatory rates. So to the extent that any given
23 party has a different rate that has to be justifiable as not
24 unreasonably discriminatory in any sense, and while everybody
25 here is going to litigate, in a sense, Teleport's issues with

1 Southern Bell, and everybody has got their two cents into
2 that, in large measure they would ultimately be bound by many
3 of those same issues, unless a separate party coming in later
4 can demonstrate that they should have a different rate for
5 whatever unique circumstances, unique to them, that would
6 justify a different -- and different being discriminatory but
7 not necessarily unreasonably so.

8 **MR. WIGGINS:** I need to respond to that,
9 Commissioner Deason. I agree with some of what Tracy says and
10 not so much as some other.

11 Intermedia has not asked the Commission -- is not
12 asking the Commission in this proceeding to determine its
13 interconnection arrangements with Southern Bell. It's not.

14 So I'm not so much -- so the -- that's number one.
15 Number two is if TCG and Southern Bell work out an arrangement
16 through negotiation, then that's a consensual arrangement. If
17 Intermedia works out an arrangement with Southern Bell that's
18 different, that's also consensual.

19 **COMMISSIONER DEASON:** I'm sorry, that's also what?

20 **MR. WIGGINS:** Also consensual; by consent. If it's
21 by consent, then maybe one or the other could argue that they
22 didn't do a better job of negotiating, or maybe someone else
23 could come in and raise that as an issue, but that certainly
24 wouldn't be a problem with Intermedia since they signed the
25 agreement.

1 What's more troublesome is if this Commission
2 actually sets the rates for the Southern Bell interconnection
3 with TCG. That will probably have a -- I hate to use the word
4 "prejudicial" but a precedential effect on any litigation that
5 would come out of this, out of Intermedia's negotiations with
6 Southern Bell.

7 So in other words, whatever happens in this docket,
8 if it goes to hearing and the Commission votes, will have
9 precedential value. Whether it will be, as we say in the law,
10 res judicata or have collateral estoppel on Intermedia from
11 taking another position, since we participate as a party,
12 remains something that can be legally debated. But the reason
13 Intermedia is in here is because as Tracy said, whatever is
14 established here as the going forward -- whatever is
15 established here in litigation as the going-forward fair
16 standard for interconnection will definitely have a defining
17 effect on ongoing negotiations and ongoing resolutions of
18 disputes. That is why we're all in here. But it's a
19 different situation than me coming in and intervening and say,
20 "I want you to set the rates between Southern Bell and
21 Intermedia now because we haven't come to agreement and we are
22 in dispute."

23 And what I'm still confused with Mr. Crosby's
24 petition, it sounds to me like he is intervening on the basis
25 of the latter. And that's the problem here. And that's what

1 I need real clarification on. Because depending on how the
2 Commission rules on that, it might further prejudice my client
3 in the future.

4 **COMMISSIONER DEASON:** Mr. Crosby, I know this
5 question has been posed to you before, but I'm still unclear
6 on it. Are you seeking intervention in this case, as Mr.
7 Wiggins represents that he's doing on behalf of his client,
8 are you seeking intervention to have your own specific
9 interconnection rate for your client established and that the
10 clock begin on that specific request?

11 **MR. CROSBY:** No, sir. It was not our intention that
12 we have the clock begin with the filing of our petition on a
13 specific interconnection rate.

14 We were hoping to have the rate that was agreed to
15 either by all the parties -- and that's the problem I'm having
16 by Mr. Wiggins' argument -- and not just two of the parties
17 apply to us. And the principle benefit of that, apart from
18 having an agreement, would be that it would commence at the
19 right time.

20 **COMMISSIONER DEASON:** Let me interrupt you there for
21 a second. Let's assume that between Teleport and Southern
22 Bell there's no negotiations which bear fruit and this matter
23 is litigated before the Commission and this Commission makes a
24 determination as to what the interconnection rates and terms
25 are going to be. Is that determination specific only as to

1 Southern Bell and Teleport? Or do you think that you have a
2 right then to basically subscribe to those terms and rates for
3 your own company effective January 1?

4 **MR. CROSBY:** I believe if the Commission adopted a
5 rate to have general applicability it would bind us. And we
6 would have appeal rights then, but no further petitioning
7 rights with this agency.

8 **COMMISSIONER DEASON:** I think we're hitting a lot of
9 nerves here.

10 **MS. CANZANO:** Commissioner, I would like to note on
11 Page 2 of Continental's filing it says "Continental is filing
12 this petition for the establishment of mutual compensation
13 rate the to be applied to the interconnection of traffic
14 between Continental and BellSouth." Top of Page 2.

15 To me that means that you're asking for the
16 Commission to establish the rates, terms and conditions
17 between Continental and BellSouth.

18 **MS. WHITE:** In the first paragraph of the first page
19 it specifically says it's petitioning the Commission to
20 establish those rates.

21 **COMMISSIONER DEASON:** I'm going to pose a question
22 and anybody that wants to give me their version of the answer
23 I will allow it. But the question is this: If we litigate in
24 this proceeding and establish a -- the Commission makes a
25 determination and establishes an interconnection rate and

1 terms for Southern Bell and for Teleport, does that allow
2 another party to come forward and say, "So as to not to be
3 nondiscriminatory, I want the same rates and terms as you
4 determine was appropriate for Southern Bell and Teleport," and
5 that you, as another entity, have a right to those same terms
6 and conditions? That's the question. Anybody that wants to
7 give me their comments on that, I will allow that at this
8 time. Mr. Melson.

9 **MR. MELSON:** MCI's position on that would be yes, if
10 you set a rate for TCG and Southern Bell, under the statute
11 that is to be nondiscriminatory, we would have the right to
12 take advantage of it. I don't think that means that it's the
13 only possible rate. I don't think it precludes MCI and
14 Southern Bell from negotiating a different arrangement, which
15 then might also become available and the parties could have a
16 choice of the rate established by the Commission, or on a
17 nondiscriminatory basis another set of rates and conditions.

