

BEFORE THE  
DIVISION OF ADMINISTRATIVE HEARINGS

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WILBERTH GAVIRIA :  
 :  
 Petitioner, : DOAH CASE NO 96-3925  
 :  
 vs. :  
 :  
 FLORIDA PUBLIC SERVICE : FPSC DOCKET NO. 960124-TC  
 COMMISSION :  
 Respondent, :  
 :  
 :

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PROCEEDINGS: HEARING

BEFORE: HONORABLE SUSAN B. KIRKLAND  
 Administrative Law Judge  
 Division of Administrative  
 Hearings

DATE: December 16, 1996

TIME: Commenced at 10:00 a.m.  
 Concluded at 12:50 p.m.

PLACE: Dade County Courthouse  
 73 West Flagler Street  
 Miami, Florida

REPORTED BY: ROWENA NASH  
 Official Commission Reporter  
 (904) 413-6736

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1 **APPEARANCES:**

2                   **CHARLIE PELLEGRINI, Florida Public Service**  
3 **Commission, Division of Legal Services, 2540 Shumard**  
4 **Oak Boulevard, Tallahassee, Florida 32399-0870,**  
5 **Telephone No. (904) 413-6199, appearing on behalf of**  
6 **the Commission Staff.**

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I N D E X			
MISCELLANEOUS			
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1	(Moses) RM-1	17	19
2	(Moses) RM-1A	18	19
3	(Moses) RM-2	19	24
3A	(Moses) RM-3	25	26
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**P R O C E E D I N G S**

(Hearing convened at 10:15 a.m.)

**THE COURT:** Good morning, my name is Susan B. Kirkland. I am the Administrative Law Judge in this case. This is the case of Wilberth Gaviria versus the Florida Public Service Commission, Case 96-3925.

Let the record reflect that Mr. Gaviria is not present, and he is not represented here today. On December 13, 1996, a notice of counsel's withdrawal from further representation of Petitioner, Wilberth Gaviria, was filed by Richard Doherty. And there's no one here representing Mr. Gaviria.

Would counsel for the Public Service Commission make his appearance at this time?

**MR. PELLEGRINI:** Yes, Your Honor. Charles Pellegrini appearing for the Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399.

**THE COURT:** All right. Is the transcript going to be ordered?

**MR. PELLEGRINI:** I believe so, Your Honor.

**THE COURT:** All right. And you had filed a request for official recognition of Chapter 364 Florida Statutes, Rule 25-22, Florida Administrative

1 PSC-96-0388-FOF-TC, and Order No. PSC 96-0548-FOF-TC.

2 And that is granted, an official recognition is taken  
3 of those documents.

4 MR. PELLEGRINI: Thank you, ma'am.

5 THE COURT: All right.

6 MR. PELLEGRINI: There's one additional  
7 preliminary matter. The Commission wishes to use a  
8 number of exhibits in addition to those which were  
9 identified in this prehearing statement. I have a  
10 list of those exhibits. Would you care to receive  
11 that list at this time?

12 THE COURT: That's fine since there's  
13 obviously going to be no objection at this point.  
14 I'll let them come in as long as you do what you are  
15 supposed to do.

16 MR. PELLEGRINI: All right.

17 THE COURT: Anything else?

18 MR. PELLEGRINI: No. I think we can  
19 proceed.

20 THE COURT: Do you want to make an opening  
21 statement?

22 MR. PELLEGRINI: Yes, I would.

23 THE COURT: All right.

24 MR. PELLEGRINI: Your Honor, the Florida  
25 Public Service Commission appears before you today to

1 present evidence that supports its objective to  
2 seek -- or that supports its decision, the  
3 Commission's decision, that is to seek the revocation  
4 of Wilberth Gaviria's certificate of public  
5 convenience and necessity for the provision of paid  
6 telephone service in Miami.

7           The Commission's evidence will show that  
8 following service complaints filed with the Commission  
9 that the Commission conducted five separate field  
10 service evaluations from June 1995 through October of  
11 1996. The Commission's evidence will show that its  
12 service evaluators, Ralph King and Chester Wade,  
13 inspected 38 telephones, some of them twice, and even  
14 some of them a third time and found 439 violations of  
15 the Commission's rules which control the provision of  
16 pay telephone service.

17           The Commission's evidence will also show  
18 that of those violations, those 439 violations, only  
19 20% of them, or 88, were repetitive violations. The  
20 Commission's evidence will further show that in those  
21 service evaluations, the average number of violations  
22 per telephone was never less than two and was as high  
23 as 11 violations per telephone.

24           The Commission's evidence will further show  
25 that Wilberth Gaviria misused its certificate in that

1 it solicited pay telephone location owners in the name  
2 of an affiliate that is not certificated. And, in  
3 fact, one whose application for certification before  
4 the Commission was recently rejected or denied.

5 Victor Cordiano, an engineer with the  
6 Commission, will testify that Wilberth Gaviria's  
7 responses were uniformly unsatisfactory to each of the  
8 Commission's notifications of the violations.

9 Richard Moses, a communications engineering  
10 supervisor with the Commission, will testify that in  
11 March of 1996, the Commission issued an order to  
12 Wilberth Gaviria to Show Cause why its certificate  
13 should not be revoked for repeated violations,  
14 persistent violations of the Commission's rules  
15 governing paid telephone service.

16 Mr. Moses will say that in the Commission's  
17 belief, it is no longer in the public interest that  
18 Wilberth Gaviria should continue to hold its  
19 Certificate No. 3320. He will say that Wilberth  
20 Gaviria has displayed a persistent disregard for the  
21 Commission's rules governing pay telephone service.  
22 And he will further say that what the Commission seeks  
23 is compliance with its rules and that on the basis of  
24 Wilberth Gaviria's conduct throughout this  
25 investigation, there is no prospect whatever that

1 Wilberth Gaviria is able or is willing to comport his  
2 conduct with the Commission's rules. Thank you.

3 THE COURT: All right. You may call your  
4 first witness.

5 MR. PELLEGRINI: The Commission calls as its  
6 first witness, Richard Moses.

7 THE COURT: If you want to sit there, that's  
8 fine with me. I mean, if you've got your stuff there  
9 and you want to sit there, that's fine.

10 MR. PELLEGRINI: I don't want to turn my  
11 back on Your Honor, and I probably will then.

12 THE COURT: If you want to just bring your  
13 thing over here.

14 MR. PELLEGRINI: Yes, sure.

15 THE COURT: Would you raise your right hand,  
16 please?

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**RICHARD MOSES**

1  
2 was called as a witness on behalf of Florida Public  
3 Service Commission and, having been duly sworn,  
4 testified as follows:

**DIRECT EXAMINATION**

5  
6 **BY MR. PELLEGRINI:**

7 Q Mr. Moses, would you state your name and  
8 business address for the record, please?

9 A My name is Richard Allen Moses. My business  
10 address is 2540 Shumard Oak Boulevard in Tallahassee,  
11 Florida 32399-0850.

12 Q By whom are you employed, Mr. Moses?

13 A The Public Service Commission.

14 Q And in what capacity?

15 A I'm the engineering supervisor over the  
16 certification and compliance section of the Bureau of  
17 Service Evaluation.

18 Q How long have you worked with the Public  
19 Service Commission?

20 A Six years.

21 Q And how long in your present position?

22 A Six years.

23 Q What are your responsibilities in general?

24 A My prime responsibility is for all  
25 certification of all telephone companies regulated by

1 the Public Service Commission and also enforcement of  
2 compliance of all the rules of the Public Service  
3 Commission.

4 Q What is your academic background, Mr. Moses?

5 A I have a year-and-a-half of college, and I  
6 have attended approximately 1500 hours of technical  
7 schools through GTE. And I've also graduated from the  
8 Bellcore School of Engineering.

9 Q Mr. Moses, tell us on an oversight basis why  
10 and how has the Public Service Commission proceeded  
11 against Wilberth Gaviria.

12 A We have initiated Show Cause as a result of  
13 noncompliance with the Commission's rules, and that's  
14 where we are today.

15 Q Which rules are those?

16 A Specifically, Chapter 25, 25-2407.

17 Q And those would be the rules governing the  
18 provision of pay telephone service; is that correct?

19 A Yes, that is correct.

20 Q At this point, Mr. Moses, I'd like to ask  
21 you some questions simply to establish the regulatory  
22 framework of this proceeding. What chapter of the  
23 Florida Statutes sets forth the Public Service  
24 Commission's authority to regulate telecommunications  
25 companies including pay telephone service providers?

1           A     Chapter 364.

2           Q     And what chapter of the Florida  
3 Administrative Code sets forth the rules governing the  
4 regulation of pay telephone service providers?

5           A     Chapter 25 specifically, 25-24.

6           MR. PELLEGRINI: Your Honor, I'm going to  
7 hand the witness a copy of Section 364-01 of the  
8 Florida Statutes.

9           THE COURT: All right.

10          Q     (By Mr. Pellegrini) Mr. Moses, and what do  
11 you understand is the Public Service Commission's  
12 jurisdiction over telecommunications companies?

13          A     The Public Service Commission has exclusive  
14 jurisdiction in all matters related to  
15 telecommunications.

16          MR. PELLEGRINI: Your Honor, I'm handing the  
17 witness Section 364.3375 of the statutes, which has  
18 been officially recognized.

19          Q     (By Mr. Pellegrini) Mr. Moses, do you  
20 understand that pay telephone service providers are  
21 required to be certificated by the Public Service  
22 Commission?

23          A     That is correct. It is required by the  
24 Florida statutes.

25          Q     Which statute?

1           A     Section 364.3375.

2           Q     And if you know, I'm going to ask you,  
3 Mr. Moses, some questions to develop which Commission  
4 rules are at issue in this proceeding. Let me ask you  
5 first: Are you familiar with Wilberth Gaviria?

6           A     Yes, I am. He's a pay telephone provider  
7 here in Miami.

8           MR. PELLEGRINI: Your Honor, I'm handing the  
9 witness a copy of Public Service Commission Order  
10 93-0548-FOF-TC which has been officially recognized.

11          Q     (By Mr. Pellegrini) Mr. Moses, is Wilberth  
12 Gaviria certificated by the Florida Public Service  
13 Commission?

14          A     Yes, he is. It was granted under authority  
15 of the Commission Order PSC-93-0548-FOF-TC issued on  
16 April 12, 1993. He was issued Certificate No. 3320.

17          Q     Mr. Moses, are you familiar with South  
18 Telecommunications, Inc.?

19          A     Yes, I am. That's an uncertificated based  
20 telephone company.

21          Q     What do you know about the ownership of that  
22 company?

23          A     At the time of application by South  
24 Telecommunications, it was listed on the application  
25 joint ownership with Wilberth Gaviria and Heiner

1 Gaviria.

2 Q And did South Telecommunications apply to  
3 the Public Service Commission for a certificate?

4 A Yes, they had.

5 Q And did the Commission grant a certificate  
6 to South Telecommunications?

7 A No, they did not.

8 MR. PELLEGRINI: Your Honor, I am handing  
9 the witness a copy of Rule 25-24.511, which has been  
10 officially recognized.

11 Q (By Mr. Pellegrini) Why did the Commission  
12 not grant a certificate to South Telecommunications?

13 A According to Chapter Section 25-24.511(4),  
14 it states that only one certificate per applicant will  
15 be granted, unless the applicant shows the granting of  
16 additional certificates is in the public interest.  
17 And they did not come forward with such a showing.

18 MR. PELLEGRINI: Your Honor, I'm handing the  
19 witness Rule 25-24.512, which also has been officially  
20 recognized.

21 Q (By Mr. Pellegrini) Mr. Moses, is there a  
22 provision in the Commission rules controlling the  
23 transfer of certificates?