18 **COMMISSIONER DEASON:** Let me ask a question, and I'm
19 not saying this is right or wrong, but it seems to me that if
20 that is the case, well, then you have a win-win situation in
21 that you sit back, you allow that to be determined, and if you
22 think you can negotiate something better you take a shot at
23 it, but you always have this fallback position which was what
24 was determined for in this case, Teleport and Southern Bell.
25 I'm just kind of curious, that's the way you envision that the

1 law was written and that's the purpose behind it?

2 MR. MELSON: That's the way I envision it. I'm not
3 sure it's a win-win, because once the Commission --

4 COMMISSIONER DEASON: You're guaranteed it's going
5 to be no worse, if that's the situation. You can either
6 negotiate something better but you have the fallback position
7 that you're going to be at least entitled to what this
8 Commission determined would be fair and reasonable
9 interconnection rates and terms for two entities.

10 MR. MELSON: I believe that's correct. But I think
11 once that decision is out, whether it is legally binding or
12 not, it is going to make it very difficult to negotiate
13 anything different, unless there, indeed, are special
14 circumstances or other arrangements that would incent, you
15 know, both parties to continue to negotiate.

16 MR. RINDLER: Commissioner, I think that the answer
17 to your question is that clearly other parties would have the
18 right to obtain the same rate on a nondiscriminatory basis,
19 and the statute specifically contemplates the possibility of
20 separate proceedings by other parties, and requires that -- I
21 think most parties here would have preferred -- most of the
22 competing carriers -- would have preferred to have a general
23 proceeding to decide this issue. But that's not what the
24 statute contemplates. It specifically says that there will be
25 separate proceedings with respect to each petition. So my

1 answer would be we're entitled to the rate that's negotiated
2 or decided here, and then we're entitled to litigate the
3 question in our own proceeding. That's what the statute says.

4 **COMMISSIONER DEASON:** Well, under that scenario then
5 if we go forward, right now we have one petition in front of
6 us, and if we go forward and there is a determination made by
7 the Commission as to that petition, and there are
8 interconnection rates and terms decided, and if there is an
9 another entity out there who disagrees with that, then I
10 assume they are free to file their own petition at that time
11 and then the 120-day clock starts for them specific with their
12 filing. Is that correct?

13 **MS. WHITE:** I would agree with that. They can
14 continue to negotiate with BellSouth and the other incumbent
15 LECs, and if they can't reach a satisfactory negotiation, then
16 they can file a petition and say that the rates that were
17 established out at the hearing between Teleport and BellSouth
18 aren't proper for them because of whatever reason.

19 **MR. TYE:** Commissioner Deason.

20 **COMMISSIONER DEASON:** Mr. Tye.

21 **MR. TYE:** I think, looking at the statute, Section
22 364.162, speaks to an ALEC that did not have a application for
23 a certificate on file as of July 1, 1995. And it says it
24 shall have 60 days from the date it is certified to negotiate
25 with a LEC, and if a negotiated price isn't established in 60

1 days, it can petition the Commission.

2 I think the reason that -- I can speak for AT&T, and
3 I think the reason a lot of these other parties are here, is
4 that if Teleport and Southern Bell cannot reach a resolution,
5 reach a settlement, we are afraid that there will be a rate
6 set; it will be a nondiscriminatory rate, and will, at least,
7 become the floor for other carriers. But that does not mean
8 that newly certificated ALECs don't have the right to
9 negotiate and don't have the right to come to this Commission
10 for relief.

11 I think -- speaking for AT&T, I can tell you I hope
12 they settle this case; that we avoid these hearings. And if
13 they do that, then Section 364.162(2) requires them to file
14 that agreement with the Commission. And I suspect that future
15 parties coming before you could point to that agreement and
16 say, "Well, we at least know to get what is in this
17 agreement," because otherwise you would have discriminatory
18 rates.

19 **COMMISSIONER DEASON:** Let me ask you a question on
20 that. If there is a negotiation process and it is fruitful
21 and there is an agreement as a result of that, the
22 Commission -- it's fine with the Commission, but the
23 Commission doesn't endorse, bless in any way that negotiation
24 because the statute encourages the parties to do that on their
25 own, and that's unneeded regulation on our part to make a

1 review as to whether that was a prudent situation.

2 MR. TYE: That is correct.

3 COMMISSIONER DEASON: How then do you feel that
4 you're entitled to the same rates, terms and conditions as it
5 being nondiscriminatory just because two parties agree that
6 that was appropriate for their specific situation?

7 MR. TYE: Because if you came up with a rate that is
8 different than what is currently in place between two other
9 parties, even though it is negotiated, that could be viewed as
10 being discrimination. And I think that's the purpose of
11 having it filed with the Commission, Commissioner Deason.

12 I'm not saying, you know -- I think that we would
13 all be better off if we didn't have to try this case at this
14 time. Because I don't think there's been adequate time for
15 discovery. I don't think there's been adequate time to
16 develop the issues. And we talked about they things at the
17 issue ID conference, you know what happens if Teleport
18 settles? A that's why these issues were framed as Teleport
19 and Southern Bell and not ALECs and Southern Bell.

20 COMMISSIONER DEASON: Let me ask you this: Does
21 your client wish to have an interconnection agreement of some
22 sort in place come January 1?

23 MR. TYE: Not at this time, no, sir. We would like
24 to see interconnection arrangements in place because we'd like
25 to see ALECs up and running. That gives us more ways to reach

1 our customers. Does AT&T expect to come to you and ask for a
2 interconnection rate to be in place January 1? No.

3 **MR. CROSBY:** Commissioner.

4 **COMMISSIONER DEASON:** Mr. Crosby.

5 **MR. CROSBY:** That is precisely our situation.

6 Continental wishes to have an interconnection rate in place
7 covering its interconnection with BellSouth on the first of
8 January. If -- and Ms. White may have provided the answer to
9 my question. If she is saying that whatever agreement flows
10 out of this proceeding, whether it be an agreement reached
11 between her company and TCG, or whether upon failure to do
12 that, this Commission will set a rate, and either of those
13 rates will be available to Continental for interconnection
14 starting January 1st at that rate, under those terms and
15 conditions, then Continental would be willing to withdraw its
16 petition without prejudice to refiling.

17 **COMMISSIONER DEASON:** Ms. White.

18 **MS. WHITE:** The only way I could agree to that is
19 Continental is exactly situated as Teleport and I don't know
20 that to be the case. I mean, you can't have a different rate
21 if there are differences between the parties, and I'm not
22 privy to how Teleport is similar or dissimilar to Continental.

23 **MR. CROSBY:** Commissioner, what I was asking for is
24 not applying that rate forever to us. If there are
25 differences, then we could litigate them in a different

1 proceeding. I could refile my petition at that time, and we
2 could either negotiate for a different rate, or the Commission
3 could set a different rate if it chose to do so for my
4 company.

5 My interest is in getting started January 1st. And
6 if whatever she will agree to would cover us, then we don't
7 wish to proceed to set another individual rate for Continental
8 at this time.

9 **COMMISSIONER DEASON:** Mr. Crosby, I can understand
10 your desire to have a rate effective January 1st. But
11 technically, for you to have any absolute guarantee of a rate
12 that would be applicable for your client, it would be 120 days
13 from October 6th, which is not January the 1st. And it seems
14 to me to have guaranteed a rate that would be effective for
15 your client specifically come January 1, it would have had to
16 have been filed in sufficient time as contemplated by statute
17 for there to be a decision made so as to have that rate
18 effective January 1st. Perhaps I'm misunderstanding the
19 statute, which is certainly very possible, but that's the way
20 I understand it. I'm going to defer to my Staff. In your
21 opinion, is that a correct reading of the statute?

22 **MR. ELIAS:** Absolutely. There's a couple of things.

23 I think that the petition is what triggers the
24 120-day clock. And my information is that Continental filed
25 its notice of intent to act as an ALEC on August 4th, 1995. I

1 believe -- or became certified on August 4th, 1995. I believe
2 that's what triggers the 60-day window of negotiation.
3 Therefore, Continental wasn't eligible to file a petition
4 until October 4th, 1995.

5 **MR. CROSBY:** I don't believe that's correct,
6 Commissioner. I believe my company commenced negotiations, or
7 signalled our intent to BellSouth to commence negotiations on
8 June 30th. And I think the date that Mr. Elias is referring
9 to is when action was taken on our notification. I don't have
10 the notification before me, but I believe it was prior to
11 that. Maybe Mr. Dunbar can help us.

12 **MR. WIGGINS:** Commissioner Deason.

13 **COMMISSIONER DEASON:** Yes.

14 **MR. WIGGINS:** I wanted to make sure Intermedia's
15 position is clear on something.

16 First of all, I agree with Mr. Melson's response to
17 you about whether another company could come and get the same
18 rates. What I want to make clear on the record, is that from
19 my perspective, at least, we're talking about two different
20 doctrines here. One is the doctrine of nondiscrimination. So
21 it doesn't really matter whether the rate is established
22 through negotiation or by edict of the Commission. Under the
23 statute under doctrines of common law -- common carrier
24 obligations, Southern Bell would not be able to unjustly
25 discriminate among folks taking service from the

1 interconnection arrangements. And I believe that was the
2 source of Ms. White's comment, that if the company was
3 similarly situated they would offer a similar arrangement.

4 The other issue is the issue of either res judicata
5 or collateral estoppel or the precedential value of this
6 proceeding.

7 In short, if Intermedia participates in this
8 proceeding and an issue is resolved as to how it ought to
9 be -- the Commission makes a decision on that and issues an
10 order, and Intermedia would like to have a different
11 arrangement and files a petition because negotiations don't
12 work, will we be subject to a motion to dismiss on the grounds
13 that we are collaterally estopped from bringing that point to
14 the Commission because we participated in a proceeding to
15 determine that issue and we lost. That issue may ultimately
16 be debated. I don't know. It's a tough one to call. But
17 there are two different things going on here. One is the
18 issue of nondiscrimination and the other is the precedential
19 value of this case as the rule of law. And I believe
20 Mr. Hatch's comments went more to the issue of
21 nondiscrimination than it did precedential value or collateral
22 estoppel. But I've said it four times now so maybe I ought to
23 quit. Thank you.

24 MR. HOFFMAN: Commissioner Deason, let me follow up
25 Mr. Wiggins' comments and tell you I agree with what

1 Mr. Wiggins and Mr. Melson and Mr. Tye have had to say.

2 In terms of precedential impact, I agree that if
3 this case in terms of Teleport's petition were not to settle,
4 then any decision made by the Commission would have some
5 precedential impact in terms of another petition filed by an
6 ALEC. If Teleport and Southern Bell are able to settle the
7 case, then I don't think there would be any precedential
8 impact, but certainly the agreement that BellSouth and
9 Teleport file could be very persuasive evidence in a
10 subsequent proceeding.

11 In addition, our position would be that if BellSouth
12 and Teleport are able to reach an agreement here prior to the
13 hearing, then all that is left to be done is for Teleport to
14 file a dismissal of this case and file that agreement with the
15 Commission as we're required to do under the statute and this
16 case is over.

17 And this is one of the reasons why I was advising
18 you that I needed some time to talk with my client. If
19 Continental's position in this case, if its status in this
20 case is that of an intervenor, then I stand to my prior
21 statement: The case goes away. But if Continental is a
22 separate petitioner, then only Teleport's petition goes away
23 and the case would proceed under Continental's petition.