24 A Yes, there is. It's Section 25-24.512 which  
25 prohibits the sale, transfer, or assignment of the pay

1 telephone certificate.

2 MR. PELLEGRINI: Your Honor, I'm handing the  
3 witness Rule 25-24.514 of the Administrative Code,  
4 which has also been officially recognized.

5 Q (By Mr. Pellegrini) Is there a provision  
6 in the Commission rules, Mr. Moses, controlling the  
7 cancellation of a certificate?

8 A Yes. Section 25-24.514(1)(b) where  
9 violation of Commission rules or orders, the  
10 Commission shall revoke the certification.

11 MR. PELLEGRINI: Your Honor, I'm handing the  
12 witness a copy of Rule 25-24.515, Pay Telephone  
13 Service, which has been officially recognized.

14 Q (By Mr. Pellegrini) Mr. Moses, which of  
15 those standards controlling pay telephone service are  
16 applicable to the circumstances of this case?

17 A Okay. Of Section 25-24.515(1), which  
18 requires that pay stations shall be lighted during the  
19 hours of darkness. (4) which requires that each  
20 telephone station shall, without charge, permit access  
21 to local directory assistance and the telephone number  
22 of any person responsible for repairs or refunds may  
23 provide, by coin access return, any long distance  
24 directory assistance charges applied to the pay  
25 telephone service company may be passed onto the

1 customer.

2 (5) which requires that each telephone  
3 station be equipped with a legible sign, card, or a  
4 plate of reasonable permanence which shall identify  
5 the following: the telephone number, location address  
6 of such station, the name of the certificate holder  
7 and the party responsible for repairs and refunds,  
8 address of responsible party, free phone number of  
9 responsible party, clear dialing instructions  
10 including the notice or lack of availability of local  
11 or toll services, and where applicable, a statement  
12 that the phone is not maintained by the local exchange  
13 company. For those pay stations that will terminate  
14 conversation after 15 minutes notice, shall be  
15 included on the sign card as well as an audible  
16 announcement 30 seconds prior to the termination of  
17 the phone call.

18 (6) Each telephone station which provides  
19 access to any interexchange company shall provide  
20 coin-free access, except for Feature Group A access,  
21 to all locally available interexchange companies. For  
22 pay stations in equal access areas, such access shall  
23 be provided through the forms of access purchased by  
24 locally available long distance carriers and shall  
25 include 10XXX + 0, 950, and 800 access.

1           For those pay stations located in nonequal  
2 access areas for 102880 may be translated to 00 to  
3 directly access AT&T.

4           (7) All intraLATA calls, including operator  
5 service calls, shall be routed to the local exchange  
6 company unless the inducer dials the appropriate  
7 access code for the carrier of their choice.

8           (11) Where there are fewer than three  
9 telephones located in a group, a directory for the  
10 entire local calling area shall be maintained at each  
11 station.

12           And (13), which is the requirements for the  
13 ANSI standards for handicapped access. Wilberth  
14 Gaviria was found in violation of that rule, also.

15           Q     And are those all the standards that are in  
16 question in this proceeding?

17           A     Yes, they are.

18           Q     Thank you.

19           MR. PELLEGRINI: Your Honor, I'm handing the  
20 witness Section 364.285 of Florida Statutes, which has  
21 been officially recognized.

22           Q     (By Mr. Pellegrini) Mr. Moses, do you  
23 understand that the Commission has statutory authority  
24 to penalize pay telephone service providers under  
25 certain conditions?

1           A     Yes, they do. The Florida Statutes,  
2 Section 364.285, Penalties, gives the Commission the  
3 jurisdiction to fine up to \$25,000 per day for each  
4 violation of Commission rules. It also gives the  
5 Commission the ability to revoke certification.

6           Q     Thank you, Mr. Moses. Now, I am going to  
7 ask you a series of questions concerning the evolution  
8 of the Commission's case against Wilberth Gaviria.  
9 Let me ask you first. Does the Commission make field  
10 evaluations of pay telephone service?

11          A     Yes, we do. Approximately 3,000 a year.

12          Q     Does the Commission use a list of evaluation  
13 criteria for those field evaluations?

14          A     Yes.

15               MR. PELLEGRINI: Your Honor, I'm handing the  
16 witness Commission Exhibit 1, marked RM-1 for  
17 identification, and marked 1 for this proceeding's  
18 purpose.

19                     (Exhibit 1 marked for identification.)

20          Q     (By Mr. Pellegrini) Please describe the  
21 exhibit which I have just handed to you, Mr. Moses.

22          A     The exhibit is the service evaluation form  
23 used by the evaluators to determine the violations of  
24 the rules. There's 29 items that they check.

25          Q     Could you quickly identify those items that

1 are pertinent again to this proceeding?

2 A Yes. Let's see. Item No. 2, Item No. 3,  
3 Item No. 4, Item No. 6. I believe Item No. 9. Item  
4 No. 14, Item No. 22, and Item No. 29.

5 Q What about Item No. 13, Mr. Moses?

6 A 13? Yes. He was cited for that, also.

7 Q And how about Item No. 15?

8 A Yes, he was cited.

9 Q What about Item No. 19?

10 A Yes.

11 Q And 26?

12 A Yes.

13 Q And I'm not sure if I asked you about 22.

14 Did you identify 22?

15 A Yes, I did.

16 MR. PELLEGRINI: Your Honor, I'm handing the  
17 witness Commission Exhibit RM-1A marked No. 2 for  
18 identification purposes.

19 (Exhibit 2 marked for identification.)

20 Q (By Mr. Pellegrini) I'm sorry, just a  
21 minute. Let me see that, please. Okay.

22 Mr. Moses, did the Commission issue an order  
23 to Show Cause to Wilberth Gaviria?

24 A Yes, they did.

25 Q When was that order issued?

1           A     It was issued March 20, 1996.

2           Q     And what reasons did the Commission indicate  
3 for issuing that order to Show Cause?

4           A     A violation of the Commission Rules 25-24.

5           Q     Is the exhibit which I've just handed you  
6 Commission Order PSC-96-0388-FOF-TC?

7           A     Yes, it is.

8           MR. PELLEGRINI: Your Honor, the Commission  
9 requests that the Commission Exhibit RM-1A marked 1  
10 for identification -- 2 for identification, be  
11 admitted into evidence.

12           THE COURT: If you'll hand them to me and  
13 I'll initial them.

14           MR. PELLEGRINI: I also ask that Exhibit  
15 No. 1 be admitted into evidence, Your Honor.

16           THE COURT: Okay.

17           (Exhibits 1 and 2 received in evidence.)

18           MR. PELLEGRINI: Your Honor, I'm handing the  
19 witness Commission Exhibit RM-2 marked 3 for  
20 identification.

21           (Exhibit 3 marked for identification.)

22           Q     (By Mr. Pellegrini) Mr. Moses, what event  
23 or events lead to the Commission's Show Cause Order to  
24 Wilberth Gaviria in the very first place?

25           A     The president of the Florida Public

1 Telecommunications Association, Lance Norris, informed  
2 me from the lady who owns Liberty Telephone Company  
3 that she had filed a complaint. And he had forwarded  
4 the complaint over to me.

5 Q Do you recall when that was?

6 A That was in May 9 of 1995.

7 Q Is that complaint of Liberty Tel the exhibit  
8 which I've just handed you?

9 A Yes, it is.

10 Q What does the complaint allege, Mr. Moses?

11 A Well, it essentially outlined the way that  
12 the person at Liberty Tel was viewing the business  
13 practices of both Heiner Gaviria, who was the  
14 applicant for South Telecommunications, and Wilberth  
15 Gaviria. They said that they were going out to  
16 location owners that they don't have anything to do  
17 with, and they're getting their telephones removed  
18 when they have legitimate contracts in place. They  
19 were just getting the phones removed.

20 Q Does the complaint contain any attachments?

21 A Yes, it does.

22 Q Could you describe those?

23 A One attachment is a letter from a person  
24 named Edwin Carranza, who was representing South  
25 Telecommunications, and it's to Liberty Telephone

1 advising them that they have removed their telephone,  
2 that they have entered into a contract and please  
3 remove their telephones.

4 Q Mr. Carranza writes as a representative of  
5 South Telecommunications; is that correct?

6 A That's correct.

7 Q Could you briefly read the pertinent parts  
8 of that letter? It is rather short.

9 A Sure. It says: Please be advised that the  
10 landlord for the above reference location has entered  
11 into a contract with South Telecommunication,  
12 Incorporated for providing pay telephone services for  
13 said location. It says, Please accept this letter as  
14 the landlord's written request that you remove your  
15 pay phone from the premises and have the pay phone  
16 removed by May 6, 1995, so a new pay phone may be  
17 installed. If you do not remove the pay phone, it  
18 will be removed for you, and you will be notified as  
19 to where to pick up the pay phone.

20 Q Does that letter suggest to you -- does it  
21 suggest to the Commission a violation of the  
22 Commission's rules?

23 A It would appear to me that South  
24 Telecommunications was operating without a  
25 certificate.

1 Q Are there additional attachments to that  
2 complaint?

3 A Yes.

4 Q Would you describe them or that?

5 A Another letter from Edwin Carranza to  
6 Liberty Tel essentially saying the same thing for  
7 another location. And Liberty Tel also says that they  
8 had received approximately seven of these types of  
9 letters.

10 Q Are there additional attachments?

11 A There is an additional attachment which  
12 outlines some of the evaluations that were performed  
13 by Liberty Tel when they went out and checked some of  
14 these phones. There was three telephones checked on  
15 May 8, 1995. One violation, they were saying they  
16 were charging 25 cents for 10 minutes which is a  
17 violation of the Commission rules that requires a  
18 minimum of 15 minutes or less before they can charge  
19 additional charges. 10XXX was blocked, which for AT&T  
20 is 10288; that was blocked. That was the Commission's  
21 violation. Also, CLEARTEL and MCI was blocked.

22 Extended area calling plans, they're  
23 charging 25 cents for 15 minutes, which is a violation  
24 of the rules. 0+ local calls were going directly to  
25 their operator service provider, which is a violation

1 of the Commission's rules which requires it to go  
2 directly to the local exchange company. Incoming  
3 calls were blocked, which is a violation of the  
4 Commission rulings requiring that all incoming calls  
5 be required unless they receive a waiver of the rules  
6 which they have not received so for this phone.

7           And on the 211 it was saying, "Just please  
8 leave a message after the tone," that the person that  
9 was calling the number would have no idea who was  
10 responsible for it, and they wouldn't have any idea of  
11 what they were reaching, other than just a recording.  
12 It could be a person's home; they wouldn't have any  
13 idea of knowing that.

14           Also, on the placard it says right at the  
15 very top of it that South Telecommunications, Inc, a  
16 coin pay telephone company, which is clearly  
17 identified on the signage on the telephone, which does  
18 not have a certificate.

19           Q     Did the complaint also contain a letter or  
20 letters from Liberty Tel's attorney to South  
21 Telecommunications?

22           A     Yes, it does.

23           Q     Could you describe that letter, date, and  
24 the writer?

25           A     The date is May 3 of 1995, and it says, I

1 was retained -- I have retained an attorney. I have  
2 been informed by my client that you've requested the  
3 removal of the pay telephones. This letter is to  
4 inform you that pursuant to your contract, my client  
5 will not remove the telephones until the expiration  
6 date. This letter was directed to the location  
7 owners.

8 Q And the letter was written by an attorney  
9 for Liberty Tel; is that correct?

10 A Jerry Kahn, yes.

11 MR. PELLEGRINI: Your Honor, the Commission  
12 requests that Exhibit RM-2, which has been marked 3  
13 for identification, be admitted into evidence.

14 THE COURT: Exhibit 3 is admitted.

15 (Exhibit 3 received in evidence.)

16 Q (By Mr. Pellegrini) Mr. Moses, I  
17 understand the Liberty Tel complaint to be what  
18 precipitated the Commission's investigation into the  
19 conduct of Mr. Gaviria's telephone business.

20 A That is correct. Rather than relying on  
21 another certificated company's investigation, we  
22 elected to do our own, and I sent an evaluator to the  
23 area to evaluate pay phones owned by the Gavirias.

24 MR. PELLEGRINI: Your Honor, I am handing  
25 the witness Commission Exhibit RM-3 which shall be

1 marked 3A for identification.

2 (Exhibit 3A marked for identification.)

3 Q (By Mr. Pellegrini) Did the Commission  
4 receive a further complaint? That is a complaint  
5 further to the Liberty Tel complaint?

6 A Yes, we did.

7 Q And what was that?

8 A It was from a Mr. Alberto Menendez who owns  
9 Alberto & Son's Meat Market.

10 Q Here in Miami?

11 A Yes, that's correct. And the letter  
12 essentially says that several months ago a company  
13 called South Telecommunications installed two pay  
14 telephones in front of our business. Not long  
15 afterwards a truck knocked down the overhead wire and  
16 both phones were out of service for over five weeks.

17 Let's see. We called -- I can't read this.  
18 Okay. He tried to contact the company. And he would  
19 only reach an answering machine, and they would not  
20 return any calls. They left messages to remove their  
21 equipment because they never did receive any  
22 commissions on the phones whatsoever. They did not  
23 respond.

24 Then it says, one day a white van pulled up  
25 at the phones, his brother went out to check to see

1 what was going on, and they went out. They were  
2 removing the phones and -- they were removing the  
3 phones. They said they did not make any money. His  
4 response to them was, well, how could the phones make  
5 any money when they had been out of service for five  
6 weeks.

7           The current complaint that he was  
8 complaining about is after they had removed the phone  
9 and they claim by -- to remove the huge concrete that  
10 was poured and the two telephones, it was a very bad  
11 eyesore, and they refused to remove the concrete that  
12 was left there in place.

13           Q     Mr. Moses, does that memorandum indicate or  
14 suggest conduct in violation of Commission rules?

15           A     It would suggest that South  
16 Telecommunications purposely installed telephones  
17 without a certificate.

18           MR. PELLEGRINI: Your Honor, the Commission  
19 requests that the Exhibit marked 3A for identification  
20 be admitted into evidence.

21           THE COURT: It's admitted.

22           (Exhibit 3A received in evidence.)

23           Q     (By Mr. Pellegrini) Having received these  
24 two complaints, Mr. Moses, what then was the  
25 Commission's action?

1           A     We sent an evaluator to the area to do  
2 evaluations.

3           Q     And who was that evaluator?

4           A     Ralph King.

5           MR. PELLEGRINI: Your Honor, I'm handing the  
6 witness Commission Exhibit RM-4 marked 4 for  
7 identification.

8                     (Exhibit 4 marked for identification.)

9           Q     (By Mr. Pellegrini) Mr. Moses, when was  
10 Mr. King first sent to Miami for evaluation?

11          A     In June of 1995.

12          Q     Can you summarize the results of Mr. King's  
13 evaluation for us, please?

14          A     There was 38 pay telephones evaluated, and  
15 there was a total of 439 violations of the  
16 Commission's rules.

17          Q     I'm sorry, I think that's the overall.

18          A     That wasn't what you --

19          Q     No. Just of the June 1995 service  
20 evaluation, please. Let me ask you the question  
21 again.

22                     Please summarize, if you will, the results  
23 of the June 1995 service evaluation conducted by  
24 Mr. King.

25          A     The telephones evaluated, there was 23

1 telephones and there was 225 violations of the  
2 Commission's rules.

3 MR. PELLEGRINI: Your Honor, I'm going to  
4 hand the witness Commission Exhibits VC-1 through 7  
5 and ask him to refer to the first pages of each.

6 Q (By Mr. Pellegrini) Mr. Moses, did the  
7 Commission notify Mr. Gaviria or the company of the  
8 service evaluation result of June 1995?

9 A Yes, we did. We notified him on June 14,  
10 1995.

11 Q Were there subsequent notifications?

12 A There was, but I'm not seeing them here in  
13 the exhibit.

14 Q Perhaps VC-2 will help your memory.

15 A I was looking for repeat violations. There  
16 was subsequent notices of additional phones on  
17 June 14th also in a separate file.

18 Q And was there a further follow up -- well,  
19 was there a further notification in July?

20 A Yes, there was, but it's not here. I don't  
21 see the July letter.

22 Q Would VC-3 be that response, that  
23 notification?

24 A Yes, July 11, 1995.

25 Q And was there still a further notification

1 of these violations?

2       A     Yes, there was. But, again, I'm not seeing  
3 it here.

4       Q     Would the following exhibit, VC-4, help your  
5 recollection?

6       A     That's dated July 11, 1995.

7       Q     What about then VC-5?

8       A     That's July 12th. That was the additional  
9 one.

10      Q     VC-6?

11      A     Okay. That is the one. It's dated  
12 August 4, 1995. And that was a certified letter, the  
13 second notice.

14      Q     Did the Commission receive responses from  
15 Gaviria in any of these instances?

16      A     Yes, we did.

17      Q     Was it necessary, however, to make even a  
18 further notification than those you've already  
19 described in order to elicit that response?

20      A     That's correct.

21      Q     And can you tell us when that additional  
22 notification was made? Perhaps VC-7 would help you.

23      A     August 9, 1995.

24      Q     Can you describe the nature of that  
25 notification?

1           A     It was a facsimile that we sent, 17 pages,  
2 that we were addressing that this is a copy of a  
3 certified letter that was sent on July 11 which was  
4 also mailed. Those were returned to the post office  
5 because it was unclaimed.

6           Q     Is my understanding correct that it was to  
7 that notification that Gaviria responded?

8           A     That's correct.

9           Q     Was his response satisfactory?

10          A     No, it was not. He essentially alleged that  
11 there was no violations committed.

12          Q     What then did the Commission do?

13          A     Initiated a Show Cause.

14          Q     Did it not order a further evaluation or  
15 reevaluation before that?

16          A     That's correct, excuse me. There was  
17 further evaluations before we went to the Show Cause.

18          Q     Do you recall when the next evaluation was  
19 carried out? Refer you back to Exhibit No. 4, RM-4,  
20 marked 4.

21                   I'm asking you when the second service  
22 evaluation was conducted.

23          A     That would be September of 1995.

24          Q     Was that the evaluation conducted by  
25 Mr. King as well, if you know?

1           A     I don't recall.

2           Q     Would you summarize the results of that  
3 evaluation? That is the one conducted in September of  
4 1995?

5           A     Yes. There were 38 telephones evaluated,  
6 including 19 that were reevaluated, and there was a  
7 total of 146 violations.

8           THE COURT: Is that 146?

9           WITNESS MOSES: Let me reverify that for  
10 you. Yes, 146.

11          THE COURT: All right, thank you.

12          MR. PFLLEGRINI: Your Honor, I'm handing the  
13 witness VC-13 and referring his attention to the first  
14 page.

15          Q     (By Mr. Pellegrini) Did the Commission  
16 notify Wilberth Gaviria of the September evaluation  
17 results?

18          A     Yes, we did. We sent notice on  
19 September 20, 1995.

20          Q     Did Wilberth Gaviria respond to that  
21 notification?

22          A     Yes, he did.

23          Q     Was his response satisfactory in that case?

24          A     No, it was not. He essentially said the  
25 same thing, that the evaluation results, he didn't

1 agree with them. That the violations were not  
2 committed.

3 Q What action, if any, did the Commission then  
4 take?

5 A Then we went to the Show Cause.

6 Q Was there not an evaluation conducted in  
7 November of 1995? Do you recall?

8 A Oh, wait a minute. We did have two other  
9 evaluators.

10 Q Again, let me refer you to RM-4.

11 A Okay. In November of 1995 there were two  
12 telephones evaluated. One was reevaluated, and there  
13 was a total of four violations.

14 MR. PELLEGRINI: Your Honor, I'm handing the  
15 witness Exhibit VC-18 and referring his attention to  
16 Page 1 of that exhibit.

17 Q (By Mr. Pellegrini) Did the Commission  
18 advise Mr. Gaviria of those service evaluation  
19 results? That is of the November 1995 evaluation?

20 A Yes, we did. On November 14, of 1995, we  
21 sent notification.

22 Q And did Wilberth Gaviria respond?

23 A Yes, he did.

24 Q Was his response satisfactory?

25 A He had the same response that he did not

1 believe the violations were committed.

2 MR. PELLEGRINI: Your Honor, I'm handing the  
3 exhibit, Exhibit RM-5 marked 5 for identification.

4 (Exhibit 5 marked for identification.)

5 Q (By Mr. Pellegrini) What action did the  
6 Commission then take following the November 1995  
7 evaluation and Mr. Gaviria's response to that?

8 A At that time is when we went to the Show  
9 Cause. The Commission issued a Show Cause Order.  
10 Mr. Gaviria had protested the Order and requested a  
11 hearing.

12 Q Is Exhibit RM -- well, let me ask you first.  
13 Did the Commission Staff prepare a recommendation  
14 leading to the Commission's Order to Show Cause?

15 A A recommendation was filed on February 8,  
16 1996, to initiate the Show Cause proceedings against  
17 Wilberth Gaviria and also to deny the application of  
18 South Telecommunications.

19 Q Is Exhibit RM-5 that recommendation?

20 A Yes, it is.

21 MR. PELLEGRINI: Your Honor, I'm handing the  
22 witness an exhibit marked -- Exhibit RM-6 marked 6 for  
23 identification.

24 (Exhibit 6 marked for identification.)

25 Q (By Mr. Pellegrini) I think you may have

1 answered this question already, Mr. Moses. But what  
2 was Wilberth Gaviria's response to the Commission's  
3 Show Cause Order.

4       **A**     He essentially just refused to admit that  
5 any violations had occurred and that he was objecting  
6 to the Order.

7       **Q**     Did he file a formal response?

8       **A**     Yes, he did.

9       **Q**     What was the nature of that response?

10       **A**     It's a response to the Show Cause Order, and  
11 he went through each one of the telephones and stated  
12 what he believed.

13       **Q**     Did he request a formal administrative  
14 hearing before the Commission in that response?

15       **A**     Yes, he did.

16               **MR. PELLEGRINI:** Your Honor, at this time  
17 the Commission requests that Exhibits marked 5 and 6  
18 for identification be admitted into evidence.

19               **THE COURT:** All right. They are admitted.

20               (Exhibits 5 and 6 received in evidence.)

21               **MR. PELLEGRINI:** Your Honor, I'm handing the  
22 witness Exhibit VC-20 and calling his attention to the  
23 first page of that exhibit.

24       **Q**     (By Mr. Pellegrini) Following the issuance  
25 of the Show Cause Order, Mr. Moses, did the Commission

1 do still a further evaluation of Wilberth Gaviria pay  
2 telephones?

3 A Yes, we did.

4 Q When was that?

5 A There was on -- let's see. I don't have the  
6 actual evaluation date, but I have the date that he  
7 was noticed of the violations which was on March 20th  
8 of 1996.

9 Q And with reference to Exhibit RM-4, can you  
10 describe -- let me return. Can you describe the  
11 results of that evaluation, please?

12 A One pay telephone was evaluated. It was a  
13 third evaluation of that same pay telephone, and there  
14 were still six violations.