24 **COMMISSIONER DEASON:** Any final comments? Mr. Tye.

25 **MR. TYE:** Commissioner Deason, with respect to the

1 collateral estopple issue, I think we talked about that at the
2 issue ID conference on September 27th. And I think the reason
3 the issues were drafted as they are pertains strictly to
4 Teleport and Southern Bell was to preclude someone raising
5 collateral estopple on a future petition. I know the Staff
6 agreed with that. So you know I think now --

7 **COMMISSIONER DEASON:** Somebody could still raise it.
8 It would be a matter of whether they are successful.

9 **MR. TYE:** Yes, sir, they could. But I think the
10 agreement of those present there was that collateral estopple
11 would not lie under those circumstances.

12 However, as Mr. Hoffman has pointed out, if TCG
13 settles this case, this case goes away and we're required to
14 go forward and try this case with Continental as a petitioner,
15 you may have a collateral estopple issue there that nobody
16 that intervned in this case intended that phase.

17 **COMMISSIONER DEASON:** All right. Thank you all.
18 I'm going to take a recess at this point, and we'll reconvene
19 at 11:25.

20 (Brief recess.)

21 - - - - -

22 **COMMISSIONER DEASON:** Call the prehearing conference
23 back to order.

24 When we took the recess we were still on preliminary
25 matters, and the preliminary matter we were discussing was the

1 petition that had been filed by Continental. And I'm prepared
2 to make a decision regarding that matter.

3 First of all, I'm going to grant the oral motion to
4 intervene that was made by Mr. Crosby on behalf of
5 Continental. He will have intervenor status in this docket
6 like all the other intervenors that are participating in the
7 matter as it regards Teleport.

8 The issues that are contained in the draft
9 Prehearing Order will not be enlarged to any extent as a
10 result of the intervention status granted to Continental.

11 And pursuant to my order on procedure in this
12 matter, the petition, as filed by Continental, will have its
13 own schedule, and that will be established by the Chairman's
14 office. As to whether it is going to be part of this docket
15 and have us on a hearing schedule, I don't know. It may be
16 even assigned a different docket number, but it will proceed
17 on its own track and will not be a part of the hearing for
18 issues pertaining to Teleport.

19 In regard to the motion for leave to file prehearing
20 statement out of time, that will be granted but only to the
21 extent it addresses issues specific to Teleport and not issues
22 that would be specific to Continental.

23 And I think that disposes of that preliminary
24 matter. Are there any other preliminary matters?

25 **MR. ELIAS:** Not that I'm aware of.

1 **COMMISSIONER DEASON:** Mr. Crosby.

2 **MR. CROSBY:** Commissioner, could I get clarification
3 of the status of my witness. Can my witness be a individual
4 witness representing my company, Mr. Dick Schleiden, or is it
5 your wish he continue to serve under the sponsorship of the
6 Cable Telecommunications Association on a panel?

7 **COMMISSIONER DEASON:** Mr. Crosby, he can be your
8 witness but he will be addressing issues that relate to
9 Teleport, and what is the appropriate interconnection rates
10 and terms for Teleport; not necessarily what would be
11 appropriate for Continental.

12 **MR. CROSBY:** Thank you.

13 **MR. ELIAS:** I am not aware of any other preliminary
14 matters.

15 **COMMISSIONER DEASON:** Do any of the parties have any
16 preliminary matters?

17 All right. We can proceed then into the draft
18 Prehearing Order.

19 The Prehearing Order is broken down, as is normally
20 the case at the Commission, with Section 1 being case
21 background. Any changes or corrections to the background?
22 Hearing none, Section 2 addresses procedure for handling
23 confidential information which is standard procedure at the
24 Commission. Any questions concerning that procedure? Hearing
25 none. Section 3 addresses prefiled testimony and exhibits.

1 Any questions concerning that section of the order? We'll
2 proceed then to Section 4, which is order of witnesses.

3 **MR. DUNBAR:** Commissioner, two issues if I might.
4 It appears that the intervenors' witnesses have been listed in
5 alphabetical order, and we'd like to request that Time
6 Warner's witness be scheduled next to the last, and that
7 Dr. Cornell would appear last.

8 We have checked with MCI Metro and they do not
9 object to that change. We'd also like for Ms. McGrath's
10 direct and rebuttal to be handled at the same time for
11 convenience of travel.

12 **COMMISSIONER DEASON:** Okay. Is there any objection
13 to the suggestion made by Mr. Dunbar? Does Staff have any
14 objection to taking direct and rebuttal simultaneously?

15 **MR. ELIAS:** No, sir.

16 **COMMISSIONER DEASON:** Show then that that change
17 would be made. Any other questions or comments concerning
18 order of witnesses?

19 **MR. CROSBY:** Commissioner, do I correctly understand
20 your ruling that Mr. Schleiden would be appearing for
21 Continental, on Page 6, instead of FCTA?

22 **COMMISSIONER DEASON:** That's my ruling. He will be
23 your witness as an intervenor in this case.

24 **MR. CROSBY:** That will be for both direct and
25 rebuttal purposes?

1 **COMMISSIONER DEASON:** Yes.

2 **MR. HOFFMAN:** Let me build on Mr. Dunbar's request
3 and ask if we could combine direct and rebuttal for all
4 witness who have filed direct then rebuttal?

5 **COMMISSIONER DEASON:** There's been a request made to
6 combine direct and rebuttal for all witnesses.

7 **MR. ELIAS:** Staff has no objection to that
8 procedure.

9 **COMMISSIONER DEASON:** Is there any objection by any
10 party? I guess the anticipation is that it will expedite the
11 hearing process; is that correct?

12 **MR. HOFFMAN:** Yes, sir.