15 Q And again, did the Commission notify  
16 Wilberth Gaviria of these service evaluation results?

17 A We notified him on March 20, 1996 of the  
18 violations.

19 Q And did Wilberth Gaviria respond?

20 A Yes, he did.

21 Q Was his response satisfactory?

22 A No.

23 Q And, finally, did the Commission take still  
24 a further step to evaluate the Gaviria pay telephones?

25 A Yes, we did. We did further evaluations in

1 October of 1996.

2 Q Who conducted those evaluations?

3 A I believe Chet Wade.

4 Q Can you, with reference again to RM-4,  
5 summarize the results of yourself and Mr. Wade's  
6 evaluation?

7 A Yes. There were 23 pay telephones  
8 evaluated. All but one were reevaluations. And there  
9 were a total of 58 violations.

10 MR. PELLEGRINI: Your Honor, I'm handing the  
11 witness Exhibits VC-44D and VC-44B and directing his  
12 attention to the first pages of those exhibits.

13 THE COURT: All of those repeat violations  
14 were those that had been reevaluated, or were some of  
15 them repeat and some of them new?

16 WITNESS MOSES: Many of them were repeat,  
17 but there were some new.

18 THE COURT: Okay.

19 Q (By Mr. Pellegrini) Did the Commission  
20 notify Wilberth Gaviria of the November -- I'm sorry,  
21 the October 1996 evaluation?

22 A Yes, we did. On November 6, 1996, he was  
23 sent notification.

24 Q And did he respond?

25 A Yes, he did.

1 Q And once again, was the response  
2 satisfactory?

3 A No, it was not.

4 MR. PELLEGRINI: Your Honor, the Commission  
5 requests that the exhibit marked 4 for identification  
6 be admitted into evidence.

7 THE COURT: 4 is admitted.

8 (Exhibit 4 received in evidence.)

9 Q (By Mr. Pellegrini) Mr. Moses, I would  
10 like to conclude your testimony with a few questions  
11 to summarize that testimony. How many service  
12 evaluations did the Commission conduct in all of  
13 Wilberth Gaviria's pay telephones?

14 A I believe there was five separate occasions  
15 that we went out and did service evaluations.

16 Q And how many telephones were evaluated?

17 A I'm not certain. I believe there was a  
18 total of 38.

19 Q And do you recall the total number of  
20 violations that were found in those 38 --

21 A I believe it was right at 427.

22 Q Mr. Moses, what relief does the Commission  
23 seek in this proceeding?

24 A Revocation of the certificate.

25 Q That is a extreme measure. Why does the

1 Commission feel that revocation is appropriate?

2 A Well, given the number of notices that the  
3 Commission has sent, also a Show Cause Order and his  
4 blatant disregard for the Commission's rules, we all  
5 believe we can achieve compliance through a fine.  
6 Normally, when we go through a fine process, a company  
7 will come forth with compliance and then pay the fine  
8 as resolution of the Show Cause. And Mr. Gaviria  
9 doesn't appear that he has the adequate knowledge to  
10 be in the pay telephone business.

11 Q Is it not the case that the Commission must  
12 find that the provision of pay telephone service is  
13 being conducted in the public interest?

14 A That is correct. And we do not believe that  
15 Mr. Gaviria is operating in the public interest.

16 Q And the obligation to find that the  
17 operation of a pay telephone service to be in the  
18 public interest is a statutory requirement; is that  
19 true?

20 A That's true.

21 Q In your experience, Mr. Moses, has the  
22 Commission revoked the certificates of pay telephone  
23 service providers for like or lesser offenses?

24 A Annually, approximately 90 pay telephone  
25 companies have their certification revoked for

1 something as simple as not paying their regulatory  
2 assessment fees. Other type of revocations, if they  
3 have moved and they have not notified the Commission  
4 of the move, then 10 days of the occurrence, that also  
5 results in revocation.

6 MR. PELLEGRINI: Thank you, Mr. Moses.

7 Your Honor, that concludes the direct  
8 examination of Mr. Moses.

9 THE COURT: All right. You may call your  
10 next witness.

11 (Witness Moses excused.)

12 - - - - -

13 MR. PELLEGRINI: The Commission calls as  
14 it's next witness, Ralph King.

15 THE COURT: Raise your right hand.

16 You may have a seat.

17 RALPH KING

18 was called as a witness on behalf of The Florida  
19 Public Service Commission and, having been duly sworn,  
20 testified as follows:

21 DIRECT EXAMINATION

22 BY MR. PELLEGRINI:

23 Q Mr. King, would you please state your name  
24 and address for the record?

25 A Ralph King, 9820 Bunker Road, Leesburg,

1 Florida 34788.

2 Q Mr. King, are you presently employed?

3 A No.

4 Q Are you enjoying your retirement?

5 A Yes.

6 Q In the period beginning with June 1995 and  
7 ending in March 1996, were you employed by the Florida  
8 Public Service Commission?

9 A Yes, I was.

10 Q And in what capacity were you employed?

11 A An engineer.

12 Q What were your duties?

13 A To evaluate pay phones.

14 Q How long in all were you employed by the  
15 Public Service Commission?

16 A From July 18, 1994 through April 30, 1996.

17 Q And how were you employed before your  
18 employment with the Public Service Commission?

19 A I retired from Sprint United Telephone with  
20 20 years of service in all. With United Telephone, I  
21 had all facets of communications experience.

22 Q And did you have any employment experience  
23 even before the experience with Sprint?

24 A I was ground communications coordinator with  
25 the Kennedy Space Center for a space walk program.

1 Q And that was with NASA?

2 A Yes.

3 Q Can you give me a brief summary of your  
4 educational background, Mr. King?

5 A I have a year at the Milwaukee School of  
6 Engineering. I have a diploma from DeVry Technical  
7 School in Chicago. And I have over 4,500 hours of  
8 special electronics.

9 Q Thank you. Do you have some idea of how  
10 many telephone service evaluations you have made in  
11 all?

12 A 1,697 with the Public Service Commission.

13 Q Is it correct that you were assigned to do  
14 service evaluations of pay telephones in Miami owned  
15 and operated by Wilberth Gaviria?

16 A Yes, I was.

17 Q When did you conduct those service  
18 evaluations?

19 A June of 1995, September of 1995, and March  
20 of 1996.

21 Q Do you recall the number of telephones that  
22 you evaluated on each of those occasions?

23 A In June of '95, I evaluated 23. In  
24 September of '95, I evaluated 38; and in March, I  
25 evaluated one.

1 Q Mr. King, can you briefly tell us how a  
2 service evaluation is carried out?

3 A Basically, you drive down the street, you  
4 see a phone, you get out and take your evaluation  
5 sheet and evaluate the telephone.

6 Q The evaluation sheet that you mentioned,  
7 what does that contain?

8 A It has each phone. It has its  
9 identification by phone number and location. It shows  
10 the owner of the phone, the evaluator, and the date,  
11 and it has the 29 compliance rules. And it also then  
12 is checked for the ANSI handicapped standards and also  
13 the interexchange carriers. And then last, any notes  
14 or special writing that the evaluator see necessary to  
15 recall special conditions about the location or  
16 anything particular about the phone is written in the  
17 remarks section.

18 Q Do I understand you to say that you begin  
19 with an evaluation sheet which contains a number of  
20 criteria?

21 A Yes, sir.

22 Q And you apply those criteria?

23 A Yes, so that each and every telephone gets  
24 the same check.

25 Q And then you prepare a service evaluation

1 report for each one of those telephones evaluated; is  
2 that correct?

3 A Yes, I do.

4 Q And did you in this case, that is the  
5 evaluation of Wilberth Gaviria telephones, prepare  
6 service evaluation reports?

7 A Yes, I did.

8 MR. PELLEGRINI: Your Honor, I'm going to  
9 hand the witness exhibits prefaced R-K-dash, and  
10 marked 7 through 69 for identification.

11 (Exhibits 7 through 69 marked for  
12 identification.)

13 Q (By Mr. Pellegrini) Mr. King, would you  
14 just quickly look through these exhibits without  
15 upsetting their order?

16 Do these appear to be the service evaluation  
17 reports which you prepared in the course of your  
18 evaluation of Wilberth Gaviria's telephones?

19 A Yes, they do.

20 Q And these evaluations are of telephones, to  
21 the best of your knowledge, owned and operated by  
22 Wilberth Gaviria; is that correct?

23 A Yes.

24 Q Mr. King, please refer to Exhibit RK-1 and  
25 tell me what telephone is evaluated in that report?

1           A     305-751-8327.

2           Q     And when was that evaluation done?

3           A     On 6/7/95.

4           Q     Can you tell me how many standards were  
5 evaluated unsatisfactory?

6           A     Seven.

7           Q     And which standards were those?  Would you  
8 enumerate them, please?

9           A     Telephone was in service, unsatisfactory.  
10 Legible and correct telephone number was displayed,  
11 unsatisfactory.  Address for responsible party for  
12 refunds and repairs displayed, unsatisfactory.  
13 Current directory available, unsatisfactory.  Correct  
14 address of pay phone location is displayed,  
15 unsatisfactory.  Sufficient light to read instructions  
16 at night, unsatisfactory.  And certified name of  
17 provider is displayed, unsatisfactory.

18          Q     Please refer to Exhibit RK-1A.  What  
19 telephone is evaluated in this report?

20          A     305-751-8327.

21          Q     Is that the same telephone which you just  
22 described?

23          A     Yes, it is.

24          Q     And when was this evaluation done?

25          A     September 14, 1995.

1 Q How many standards were evaluated  
2 unsatisfactory?

3 A Two.

4 Q Which?

5 A Address of responsible party for refunds and  
6 repairs displayed, unsatisfactory. And current  
7 directory available, unsatisfactory.

8 Q Please refer to Exhibit RK-2. Which  
9 telephone was evaluated in this report?

10 A 305-751-8523.

11 Q And when was that evaluation done?

12 A On 6/7/95.

13 Q How many standards were evaluated  
14 unsatisfactory?

15 A Eight.

16 Q Would you enumerate them, please?

17 A Legible and correct telephone number was  
18 displayed, unsatisfactory. Address of responsible  
19 party for repairs and refund, unsatisfactory. Current  
20 directory available, unsatisfactory. Wiring properly  
21 terminated and in good condition, unsatisfactory.  
22 Correct address of pay phone location is displayed,  
23 unsatisfactory. Certified name of provider displayed,  
24 unsatisfactory. Local telephone company  
25 responsibility disclaimer is displayed,

1 unsatisfactory. Clear and accurate dialing  
2 instructions are displayed, unsatisfactory.

3 Q Refer now to Exhibit RK-2A. What telephone  
4 is evaluated in that report?

5 A 305-751-8523.

6 Q Is that the same as the telephone evaluation  
7 just described?

8 A Yes, it is.

9 Q And when was that second evaluation done?

10 A September 14, 1995.

11 Q How many standards were evaluated  
12 unsatisfactory?

13 A Three.

14 Q Enumerate them, please.

15 A Address of responsible party for refund and  
16 repair displayed, unsatisfactory. Current directory  
17 available, unsatisfactory. Sufficient light to read  
18 instructions at night, unsatisfactory.

19 Q Refer now to Exhibit RK-3. What telephone  
20 was evaluated in this report?

21 A 305-633-9237.

22 Q And when was that evaluation done?

23 A June 6, 1995.

24 Q How many standards evaluated unsatisfactory?

25 A Eleven.

1 Q Would you enumerate them, please?

2 A Legible and correct telephone number was  
3 displayed, unsatisfactory. Address of responsible  
4 party for refund and repairs displayed,  
5 unsatisfactory. Coin free number for repairs and  
6 refund works properly, unsatisfactory. Current  
7 directory, unsatisfactory. Extended area service and  
8 local calls 25 cents or less, unsatisfactory. Correct  
9 address of pay phone location is displayed,  
10 unsatisfactory. Instrument reasonably clean,  
11 unsatisfactory. Local telephone company  
12 responsibility disclaimer is displayed,  
13 unsatisfactory. Incoming calls can be received and  
14 bells ring and can be heard, unsatisfactory. Access  
15 to all available interexchange carriers was available,  
16 unsatisfactory. Dial 0, area code, local number, does  
17 it go to the LEC operator, unsatisfactory.

18 Q Refer next to Exhibit RK-4. What telephone  
19 is evaluated in this report?

20 A 305-920-9902.

21 Q When did you do that evaluation?

22 A June 9, 1995.

23 Q How many standards were evaluated  
24 unsatisfactory?

25 A Eleven.

1 Q Enumerate them, please.

2 A Telephone was accessible to the physically  
3 handicapped, unsatisfactory. Legible and correct  
4 telephone number was displayed unsatisfactory.  
5 Address of responsible party for refunds and repairs  
6 displayed, unsatisfactory. Coin free number for  
7 repairs or refunds worked properly, unsatisfactory.  
8 Current directory available, unsatisfactory. Extended  
9 area service local calls 25 cents or less,  
10 unsatisfactory. Correct address pay phone location is  
11 displayed, unsatisfactory. Certified name of provider  
12 is displayed, unsatisfactory. Local telephone company  
13 responsibility disclaimer is displayed,  
14 unsatisfactory. There was direct free service to  
15 local directory assistance, unsatisfactory. Access to  
16 all interexchange carriers was available,  
17 unsatisfactory.

18 Q Refer next to Exhibit RK-4A. What telephone  
19 is evaluated in this report?

20 A 305-920-9902.

21 Q When did you do that evaluation?

22 A September 11, 1995.

23 Q How many standard were evaluated  
24 unsatisfactory?

25 A Six.

1 Q Enumerate them, please.

2 A Telephone was accessible to the physically  
3 handicapped, unsatisfactory. Current directory  
4 available, unsatisfactory. Extended area service and  
5 local calls 25 cents or less, unsatisfactory. Correct  
6 address pay phone location is displayed,  
7 unsatisfactory. Enclosure is adequate and free of  
8 trash, unsatisfactory. Incoming calls can be  
9 received; bells ring and be heard, unsatisfactory.

10 Q Refer to Exhibit RK-5, please. What  
11 telephones did you evaluate in this report?

12 A 305-854-9684.

13 Q And when did you do that evaluation?

14 A June 7, 1995.

15 Q How many standards were evaluated  
16 unsatisfactory?

17 A Twelve.

18 Q Enumerate them, please.

19 A Legible and correct telephone number was  
20 displayed, unsatisfactory. Address of responsible  
21 party for refunds and repairs displayed,  
22 unsatisfactory. Coin free number for repairs/refunds  
23 works properly, unsatisfactory. Current directory  
24 available, unsatisfactory. Extended area service and  
25 local calls 25 cents or less, unsatisfactory. Correct

1 address pay phone location is displayed,  
2 unsatisfactory. Certified name of provider is  
3 displayed, unsatisfactory. Local telephone company  
4 responsibility disclaimer is displayed,  
5 unsatisfactory. Clear and accurate dialing  
6 instructions are displayed, unsatisfactory. Excess to  
7 all available interexchange carriers was available,  
8 unsatisfactory. Combination of nickels and dimes  
9 operated properly, unsatisfactory. And dialing 0 for  
10 the local number, does call go to the LEC operator,  
11 unsatisfactory.

12 Q Refer next to Exhibit RK-6. What telephone  
13 is evaluated, did you evaluate in this report?

14 A 305-854-9087.

15 Q When did you do that evaluation?

16 A June 7, 1995.

17 Q How many standards were evaluated  
18 unsatisfactory?

19 A Ten.

20 Q Enumerate them, please.

21 A Address of responsible party for refund and  
22 repair is displayed, unsatisfactory. Coin free number  
23 for repairs/refunds works properly, unsatisfactory.  
24 Current directory, unsatisfactory. Extended area  
25 service and local calls 25 cents or less,

1 unsatisfactory. Correct address of pay phone location  
2 is displayed, unsatisfactory. Certified name of  
3 provider is displayed, unsatisfactory. Local  
4 telephone company responsibility disclaimer is  
5 displayed, unsatisfactory. Clear and accurate dialing  
6 instructions are displayed, unsatisfactory.  
7 Combination of nickels and dimes operate properly,  
8 unsatisfactory. Dial 0 + area code + local number;  
9 does call go to LEC operator, unsatisfactory.

10 Q When you say, Mr. King, "current directory  
11 unsatisfactory," you mean current directory  
12 availability was unsatisfactory?

13 A Current directory is a telephone book.

14 Q I think you mean to say that it wasn't  
15 available; is that correct?

16 A Yes. Didn't I say that?

17 Q Not quite.

18 A Current directory available unsatisfactory.

19 Q Would you refer next to Exhibit RK-7?

20 THE COURT: Do these have numbers on the  
21 forms?

22 MR. PELLEGRINI: Yes.

23 THE COURT: Can you just refer to the  
24 numbers? If you just want to read into the record  
25 what each number is and from then on just refer to the

1 number rather than have him just read every single  
2 thing out, because it looks like you've got a lot.

3 MR. PELLEGRINI: I'm sorry, I misunderstood  
4 you. Your Honor, no, they don't have numbers. And  
5 there is quite a number of them.

6 THE COURT: Well, maybe, can you -- rather  
7 than have him read each one of those out -- you don't  
8 have any independent recollection? I mean, you have  
9 to use this to refresh your memory, don't you?

10 WITNESS KING: Yes, ma'am. For the exact  
11 item. But, like, you could do Exhibit 16, and I could  
12 give you the unsatisfactoriness, how many on each phone.

13 THE COURT: Okay. What you might want to do  
14 to cut this short instead of having to -- if you are  
15 going to put those in evidence, I assume --

16 MR. PELLEGRINI: Yes.

17 THE COURT: If you are going to put them in  
18 evidence, just ask him if that accurately depicts what  
19 he found. That way we can cut through having him read  
20 every single one of these. Because if it's going to  
21 come in, I can look and see what's marked.

22 You marked them unsatisfactory?

23 WITNESS KING: Yes, ma'am.

24 THE COURT: And I can look and see what that  
25 is rather than have him sit here all day doing that.

1           MR. PELLEGRINI: That's certainly agreeable.

2           Q       (By Mr. Pellegrini) Mr. King, would you  
3 look through the remainder of those exhibits. (Pause)

4           Mr. King, having reviewed the exhibits  
5 marked through 69, do they represent -- to the best of  
6 your knowledge, are they an accurate depiction of the  
7 service evaluations which you made of Wilberth  
8 Gaviria's pay telephones?

9           A       Yes, they are.

10          Q       Did you make those service evaluation  
11 reports at or about the same time that you conducted  
12 the evaluations?

13          A       Exactly at the same time.

14          MR. PELLEGRINI: Your Honor, the Commission  
15 would request that exhibits -- Commission exhibits  
16 marked 7 through 69 be admitted into evidence.

17                 (Exhibits 7 through 69 received in  
18 evidence.)

19          Q       (By Mr. Pellegrini) Mr. King, just one or  
20 two final questions. Is it not true that telephone  
21 accessibility for the physically handicapped is  
22 considered a more serious violation perhaps than many  
23 of the others?

24          A       Yes, it is.

25          Q       And did you find that to be the difficulty

1 with some of Mr. Gaviria's telephones?

2 A Yes.

3 Q And is not access to all available  
4 interexchange carriers, the availability of that, is  
5 that not considered a major standard as well?

6 A Yes, it is.

7 Q And did you find Mr. Gaviria's telephones to  
8 be in violation of that standard?

9 A Yes, I did.

10 MR. PELLEGRINI: Thank you, Mr. King.

11 Your Honor that concludes the direct  
12 examination of Mr. King.

13 THE COURT: All right. If you'll hand those  
14 exhibits up to me, I'll go ahead and mark them.

15 How many more witness do you have, sir? Can  
16 we get through with them in, say, an hour so we don't  
17 need to take a lunch break?

18 MR. PELLEGRINI: Oh, I think so.

19 THE COURT: Okay. I'm going to let you take  
20 these exhibits back with you, and if you'll just file  
21 them with the division. You are going back to  
22 Tallahassee?

23 MR. PELLEGRINI: Yes, Your Honor.

24 THE COURT: If you'll just file them with  
25 the division when you get back.

1           **MR. PELLEGRINI:** Certainly.

2           **THE COURT:** I've got two more cases this  
3 week, and I bet my suitcase is going to be filled.

4           All right. Call your next witness.

5           **MR. PELLEGRINI:** You are excused, Mr. King.

6           The Commission calls as its next witness,  
7 Chester Wade.

8           (Witness King excused.)

9           - - - - -

10          **THE COURT:** Raise your right hand, please.

11          You may have a seat.

12                           **CHESTER WADE**

13 was called as a witness on behalf of Florida Public  
14 Service Commission and, having been duly sworn,  
15 testified as follows:

16                           **DIRECT EXAMINATION**

17 **BY MR. PELLEGRINI:**

18           **Q** Mr. Wade, would you please state your full  
19 name and address for the record?

20           **A** Chester F. Wade, 2540 Shumard Oak Drive,  
21 Tallahassee, Florida.

22           **Q** How are you presently employed, Mr. Wade?

23           **A** The Public Service Commission.

24           **Q** How long have you been employed by the  
25 Public Service Commission.

1           A     Five months.

2           Q     How were you employed before your employment  
3 with the Public Service Commission?

4           A     I retired from GTE after 28 years of service  
5 where I inspected up to several hundred telephones,  
6 pay telephones; supervised inside plant, outside  
7 plant; and was local manager.

8           Q     What are your present responsibilities with  
9 the Public Service Commission?

10          A     I'm an engineer.

11          Q     What do your duties consist of?

12          A     I inspect pay telephones. I evaluate  
13 central offices where the dial tone or the traffic, I  
14 guess you would say, is handled. We go and evaluate  
15 the power of the central office, the carriers, pay  
16 telephones ongoing.

17          Q     What is your educational background?

18          A     I have an associate's degree from Polk  
19 Community College, and I'm in a continuing education  
20 program at the University of South Florida.

21          Q     Mr. Wade, were you assigned to conduct  
22 service evaluations of Wilberth Gaviria pay telephones  
23 in Miami?

24          A     Yes, I was.

25          Q     And when did you carry out that assignment?

1           A     In October of '96.

2           Q     How many telephones did you evaluate?

3           A     23.

4           Q     Did you prepare service evaluation reports?

5           A     Yes, I did.

6           MR. PELLEGRINI: Your Honor, I'm handing the  
7 witness Commission Composite Exhibit -- exhibits are  
8 prefixed C-W-dash, and are numbered 70 through 94 for  
9 identification.

10                   (Exhibits 70 through 94 marked for  
11 identification.)

12           Q     (By Mr. Pellegrini) Mr. Wade, I would ask  
13 you to look through each one of those exhibits which  
14 I've just handed to you.

15                   Mr. Wade, are those exhibits the service  
16 evaluation reports which you prepared in your October  
17 1996 evaluation of Wilberth Gaviria pay telephones?

18           A     Yes, they are.

19           Q     And did you make those service evaluation  
20 reports yourself?

21           A     Yes, I did. At each pay phone evaluation, I  
22 filled out the form right at the pay phone.

23           Q     At the same time as you made the evaluation?

24           A     Exactly.

25           Q     And to the best of your knowledge, are these

1 the pay telephones which are owned and operated by  
2 Wilberth Gaviria?

3 A Yes, to the best of my knowledge.

4 MR. PELLEGRINI: Your Honor, we propose that  
5 we handle these exhibits as we did for those of  
6 Mr. King. And I would request that they be admitted  
7 into evidence at this time.