13 **COMMISSIONER DEASON:** Okay. Ms. Wilson.

14 **MS. WILSON:** Commissioner, yes. Now, Jeffrey E.
15 Smith will be testifying on behalf of FCTA. That means that
16 there will no longer be an FCTA panel, and so I would propose
17 that FCTA's testimony, if all of the other parties are
18 willing, that the direct testimony be stipulated into the
19 record. Mr. Smith has travel and scheduling difficulties. He
20 will only be available to testify on the 25th. And so I would
21 request that either he be allowed to testify on the 25th or
22 that the parties, if they are amenable, would stipulate his
23 direct testimony into the record.

24 **MS. WHITE:** Commissioner Deason, I have a question
25 of clarification. Mr. Smith was on the panel with

1 Mr. Schleiden and Mr. Kern; is that correct?

2 MS. WILSON: Yes. Then we altered that so that
3 Mr. Kern would only be providing rebuttal now and it was left
4 with Mr. Smith and Mr. Schleiden.

5 MS. WHITE: So Mr. Schleiden will be presenting the
6 direct testimony of the FCTA but on behalf of Continental.

7 MS. WILSON: Correct. The same testimony.

8 MS. WHITE: Then I also have a clarification
9 question for Mr. Crosby. He mentioned Mr. Schleiden for both
10 direct and rebuttal, but I believe that Mr. Schleiden only
11 filed direct; is that correct?

12 MR. CROSBY: That's correct.

13 COMMISSIONER DEASON: Okay. There's been a request
14 to make an accommodation for Mr. Smith, to have him either
15 testify on the 25th or to possibly have his direct testimony
16 stipulated into the record.

17 It would be my desire at this point simply to try to
18 make an accommodation to have him testify on the 25th, unless
19 it is clear that there's not going to be any cross examination
20 and, therefore, would be no need for him to even travel to
21 Tallahassee. Let me ask that question then. Is there going
22 to be cross examination for Mr. Smith, assuming that he will
23 be testifying on the 25th? There's no cross examination? If
24 there's going to be no cross examination, by all means there's
25 no need for him to appear.

1 **MS. WILSON:** Thank you. Commissioner, just to add
2 to that, Mr. Smith and Mr. Schleiden had adopted the exact
3 same testimony, so to the extent there is cross examination on
4 that testimony, it could be potentially addressed to
5 Mr. Schleiden.

6 **COMMISSIONER DEASON:** Very well.

7 **MS. WILSON:** Thank you.

8 **COMMISSIONER DEASON:** The Prehearing Order can show
9 then that all parties have agreed to stipulate Mr. Smith's
10 direct testimony into the record, and will be waiving cross
11 examination, and that there will be no need for Mr. Smith to
12 appear at the hearing in this matter.

13 And as to the request that for those witnesses who
14 have both direct and rebuttal, to hear that testimony
15 simultaneously, I think there's no objection. Mr. Crosby.

16 **MR. CROSBY:** Commissioner, I understand there was
17 some agreement reached by the parties at the issue ID workshop
18 with respect to a witness's ability to rebut new issues that
19 come up in depositions and so forth. I think that was because
20 of the compacted time limit on discovery. Mr. Schleiden would
21 like the opportunity to rebut in accordance with that
22 agreement.

23 **COMMISSIONER DEASON:** Mr. Elias?

24 **MR. ELIAS:** My recollection was that the purpose was
25 to permit parties to respond to new arguments that were raised

1 in rebuttal testimony and not as described by Mr. Crosby. I'd
2 like to hear from the other parties if they thought that
3 that's what we agreed to.

4 **MS. WHITE:** BellSouth agrees with Mr. Elias's
5 characterization of that.

6 **COMMISSIONER DEASON:** Let me see if I understand.
7 The agreement was that to the extent new issues were raised on
8 rebuttal, that it would be allowed, witnesses would be allowed
9 to address that.

10 **MS. WHITE:** No, they would be allowed to ask
11 questions on it in the depositions, is my understanding. I
12 don't recall that they were allowed to file actual written
13 testimony on it.

14 **COMMISSIONER DEASON:** I'm confused. Mr. Tye.

15 **MR. TYE:** Commissioner Deason, as I recall the issue
16 came up in the context of Issues 3 through 10, which I think
17 when the parties filed their initial direct testimony, didn't
18 contemplate -- everybody expected those issues to be resolved
19 through negotiations. And so there was -- at the issue ID
20 conference we talked about the fact that in the rebuttal phase
21 parties may be taking positions on these issues for the first
22 time. And if that was the case, I think the agreement was
23 that then parties would be able to present rebuttal on those
24 issues in the context of their depositions in the form of
25 direct testimony. Is that correct?

1 **MR. ELIAS:** That's my understanding.

2 **MR. TYE:** But it went to Issues 3 through 10, as I
3 recall, and not to the issues which the parties had already
4 filed other testimony on.

5 **MR. CROSBY:** And we're merely talking about his
6 ability on live testimony to rebut what he would have rebutted
7 in his deposition had he been deposed.

8 **COMMISSIONER DEASON:** My ruling is going to be that
9 he will be allowed to testify on those matters as contemplated
10 in the agreement among the parties. And to the extent that a
11 party believes he's overstepping those bounds, they will be
12 entitled to make an objection at the time that testimony is
13 provided.

14 **MR. HOFFMAN:** Commissioner.

15 **COMMISSIONER DEASON:** Yes.

16 **MR. HOFFMAN:** Mr. Kouroupas should be shown for
17 Issues 1 through 10 in Section IV, Page 6.

18 **COMMISSIONER DEASON:** Very well.

19 I want it to be abundantly clear now that it is the
20 desire of the parties and of Staff to have the direct and
21 rebuttal of those witnesses providing both direct and
22 rebuttal, to have that heard at one time when they take the
23 stand.