8 THE COURT: Okay. They are admitted.

9 (Exhibits 70 through 94 received in  
10 evidence.)

11 Q (By Mr. Pellegrini) All right. Now,  
12 Mr. Wade, just one final question. Is it not true  
13 that, at least for the most part, the evaluations that  
14 you conducted in October of 1996, that they were  
15 reevaluations for telephones that had been previously  
16 evaluated by Mr. King and others?

17 A Yes.

18 MR. PELLEGRINI: Thank you, Mr. Wade. That  
19 concludes direct examination of Mr. Wade.

20 THE COURT: Thank you, sir.

21 (Witness Wade excused.)

22 - - - - -

23 MR. PELLEGRINI: The Commission next calls  
24 as its witness, Victor Cordiano.

25 THE COURT: Raise your right hand.

**VICTOR CORDIANO**

1  
2 was called as a witness on behalf of Florida Public  
3 Service Commission and, having been duly sworn,  
4 testified as follows:

**DIRECT EXAMINATION**

5  
6 **BY MR. PELLEGRINI:**

7       **Q**     Mr. Cordiano, please state your full name  
8 and business address for the record?

9       **A**     Victor C. Cordiano.

10       **THE COURT:** And how do you spell your last  
11 name?

12       **WITNESS CORDIANO:** C-O-R-D-I-A-N-O. The  
13 business address is 2540 Shumard Oak Boulevard,  
14 Tallahassee, Florida 32399-0866.

15       **Q**     (By Mr. Pellegrini) By whom are you  
16 employed?

17       **A**     The Florida Public Service Commission.

18       **Q**     How long have you been employed by the  
19 Florida Public Service Commission?

20       **A**     Since November of '94. Approximately two  
21 years, a little over two years.

22       **Q**     How were you employed prior to your  
23 employment, your present employment?

24       **A**     I worked for a company called Benedict  
25 Engineering Company.

1 Q In what capacity?

2 A I was a research and design -- research  
3 development engineer. And I also did work in the  
4 accident -- in the field of accident construction.

5 Q What is your educational background,  
6 Mr. Cordiano?

7 A I graduated back in 1990 with an electrical  
8 engineering degree from Florida State University.

9 Q What are your present responsibilities?  
10 That is, your responsibilities of your present job.

11 A Enforcing -- actually, rulemaking and  
12 enforcing compliance with the Commission rules which  
13 affect telecommunications companies by handling  
14 certification and demarcation matters, outages, safety  
15 variances, and also analyzing data and presenting  
16 recommendations to the Commission.

17 Q In the present matter, that is of the Public  
18 Service Commission's concern with the operation of  
19 Wilberth Gaviria's pay telephone business, what has  
20 been your role?

21 A My role was to review the evaluations of the  
22 pay telephones in Miami in operation by Wilberth  
23 Gaviria, to summarize those evaluations, and to  
24 present a recommendation to the Commissioners.

25 MR. PELLEGRINI: Your Honor, I'm handing the

1 witness a Commission composite exhibit consisting of  
2 exhibits marked 98A through 133 for identification.

3 (Exhibits 98A through 133 marked for  
4 identification.)

5 Q (By Mr. Pellegrini) Mr. Cordiano, would  
6 you first refer to Exhibit VC-1, please, and describe  
7 what this exhibit is.

8 WITNESS CORDIANO: I'm sorry, Your Honor.  
9 Charlie, I'm showing VC-5 here.

10 Q (By Mr. Pellegrini) Okay. (Pause)  
11 Refer then to the exhibit marked 98A and  
12 describe for me what that represents.

13 A Okay. Exhibit 98A is a letter from me to  
14 Wilberth Gaviria dated June 14, 1995, for file  
15 No. TE793.9501. This letter shows service evaluations  
16 performed on 12 Wilberth Gaviria pay telephones and  
17 shows the violation items for each of those phones.

18 Q Does it call for a response within a certain  
19 period of time?

20 A Yes, it does. It requires a response within  
21 15 days explaining the corrective action taken.

22 Q Did Wilberth Gaviria respond to this  
23 notification?

24 A No, he did not.

25 Q Please refer to Exhibit 98 -- marked 98B,

1 and describe to me what that exhibit is.

2           A     Exhibit 98B is again a letter from me to  
3 Wilberth Gaviria dated June 14, 1995, for File  
4 No. TE793.9502. This letter shows violation items for  
5 five Wilberth Gaviria pay telephones and again  
6 requesting a response within 15 days explaining the  
7 corrective action taken.

8           Q     And did Wilberth Gaviria respond?

9           A     No, he did not.

10          Q     Please refer to exhibit identified 98C and  
11 describe for me what that is.

12          A     Exhibit 98C is a letter from me to Wilberth  
13 Gaviria dated July 11, 1995, for file TE793.9501.  
14 This letter was sent certified mail. It shows the  
15 violation items for 12 pay telephones in operation by  
16 Wilberth Gaviria. Again, requesting a response within  
17 15 days explaining the corrective action taken.

18          Q     Was this not the same notification that had  
19 been sent to Wilberth Gaviria earlier by regular mail?

20          A     That's correct. This is the second letter  
21 notifying him of all the violation letters.

22          Q     And did the Commission receive a response  
23 from Wilberth Gaviria on this occasion?

24          A     No, we did not.

25          Q     Please refer to the Exhibit identified 98D,

1 and describe for me what that is.

2           A     Exhibit 98D is a letter from me to Wilberth  
3 Gaviria dated July 11, 1995, for File TE793.9502.  
4 Again, by certified mail. This letter shows violation  
5 items for five pay telephones in operation by Wilberth  
6 Gaviria, again calling for a response within 15 days  
7 explaining the corrective action taken.

8           Q     And did you receive such a response?

9           A     No, we did not.

10           THE COURT: Is this the same notification  
11 that you sent on June 14th?

12           WITNESS CORDIANO: Let me double check that,  
13 Your Honor. Yes, it is.

14           Q     (By Mr. Pellegrini) Referring your  
15 attention now to the exhibit marked 99 for your  
16 identification. Describe for me what that exhibit  
17 contains.

18           A     Exhibit 99 is a letter from me to Wilberth  
19 Gaviria dated July 12, 1995, for File TE793.9503.  
20 This letter shows violation items for six pay  
21 telephones in operation by Wilberth Gaviria. Again,  
22 calling for corrective action within 15 days.

23           Q     And did the Commission receive a response to  
24 this notification?

25           A     No, we did not.

1 Q Please refer to the exhibit marked 100 for  
2 identification, and describe for me what that exhibit  
3 is, please.

4 A Exhibit No. 100, again is a letter from me  
5 to Wilberth Gaviria dated August 4, 1995, for File  
6 No. TE793.9503. This was sent certified mail showing  
7 the violation items for six pay telephones in  
8 operation by Wilberth Gaviria and calling for an  
9 explanation as to corrective action taken within 15  
10 days.

11 Q And did the Commission receive Mr. Gaviria's  
12 response in this case?

13 A We did receive a response on August 21,  
14 1995, addressing all the violations.

15 Q Refer next to the exhibit marked 101, and  
16 describe for me what that exhibit is.

17 A Exhibit 101 is a letter from me to Wilberth  
18 Gaviria. Actually, it was a facsimile transmission.  
19 The facsimile transmission included all the violation  
20 letters and requested a response by August 14th for  
21 Files TE793.9501, 9502, and 9503.

22 Q And was it not, in fact, this notification  
23 to which Wilberth Gaviria finally responded?

24 A That is correct. However, I do want to note  
25 that we did -- we initiated our notices back in June

1 for the violation items.

2 Q Please refer to the exhibit marked 102 for  
3 identification, and describe for me what that is,  
4 please.

5 A Exhibit No. 102 is a letter from me to  
6 Mr. Brian L. Fink, then legal counsel for Wilberth  
7 Gaviria. This letter indicates to Mr. Fink that we  
8 faxed all the violation letters to Wilberth Gaviria  
9 and that Wilberth Gaviria agreed that he did receive  
10 the violation letters and that he would respond  
11 accordingly for each of the files.

12 We also further advised Mr. Fink that  
13 Mr. Gaviria is in apparent violation of many of the  
14 rules, and that if we did not receive a satisfactory  
15 or timely response within the response dates, we would  
16 then go forth with an initiation of the Show Cause  
17 proceedings.

18 Q So then it was in August of 1995 that the  
19 Commission first made Mr. Gaviria aware of the  
20 possibility of the Show Cause proceeding?

21 A That's correct.

22 Q Please refer to the exhibit marked 103 for  
23 identification, and explain what this exhibit is,  
24 please.

25 A Exhibit No. 103 is Wilberth Gaviria's

1 response for File TE793.9501.

2 Q Have you prepared an exhibit analyzing that  
3 response?

4 A Yes, I have.

5 Q Is that Exhibit 104?

6 A No, it is not.

7 MR. PELLEGRINI: Excuse me, Your Honor.

8 (Pause)

9 Q (By Mr. Pellegrini) Would your analysis of  
10 Mr. Gaviria's 1995 response be the exhibit marked 134?

11 A That is correct.

12 Q Describe your analysis, Mr. Cordiano?

13 A This analysis shows Gaviria's response to  
14 File TE793.9501. It shows the response for the June  
15 1995 evaluations.

16 Q Did you characterize those responses?

17 A Yes, I did.

18 Q And how did you do that?

19 A Okay. For Item No. 5, we found nine --  
20 actually, Wilberth Gaviria responded nine times  
21 admitting free number repairs and refunds did not work  
22 properly. Nine times -- nine admissions that the  
23 current directory -- being unavailable. Nine  
24 admissions of the certificated name of the provider  
25 not being displayed. Again, nine admissions of the 0

1 + local number not being routed to the local exchange  
2 company operator. Eight admissions of extended area  
3 service and local calls not being 25 cents or less.  
4 Seven admissions of not permitting coin free access to  
5 all locally available interexchange companies, and  
6 four admissions of incoming call blocking. And  
7 lastly, one admission of insufficient lighting to read  
8 instructions and to use the telephone.

9 Q And how would you describe or characterize  
10 the balance of the Gaviria responses?

11 A Well, for the evaluations performed in June,  
12 in addition to the 56 admissions, Gaviria responded 45  
13 times claiming vandalism to be the cause, 14 times  
14 denying the violation existed, four times claiming  
15 that the coin line would be transferred, and one  
16 response was not received. So overall they were  
17 unsatisfactory. This was viewed this was  
18 unsatisfactory.

19 Q I believe you testified that in 45 cases,  
20 the Gaviria response was vandalism; is that correct?

21 A 45 responses, that's correct.

22 Q Did the responses indicate any facts in  
23 support of the explanation of vandalism?

24 A Well, Gaviria did point out for certain  
25 violation items that they were caused by vandalism,

1 and mainly, that involved signage problems.

2 Q But did his response explain or set forth  
3 any facts that would support his explanation that the  
4 violations had been caused by vandalism?

5 A He simply stated that the cause was due to  
6 vandalism.

7 Q And in those cases where the response simply  
8 denied that the violation existed, was there an  
9 explanation in those cases for the denial?

10 A To the best of my knowledge, I believe that  
11 the denials were simply stated that the violations  
12 were not found.

13 Q Mr. Cordiano, would you next refer please to  
14 the exhibit marked 104 for identification and describe  
15 for me what that exhibit is.

16 A Okay. Exhibit 104 is Wilberth Gaviria's  
17 response for file TE793.9503.

18 Q And that is a response to which notification  
19 of violation?

20 A For File TE793.9503.

21 Q Okay. And have you prepared an exhibit  
22 analyzing this response?

23 A Yes, I have.

24 Q Would that be Exhibit 135?

25 A That's correct.

1           Q     With reference to that exhibit, would you  
2 describe your analysis, please?

3           A     Exhibit 135 shows an analysis of Gaviria's  
4 response to File TE793.9503. It shows three  
5 admissions of the certificated name of the provider  
6 not being displayed. And in addition to these three  
7 admissions, 42 responses denied a violation existed.  
8 One claimed the coin line would be transferred, and  
9 two claimed that the violation did not apply.

10          Q     Thank you. Would you refer next to the  
11 exhibit marked 105 for identification, and describe  
12 for me what that exhibit is.

13          A     Exhibit No. 105 is a letter from my boss,  
14 Mr. Richard Moses, to Brian L. Fink. This letter --  
15 I'm sorry.

16                 Okay. This letter was in response to  
17 Mr. Fink's letter dated August 4th. It addresses the  
18 procedure involved for the certification of South  
19 Telecommunications. It also indicates five telephones  
20 that were claimed to be transferred by Wilberth  
21 Gaviria; however, a follow-up investigation with  
22 Southern Bell Telephone indicated that the lines still  
23 were assigned to Mr. Gaviria.

24                 The letter also mentions that Mr. Gaviria  
25 stated that for the pay telephones 305-854-9087 and

1 305-673-9125, Gaviria states, on this two pay  
2 telephone location, only one directory is required.  
3 This is a misinterpretation of the rule. Also,  
4 Mr. Gaviria responds in regard to a directory  
5 assistance problem and a signage problem for pay  
6 telephone 305-751-9087.

7 Q If I understood your testimony in reference  
8 to this letter correctly, Mr. Cordiano, it was in this  
9 letter that Mr. Moses advised Wilberth Gaviria, who  
10 had alleged that certain phones had been transferred  
11 to another, that on the basis of information received  
12 from Southern Bell that that transfer had not  
13 occurred; is that correct?

14 A That's correct. The transfer did not occur  
15 until September 18th.

16 Q And this letter is dated when?

17 A This letter is dated September 6th.

18 Q Next, Mr. Cordiano, refer to the exhibit  
19 marked 106 for identification, and describe for me  
20 what this exhibit is.

21 A Exhibit No. 106 is a letter from Wilberth  
22 Gaviria to Mr. Moses in response to the letter dated  
23 September 6th. Mr. Gaviria states that the five pay  
24 telephones were transferred, or were pending transfer,  
25 and that he corrected all the violations found on

1 these phones. He also indicates that for pay  
2 telephones 305-854-9087 and 673-9125 that he had  
3 ordered directories.

4 He further takes issue with a directory  
5 assistance problem and a 911 problem -- oh, I'm sorry,  
6 just a directory assistance problem.

7 Q All right. Refer next, then, to Exhibit  
8 marked 107 for identification and describe that  
9 exhibit to me.

10 A Exhibit 107 is a letter dated from me -- I'm  
11 sorry. Is a letter from me to Wilberth Gaviria dated  
12 September 20, 1995, for file No. TE793.9504. It shows  
13 the violation items for 12 pay telephones in operation  
14 by Wilberth Gaviria, requesting a response within 15  
15 days explaining the corrective action taken.

16 Q Next, then, refer to Exhibit marked 108 for  
17 identification and describe what that is, please.

18 A Exhibit 108 is a letter from me to Wilberth  
19 Gaviria dated September 20, 1995, for File TE793.9505.  
20 It shows violation items for 11 additional pay  
21 telephones in operation by Wilberth Gaviria, and again  
22 calling for a response within 15 days of the  
23 corrective action taken.

24 Q Refer next to exhibit marked 109 for  
25 identification and describe what that is, please.

1           A     Exhibit 109 is a letter from me to Wilberth  
2 Gaviria dated September 20, 1995, for File  
3 TE7953.9506. The letter shows violation items for 10  
4 pay telephones in operation by Wilberth Gaviria, again  
5 requesting a response within 15 days explaining the  
6 corrective action taken.

7           Q     And the exhibit marked 110 for  
8 identification, is that a further notification of  
9 violations?

10          A     That's correct. It's for File TE793.9507.

11          Q     And what is the date of that notification?

12          A     Actually, I'm not sure if I have that -- the  
13 cover sheet for that. I think I'm missing some pages.

14          Q     Refer next then to the exhibit marked 111  
15 for identification and tell me what that is, please.

16          A     Exhibit 111 is a letter from me to Wilberth  
17 Gaviria dated September 20, 1995, for File  
18 No. TE793.9507. This letter shows violation items for  
19 six pay telephones in operation by Wilberth Gaviria  
20 requesting a response within 15 days explaining the  
21 corrective action taken.

22          Q     The next exhibit marked 112 for  
23 identification, what is that exhibit?

24          A     Exhibit 112 is a letter from Mr. Brian Fink  
25 to Mr. Moses dated October 2, 1995. Mr. Fink

1 addresses his concerns about the violations cited in  
2 previous letters to Wilberth Gaviria. He mentions in  
3 regard to that, he mentions that Mr. Gaviria is  
4 concerned that whoever is doing the evaluations is  
5 intentionally falsifying or misstating the condition  
6 of Mr. Gaviria's telephones. In that regard he  
7 requested copies of the actual service evaluations,  
8 service evaluations notes, and also mentioned that he  
9 would schedule a meeting.

10 Q Would it be fair to say that the tone of  
11 that letter is to accuse the evaluators of dishonest  
12 evaluations? Would that be your assessment of that  
13 letter?

14 A That's how I perceive it.

15 Q And you testify that in that letter Mr. Fink  
16 requested a meeting with the service evaluator, or  
17 service evaluators, and with Mr. Moses; is that  
18 correct?

19 A That's correct. However, we did leave it up  
20 to Mr. Fink to contact us about a date and time.  
21 However, Mr. Fink never followed up.

22 Q And so I would understand that such a  
23 meeting was never held; is that correct?

24 A That's correct. We actually had a  
25 conference call with Mr. Fink on October 11th, I

1 believe. And we discussed possibly setting up a  
2 meeting; however, again, he never did follow up.

3 Q The Commission was prepared to participate  
4 in such a meeting; is that correct?

5 A That's correct.

6 Q Would you direct your attention next to the  
7 exhibit marked 113 for identification and describe for  
8 me what that is.

9 A Okay. Exhibit 113 is a letter from me to  
10 Wilberth Gaviria dated November 14, 1995, for File  
11 No. TE793.9508. This letter shows violation items for  
12 two pay telephones in operation by Wilberth Gaviria,  
13 also calling for a response within 15 days explaining  
14 the corrective action taken.

15 Q Refer next to the Exhibit marked 114 for  
16 identification. Is this Wilberth Gaviria's response?

17 A That is correct. Exhibit 114 is Wilberth  
18 Gaviria's response for File TE793.9508.

19 Q Did you prepare an analysis of that  
20 response?

21 A Yes, I did.

22 Q Would that be the exhibit marked 135 for  
23 identification?

24 A Actually, I believe it's marked 136.

25 Q 136. Would you describe that analysis,

1 please?

2           A     Okay. This Exhibit 136 shows an analysis of  
3 Wilberth Gaviria's response to File TE793.9508. It  
4 shows two denials of the address of responsible party  
5 for repairs and refunds; it was not displayed. And  
6 two denials for the current directory unavailable.

7           Q     And were these denials supported by  
8 explanation?

9           A     Again, I believe Wilberth Gaviria simply  
10 responded that the current directory -- in the case of  
11 current directory, he may have mentioned that the  
12 current directory was available.

13          Q     Then, in effect, his responses were straight  
14 refuting of the service evaluations -- the service  
15 evaluator's findings?

16          A     That's correct. And one further note about  
17 the current directories; he mentioned in his response  
18 that he had ordered the directories. That was his  
19 comment with respect to the directories.

20          Q     Let me next refer your attention to exhibit  
21 marked 115 for identification. 115. And tell me  
22 please what that is.

23          A     Exhibit 115 is a letter from Barbara Bailey,  
24 a research assistant for the Bureau of Service  
25 Evaluation to Wilberth Gaviria dated March 20, 1996,

1 her File No. TE793.9601. This letter shows violation  
2 items for one pay telephone in operation by Wilberth  
3 Gaviria calling for a response within 15 days  
4 explaining the corrective action taken.

5 Q Refer then to the exhibit marked 116 for  
6 identification. Is this Gaviria's response?

7 A Actually, Exhibit 116 shows another letter  
8 from Barbara Bailey. Actually, I believe it's a  
9 duplicate. Let me see.

10 Q Refer then to Exhibit 117.

11 A Okay.

12 Q And describe what that is, please.

13 A This is an Exhibit No. 117. It shows the  
14 pay phone, breakdown of the pay phone evaluations.

15 Q I'm sorry, let me stop you. We missed  
16 marking -- (Pause)

17 Well, let me refer you next to the exhibit  
18 marked 137. Did you prepare an exhibit analyzing  
19 Mr. Gaviria's response to the March 1996 evaluations?

20 A Yes, I did.

21 Q And is that Exhibit 137?

22 A That's correct.

23 Q Describe your analysis, please,  
24 Mr. Cordiano.

25 A Exhibit 137 shows an analysis of Wilberth

1 Gaviria's response to File TE793.9601. It shows one  
2 denial of the address of responsible party for repairs  
3 and refunds was not displayed. One denial of the  
4 current directory being unavailable. One denial of  
5 the certificated name of the provider was not  
6 displayed. One denial that the local exchange company  
7 responsibility disclaimer was not displayed. One  
8 denial that the 0 + intraLATA toll calls were not  
9 rated properly. And one denial that the 0 + local  
10 numbers were not routed to the local exchange company  
11 operator.

12 Q Refer next to the exhibits marked 118 and  
13 119. Are those VC-44A and VC-44B?

14 A I'm showing just Exhibit 118, VC-23.

15 Q Over here.

16 A Oh, okay, I'm sorry.

17 Q Those would be exhibits marked 138 and 139,  
18 I'm sorry.

19 A That's correct.

20 Q Describe what these exhibits are?

21 A Okay. Exhibit 138 is Wilberth Gaviria's --  
22 actually a letter from Barbara Bailey to Wilberth  
23 Gaviria dated November 6, 1996, for File TE793.9603.  
24 This letter shows violation items for 12 pay  
25 telephones in operation by Wilberth Gaviria requesting

1 a response within 15 days of the corrective action.

2 Q Do the exhibits also contain -- those two  
3 exhibits. Does that exhibit and the next one also  
4 contain Wilberth Gaviria's responses?

5 A That is correct.

6 Q And those responses were dated when?

7 A The response -- let's see. Both responses  
8 are dated November 20th.

9 THE COURT: Okay. Is that in Exhibit 138 as  
10 well?

11 WITNESS CORDIANO: That's correct.

12 Q (By Mr. Pellegrini) Dated November 20,  
13 1996; is that correct?

14 A That's correct.

15 Q In response of the evaluations conducted  
16 October of 1996; is that correct?

17 A That's correct.

18 Q Have you analyzed that response?

19 A Yes, I have.

20 Q And that would be Exhibit 140; would it not?

21 A That is correct.

22 Q Would you describe your analysis?

23 A Okay. Exhibit 140 shows an analysis of  
24 Wilberth Gaviria's response to Files TE793.9603 and  
25 File 9604. The analysis shows that Wilberth Gaviria

1 responded once for denial -- denying that the  
2 telephone was not in service, one denial that the  
3 current directory was unavailable, two denials that  
4 the address of the pay telephone location was not  
5 displayed. One denial that the enclosure was not  
6 adequate or free of obstructions. 22 denials that the  
7 certificated name of the provider was not displayed.  
8 Two denials that access to the operator via 0 was  
9 not -- I'm sorry, let me repeat that. Two denials of  
10 access to the operator via 0-, negative zero. And two  
11 denials that the 911 could not identify the street  
12 address of the pay telephone.