24 **MR. ELIAS:** That's my understanding.

25 **COMMISSIONER DEASON:** Very well. The order may

1 reflect that.

2 Any other changes or questions concerning order of
3 witnesses?

4 MR. RINDLER: Commissioner, on Page 6, Mr. Devine's
5 should also be noted for Items 1 through 10.

6 COMMISSIONER DEASON: Very well. Okay. We'll
7 proceed now into Section V, basic positions. Any changes or
8 corrections to the basic position statements?

9 MR. HOFFMAN: Commissioner, for Teleport, at the end
10 of the first paragraph we had a typographical error in our
11 prehearing statement which was rolled into the basic position.
12 And at the end of the first sentence in the first paragraph it
13 should say "on any such arrangements" rather than "an any such
14 arrangements."

15 COMMISSIONER DEASON: Okay.

16 MR. WIGGINS: Commissioner Deason, throughout this
17 Prehearing Order, Intermedia takes the position "no position"
18 pending discovery. To the best of my memory, this is the
19 first time I've ever done this in a prehearing statement. I
20 always endeavor to try to get positions there where we have
21 them or have a ability to get to them. It's been a little
22 compressed.

23 I just wanted to let you know, and the parties to
24 know, it's my intention by Thursday, after reviewing some
25 discovery that TCG has produced and looking at some things, to

1 be getting to the Staff and to the parties prehearing
2 positions. I believe that we have the right to take a
3 position up to the time of the hearing. But I want to get
4 this out in time so it will be of use to people so they know
5 where we're coming from. And I apologize for any
6 inconvenience that may cause anyone.

7 **COMMISSIONER DEASON:** Is Thursday noon the
8 appropriate deadline, Mr. Elias?

9 **MR. ELIAS:** I believe so. Thursday noon would be
10 fine for any typographical or other corrections that parties
11 would have to their prehearing statements as reflected in the
12 Prehearing Order. I would ask wherever possible those be
13 supplied on diskette as well as typed copy.

14 **MR. WIGGINS:** Right. Thank you.

15 **COMMISSIONER DEASON:** Very well.

16 **MR. ELIAS:** It would be my intent to issue the
17 Prehearing Order the early part of next week.

18 **COMMISSIONER DEASON:** We'll proceed then into
19 Section VI, issues and positions.

20 **THE REPORTER:** Please turn on your mike.

21 **MS. WHITE:** -- here in the hearing room since most
22 of the parties will be here next week?

23 **MR. ELIAS:** Certainly.

24 **COMMISSIONER DEASON:** Issue No. 1. Questions,
25 changes concerning positions on Issue No. 1. Issue 2. I'm

1 going to proceed rather rapidly unless I hear something.

2 **MR. HOFFMAN:** Commissioner, I would suggest that
3 we're very close to, if not there, in terms of stipulating
4 Issue 2. I think everyone agrees that Southern Bell should
5 tariff the interconnection rate or other arrangements.
6 They've stated it in a little bit of a different way, but it
7 may be something that the parties should get together in terms
8 of the appropriate language for a stipulation.

9 **MR. ELIAS:** I have a question about the issue
10 itself. Are we speaking just to interconnection rates that
11 the Commission would set, or are we speaking to any negotiated
12 agreement that might be reached between TCG and Southern Bell?

13 **MR. HOFFMAN:** Commissioner, I think that TCG and
14 BellSouth would need some time to come back and give some
15 clarification on that issue. If that affects the prospect of
16 a stipulation, then maybe we can't stipulate at this point.

17 **MR. ELIAS:** I'm just not sure. I just would hate to
18 proceed all the way through the case to have a final
19 Commission vote and then have this mean different things to
20 different people.

21 **MR. HOFFMAN:** Depending on whether or not we reach a
22 negotiated agreement or whether the rates are established by
23 the Commission, right.

24 **COMMISSIONER DEASON:** What we have here, first of
25 all, it's a question concerning the scope of the issue as

1 stated, is whether it applies to both a negotiated agreement
2 as well as a determination by the Commission. And we're not
3 clear on what the issue is. Is that what I'm hearing.

4 **MR. HOFFMAN:** Yes.

5 **MR. TYE:** Commissioner Deason, I thought when we
6 agreed on these issues that we assumed if a negotiated
7 agreement was reached, that this case would go away so these
8 issues wouldn't be resolved. That's why I assumed this issue
9 applied to rates set by the Commission and not negotiated.

10 **COMMISSIONER DEASON:** Well, now, if there's an
11 agreement, and then you'd have an issue that's not resolved
12 when the case goes away; is that your desire?

13 **MR. TYE:** That's why I assumed that this issue
14 applied to a situation where the Commission had to actually
15 decide this case and set the rate. If there's an agreement
16 and I assume that the issue did not apply to the agreement.

17 **COMMISSIONER DEASON:** Let me ask this question then.
18 Is it contemplated within the statute that a negotiated
19 agreement would have -- would be filed with the Commission and
20 become a tariff, or is it just that it would be filed with the
21 Commission?

22 **MR. TYE:** I think when we came up with this issue,
23 we assumed that if the Commission set the rate, then the issue
24 existed should it be a tariff or should it be something else.
25 I didn't see this particular issue as applied to a negotiated

1 agreement specifically for the reason that I expected the case
2 to go away if an agreement was reached. And I don't know if
3 the other parties had that same thought or not.

4 **COMMISSIONER DEASON:** Mr. Hoffman.

5 **MR. HOFFMAN:** Commissioner, we phrased the issue
6 with the intent that the Commission would be establishing the
7 interconnection terms, rates or other arrangements. I think
8 practically speaking, if BellSouth and TCG are able to reach a
9 settlement, then I think all of the issues in this case would
10 disappear and this would be one of the many issues that the
11 Commission would not decide at this time.

12 **COMMISSIONER DEASON:** So what you're saying is that
13 this issue as originally contemplated was in a situation where
14 the Commission would be making a decision, so perhaps we
15 should just clarify the issue to state that so that it would
16 be clear.

17 **MR. HOFFMAN:** Okay.

18 **COMMISSIONER DEASON:** Is there any objection to
19 clarifying that issue, Mr. Elias?

20 **MR. ELIAS:** No. And I would just propose to reword
21 the issue to say that "If the Commission sets rates, terms and
22 conditions for interconnection between TCG and BellSouth,
23 should BellSouth tariff the interconnection rate or other
24 arrangements."

25 **COMMISSIONER DEASON:** Any objection to the issue as

1 restated?

2 **MR. RINDLER:** That was not our understanding,
3 Commissioner. We understood this to be addressing the issue
4 of whether or not any agreement or decision of the Commission
5 would be tariffed.

6 **COMMISSIONER DEASON:** Okay. What we have here is we
7 have a disagreement as to what is in disagreement, that's what
8 is at issue. Perhaps we should have two issues, Mr. Elias.
9 Is there any objection to having both issues?

10 **MS. WHITE:** May I suggest, could we leave the issue
11 as it is and each party could answer it with the understanding
12 of what it means in their own understanding of what it means?

13 **COMMISSIONER DEASON:** Well, what you need to realize
14 is that the purpose of this Prehearing Order is not only for
15 the benefit of the parties but for the benefit of the
16 Commissioners. And to the extent it is not clear to them as
17 to what is at issue, I have failed in my endeavor to make
18 these issues as crystal clear as possible to my fellow
19 Commissioners. And so to the extent there's disagreement to
20 what this issue is, that's not satisfactory to me. I want a
21 clear understanding as what the issue is. And it may be that
22 we're going to have to have two separate issues. One for the
23 case in which the Commission makes a decision and one in the
24 case where there is an agreement. But that immediately brings
25 to me the question of if there's an agreement, this case goes

1 away and that issue would not even be determined. So it's
2 kind of inefficient in utilization of our resources. So I'm
3 just looking for some guidance.

4 Mr. Elias, Ms. Canzano, Mr. Hatch.

5 MR. ELIAS: I'm sorry, I didn't hear the last part.

6 COMMISSIONER DEASON: I'm just looking for some
7 guidance. If it is true that if there is an agreement this
8 case goes away, there's no need in having an issue addressing
9 whether there should be a tariff filing if there is an
10 agreement because we're not going to litigate the issue
11 anyway.

12 MR. ELIAS: I would agree with you, and I think
13 that's consistent with the statute that requires that any
14 negotiated agreement simply be filed with the Commission.

15 MR. HATCH: Let me also point out and suggest to you
16 that once that petition was filed, the jurisdiction over how
17 the resolution of this case is handled is within the
18 Commission's, essentially, discretion. And that even though
19 they cut a deal and settle the case, they have to present that
20 settlement to you in order to determine whether it's
21 appropriate in the first place, which, probably, I don't think
22 that there would be any large probability that you would
23 reject the settlement if they agreed to it. But more
24 importantly, having approved that settlement, you need to do
25 that in order to determine whether all of the issues raised in

1 your proceeding have, in fact, been resolved.

2 So to the extent that resolution leaves hanging
3 certain issues you deem important for resolution, then perhaps
4 there still may be things left to do. Now, I would envision
5 any settlement being global. But there's still theoretically
6 a possibility you would still have issues hanging and
7 everybody would either agree to disagree and resolve those in
8 litigation or they would have a complete settlement.

9 **COMMISSIONER DEASON:** So you're saying that if it is
10 presented as an issue, the parties, if their negotiation does
11 reach a settlement, they would have an obligation to address
12 that within their settlement, or to not address it and then
13 perhaps have the Commission raise that as an issue when the
14 Commission considers the settlement.

15 **MR. HATCH:** And the Commission's decision on all of
16 that could rest with we're not going to address that now and
17 leave it for a later day, or we're going to hear it now,
18 whatever is left over, or it's a global settlement. I mean,
19 there's a lot of permutations and combinations, but it would
20 be up to you to decide.

21 **MS. WHITE:** BellSouth would disagree with that. I
22 mean if we reach -- if Teleport and BellSouth reaches an
23 agreement, then according to the statute, the rates and terms
24 and conditions of that agreement have to be filed with the
25 Commission. I don't know whether the statute talks about

1 approval by the Commission. And if Teleport and BellSouth
2 reach an agreement and file those rates, terms and conditions
3 with the Commission, then Teleport and/or BellSouth would sign
4 a motion to dismiss this proceeding and the entire thing would
5 go away, including all of the issues. Because it's a
6 proceeding that's on Teleport's petition, and if they have
7 dismissed their petition, then everything has gone away.

8 **COMMISSIONER DEASON:** I'm inclined to agree. I
9 think what we're going to do is we're going clarify Issue 2 to
10 mean in the case where the Commission makes a decision. To
11 the extent that the Commission or other parties believe that
12 there should be tariffs as a result of negotiated settlement,
13 that can be determined by the Commission at that time,
14 assuming there is a settlement. But for Issue 2 it's going to
15 be clarified to read in the situation where there is a
16 decision made by the Commission.

17 Given that clarification of Issue 2, are there any
18 changes to the positions stated in Issue 2?

19 **MR. RINDLER:** Commissioner, I assume you don't want
20 us to state whether we disagree with the issue here in the --

21 **COMMISSIONER DEASON:** I'm telling you what the issue
22 is. If you think that in your position, in reponse to that
23 issue, if you want to raise that, I'm not saying that you
24 cannot raise that in your position, but it's not going to be a
25 separate issue that's going to be voted on by the Commission,

1 not until it is appropriate. And that would be in the
2 situation where there is a settlement and it is presented to
3 the Commission, and there seems to be a need for a tariff and
4 one is not filed, or vice versa. I just think it's premature
5 at this point. If you want to include that possibility as
6 part of your position statement, I'm not going to forbid you
7 from doing that.

8 **MR. RINDLER:** My question was what you intended on
9 that. Because if your intention was that if one had that
10 concern, they should put it in the basic statement and we
11 probably would have to amend ours, if it is that it will
12 simply be addressed when the Commission makes a decision.

13 **COMMISSIONER DEASON:** See, I want all of the
14 issues -- if there's a settlement reached, this case can be
15 closed and all of the issues as defined and as clarified in
16 this Prehearing Order would be resolved, and there would be
17 nothing hanging. And that's what my desire is. And I think
18 by clarifying this issue to apply only to a situation where
19 the Commission makes the decision, well, then I think we'll be
20 clear. And if I'm mistaken, someone correct me. That's my
21 understanding.

22 **MR. ELIAS:** That's Staff's understanding.

23 **COMMISSIONER DEASON:** Issue No. 3.

24 **MR. DUNBAR:** Commissioner, Time Warner has a minor
25 change to its position. On the second line, after the word

1 "tandems" insert the words, "and end offices."

2 COMMISSIONER DEASON: Other changes for Issue 3?
3 Issue No. 4. Issue 5a. Issue 5b. Issue 6. Issue 7. Issue
4 8. Issue 9. Issue 15.

5 MR. DUNBAR: Commissioner, Time Warner has a change
6 here also. It actually is an addition and I have given it to
7 Staff, but it would be to add a new sentence at the beginning
8 of the position, to read "There should be full interconnection
9 interoperability between LECs and ALECs for CLASS/LASS
10 services.

11 COMMISSIONER DEASON: Staff, did you get that
12 change?

13 MR. ELIAS: Yes, sir, thank you.

14 COMMISSIONER DEASON: That concludes the issues.
15 Section 7 addresses exhibit list. Changes or corrections to
16 the exhibit list? Section 8 addresses proposed stipulations.
17 Perhaps there will be a stipulation presented at some point.
18 Section 9 pending motions.

19 MR. ELIAS: There are a number of intervention
20 petitions pending, and I believe on all of them the time for
21 response has run, and it would be my intention to forward
22 orders to the Prehearing Officer for issuance this week.

23 COMMISSIONER DEASON: For the granting of those.

24 MR. ELIAS: Yes, sir.

25 COMMISSIONER DEASON: Very well.

1 **MR. CROSBY:** Commissioner, could we go back to
2 Page 28. With respect to Chairman Clemmons' letter of
3 August 17th, which is currently shown as an exhibit to be
4 proffered by the FCTA.

5 **COMMISSIONER DEASON:** Yes.

6 **MR. CROSBY:** Could we also show that as Schleiden,
7 Continental Exhibit ARS-1, I believe.

8 **COMMISSIONER DEASON:** Any objection? Hearing no
9 objection that change will be made.

10 **MR. CROSBY:** Thank you. Section 10 addresses
11 rulings. I assume the rulings that were made here today will
12 be incorporated.

13 **MR. ELIAS:** Yes, sir.

14 **COMMISSIONER DEASON:** Anything further to come
15 before the Prehearing Officer at this time? Hearing none, the
16 prehearing conference is concluded. Thank you all. (Pause)

17 Okay. We're back on the record. Mr. Dunbar.

18 **MR. DUNBAR:** Our witness is coming from Denver, and
19 it is identical to the position, basically, that was adopted
20 by Mr. Schleiden, who will be appearing, and the other witness
21 who will not be appearing, and I wondered if no one had cross,
22 we will not worry about bringing her all of the way.

23 **COMMISSIONER DEASON:** Very well. Your witness's
24 name is?

25 **MR. DUNBAR:** McGrath.

1 **COMMISSIONER DEASON:** McGrath. Okay. The question
2 is concerning Witness McGrath as to whether there is going to
3 be cross examination, and if there is not, if that testimony
4 could be stipulated into the record and cross examination
5 waived.

6 **MS. WEISKE:** May I clarify? Ms. McGrath's direct
7 only deals with the issues that the cable group has also
8 filed. Ms. McGrath's rebuttal, so that people who may not yet
9 have had an opportunity to look at it, does address some of
10 the new issues. So I want that to be clear for the record.

11 **COMMISSIONER DEASON:** But you're still asking at
12 this point as to whether there is the necessity for having
13 Ms. McGrath appear at the hearing.

14 **MS. WEISKE:** That's correct, Your Honor.

15 **COMMISSIONER DEASON:** Okay. Is there comments on
16 that? Ms. White.

17 **MS. WHITE:** Nancy White for BellSouth. I'm
18 embarrassed to say I haven't looked at Ms. McGrath's testimony
19 enough to be able to make a statement one way or the other as
20 to whether we could agree or not.

21 **MS. WEISKE:** If they could just, Your Honor, contact
22 me directly if it turns out -- when they have had an
23 opportunity to review, if there's not going to be cross
24 examination for her.

25 **MS. WHITE:** I'll be happy to, and I will attempt to

1 STATE OF FLORIDA)
2 COUNTY OF LEON)

CERTIFICATE OF REPORTER

3 I, JOY KELLY, CSR, RPR, Chief, Bureau of Reporting,
4 Official Commission Reporter,

5 DO HEREBY CERTIFY that the Prehearing Conference in
6 Docket No. 950985-TP was heard by the Prehearing Officer at
7 the time and place herein stated; it is further

8 CERTIFIED that I stenographically reported the said
9 proceedings; that the same has been transcribed under my
10 direct supervision; and that this transcript, consisting of 57
11 pages, constitutes a true transcription of my notes of said
12 proceedings.

13 DATED this 11th day of October, 1995.

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