13 Q And the October 1996 evaluations were, for  
14 the most part, reevaluations; is that not correct?

15 A That's correct.

16 Q Mr. Cordiano, a final series of questions.  
17 Did you not prepare some analyses or tabulations by  
18 violation type?

19 A Yes, I did.

20 Q Let me refer you first then to Exhibit 118.  
21 Is that VC-23?

22 A Uh-huh. I also have Exhibit No. 117.

23 Q That's all right.

24 A Okay.

25 Q I'm referring you to Exhibit -- well, let me

1 turn you back to Exhibit 117, I'm sorry. Tell me what  
2 that is.

3 A Okay. Exhibit No. 117 is a breakdown of the  
4 violations found on Wilberth Gaviria's pay telephones.

5 Q Can you summarize what that breakdown  
6 depicts?

7 A Yes. We found 439 apparent violations of  
8 which 88 were repeated. We also show an average of 11  
9 violations; a high of 11 violations per phone, and a  
10 low of two violations per phone.

11 Q Does that chart indicate the number of times  
12 the telephones were evaluated or reevaluated?

13 A Yes, 14 different phones were evaluated. 14  
14 of which were evaluated once, 21 were evaluated twice,  
15 nine were evaluated three times, and one evaluated  
16 four times.

17 Q I'm sorry, the total number of telephones  
18 evaluated is 38; is that not correct?

19 A Well, I believe 45 different pay phones were  
20 evaluated. I believe that's the correct number.

21 Q And, again, how many were reevaluated once?

22 A 14 were evaluated once.

23 Q And how many were reevaluated twice?

24 A 21.

25 Q And third-time reevaluations?

1           A     There were nine that were reevaluated three  
2 times.

3           Q     Let me refer you next to the exhibit marked  
4 118 for identification. Would you describe what this  
5 exhibit is?

6           A     Exhibit 118 shows a breakdown of the  
7 individual evaluations, also showing the repeat  
8 evaluations. It shows the violation items 1 through  
9 29, and it shows those violation items with an  
10 unsatisfactory rating.

11          Q     Then does it depict the service standards  
12 which were evaluated unsatisfactory by service  
13 evaluation?

14          A     That is correct. All of the dates are  
15 included in this exhibit.

16          Q     Turn then, next, to the exhibit marked 119  
17 for identification and describe for me what that is,  
18 please.

19          A     Okay. Exhibit 119 shows an analysis of the  
20 apparent violations with respect to requiring  
21 accessibility to the physically handicapped. This  
22 exhibit shows seven apparent violations of which one  
23 is repeated.

24          Q     This was the number of violations, if I  
25 understand correctly, of the physically handicapped

1 rule over the course of the five evaluations. It's a  
2 summary; is that correct?

3 A Well, actually, this analysis shows, I  
4 believe, four of the five. The October evaluations  
5 are not included in this exhibit.

6 Q Okay. Would you refer next then to the  
7 exhibit marked 120 and describe what that exhibit is,  
8 please.

9 A Exhibit 120 shows the apparent violations of  
10 Rule 2524.515(5) requiring the certificated name be  
11 displayed. 36 apparent violations are shown, of which  
12 six were repeated.

13 Q Refer then next to the Exhibit 121.  
14 Describe what that exhibit is.

15 A Exhibit 121 shows the apparent violation of  
16 Rule 25-24.515(8) requiring incoming calls to be  
17 received. It shows 20 apparent violations, of which  
18 one was repeated.

19 Q Again, what you are doing in these  
20 tabulations is to summarize the violations by type  
21 over the course of the evaluations?

22 A That's correct.

23 Q Refer then next to the exhibit marked 122  
24 for identification and describe what that exhibit is.

25 A Exhibit 122 shows apparent violations of

1 Rule 25-24.515(6) regarding the accessibility to all  
2 locally available interexchange companies. The  
3 analysis shows 15 apparent violations of which zero  
4 were repeated.

5 Q Refer then next to the exhibit marked 123  
6 for identification, please, and explain what that  
7 exhibit is.

8 A Exhibit 123 shows apparent violations of  
9 Rule 25-24.515(7) requiring 0 + local calls to be  
10 routed to the local exchange company. The analysis  
11 shows 25 apparent violations, of which zero were  
12 repeated.

13 Q Next, refer to the exhibit marked 124 for  
14 identification and describe what that is.

15 A Exhibit 124 shows apparent violations of  
16 Rule 25-24.515(11) requiring current telephone  
17 directory be available. The analysis shows 63  
18 apparent violations, of which 20 were repeated.

19 Q Refer then, next, to the exhibit marked 125  
20 for identification. What is that?

21 A Exhibit 125 shows apparent violation of Rule  
22 25-24.515(5) requiring address for repairs and  
23 refunds. The analysis shows 58 apparent violations,  
24 of which 16 were repeated.

25 Q Refer to the exhibit marked 126 for

1 identification next, please, and describe what that  
2 is.

3 A Exhibit 126 shows an apparent violation of  
4 Rule 25-24.515(5) requiring address for pay telephone  
5 location. It shows 33 apparent violations, of which  
6 five were repeated.

7 Q Okay. Refer to the exhibit marked 127 for  
8 identification. What is that?

9 A Exhibit 127 shows apparent violation of Rule  
10 25-24.516(1)(a) requiring EAS and local NXX coin calls  
11 to be routed in accordance with the local exchange  
12 company local coin rate. The analysis shows 22  
13 apparent violations, of which four were repeated.

14 Q Refer next, if you will, to the Exhibit  
15 marked 128 for identification. What is that?

16 A Exhibit 128 shows apparent violation of Rule  
17 25-24.515(5) requiring a free number for repairs and  
18 refunds. The analysis shows 20 apparent violations of  
19 which zero were repeated.

20 Q Exhibit 129 marked for identification, what  
21 is that?

22 A Exhibit 129 shows an apparent violation of  
23 Rule 25-24.515(1) requiring sufficient lighting to be  
24 read -- to read instructions and operate the phone.  
25 This analysis shows 19 apparent violations, of which

1 three were repeated.

2 Q Next, refer please to the exhibit marked 130  
3 for identification.

4 A Exhibit No. 130 shows apparent violation of  
5 Rule 25-24.515(5) requiring the LEC disclaimer noticed  
6 be displayed. The analysis shows 15 apparent  
7 violations, of which zero were repeated.

8 Q And the exhibit marked 131 for  
9 identification, what is that?

10 A Exhibit 131 shows an apparent violation of  
11 Rule 25-24.515(5) requiring telephone number to be  
12 displayed. The analysis shows 13 apparent violation,  
13 of which zero are repeated.

14 Q Mr. Cordiano, throughout this last series of  
15 questions when you've used the term "apparent  
16 violations," can you explain what it is you mean by  
17 apparent violation?

18 A The reason for using apparent is that as far  
19 as indicating a clear violation, that is up to -- that  
20 is not my authority to state that it's a pure  
21 violation. So by stating apparent violation, those  
22 are the violations that we found at the phones.

23 Q Would it be fair to state that in the  
24 ordinary course of business it would be for the  
25 Commission to ultimately find that the violations had

1 been committed?

2 A That's correct.

3 Q Refer now to the exhibit marked 132 for  
4 identification.

5 A Exhibit No. 132 is a letter from Nancy Sims  
6 of BellSouth to me dated November 7, 1995. The letter  
7 indicates confirmation that the directories were not  
8 ordered by Wilberth Gaviria and/or South  
9 Telecommunications for the pay telephones in question.

10 Q I assume this letter was solicited from  
11 BellSouth Telecommunications based on your earlier  
12 testimony that Wilberth Gaviria had responded in many  
13 instances that he had ordered telephone directories?

14 A That's correct.

15 Q And this letter from BellSouth  
16 Telecommunications indicates that they -- that is that  
17 BellSouth Telecommunications had not received requests  
18 for telephone directories or orders for telephone  
19 directories; is that correct?

20 A That's correct. BellSouth indicates that  
21 their records do not show Wilberth Gaviria or South  
22 Telecommunications ordering directories. However,  
23 they are under the company name and would have to  
24 reverify the information if directories were ordered  
25 under another number.

1 Q But for present purposes, the certificated  
2 name under the Gaviria certificate is Wilberth  
3 Gaviria; is that correct?

4 A That is correct.

5 Q That is on Certificate No. 3320?

6 A That is correct.

7 Q Please refer to an exhibit marked 133 for  
8 identification next and tell me what that is.

9 A Exhibit 133 is a letter from Wayne Tubaugh  
10 from BellSouth to me dated October 27, 1995, regarding  
11 the transfers, the pay telephone transfers, mentioned  
12 previously. According to BellSouth's records, the  
13 phones which Wilberth Gaviria claimed to have  
14 transferred were still assigned to Wilberth Gaviria  
15 and the transfers were not completed until September  
16 18th of '95.

17 Along with this exhibit is a letter from  
18 Wilberth Gaviria to Mr. Rick Moses in response to his  
19 letter dated September 6th regarding the transfers.  
20 Wilberth Gaviria states that the transfers were  
21 pending and that he corrected all of the violations  
22 prior to the transfers.

23 Q Is it not true that Wilberth Gaviria had  
24 responded on September 6, 1995, stating that these  
25 four telephones had been transferred to another?

1           A     Specific -- I believe he mentioned that the  
2 lines were going to be transferred. However, we did  
3 initially notify Mr. Gaviria, I believe back in June  
4 and now we are here in September, you know, receiving  
5 this response.

6           Q     And I believe it's your present testimony  
7 that the letter from Southern Bell dated October 27,  
8 1995, indicates that the transfer of those telephones,  
9 in fact, occurred not until September 18, 1995; is  
10 that correct?

11          A     That's correct.

12          Q     And is it not a fact that those phones which  
13 Wilberth Gaviria claimed to have transferred after  
14 rectifying all of the violations, that those phones,  
15 in fact, were subsequently evaluated and found to  
16 still be in violation of the service standards?

17          A     I believe that's the case.

18          Q     All right.

19                **MR. PELLEGRINI:** Your Honor, the Commission  
20 requests that the exhibits used in Mr. Cordiano's  
21 testimony, identified from 98A through 140 be admitted  
22 into evidence at this time.

23                **THE COURT:** I think some of those you  
24 skipped, I think. Let me show you what I have got:  
25 98A, the 98B, 98C, 98D, 99, 100 -- I just lost my

1 place. (Pause)

2 Okay, I've got 100, 101, 102, 103, 134, 104,

3 135.

4 MR. PELLEGRINI: Yes.

5 THE COURT: 105, 106, 107, 108, 109, 110,

6 111, 112, 113, 114, 136.

7 MR. PELLEGRINI: Yes.

8 THE COURT: 115, 137, 138, 140, and back to  
9 117. Let's see. Okay, I see. You skipped and went

10 back. 118, 119, 120, 121, 122, 123, 124, 125, 126,

11 127, 128, 129, 130, 131, 132, 133.

12 MR. PELLEGRINI: Exactly.

13 THE COURT: Okay. Do we have 139?

14 MR. PELLEGRINI: Yes, we do.

15 THE COURT: Because I don't have it

16 identified. Maybe I just missed it.

17 MR. PELLEGRINI: I produced that at the same  
18 time I produced 138.

19 THE COURT: Okay. Then 98A through 140 are

20 admitted.

21 Is that street music down there?

22 Do you have any further questions?

23 (Exhibits 98A through 140 received in  
24 evidence.)

25 MR. PELLEGRINI: No, that concludes our

1 direct examination of Mr. Cordiano.

2           **THE COURT:** Thank you, sir.

3           Do you have any further witnesses?

4           (Witness Cordiano excused.)

5                               - - - - -

6           **MR. PELLEGRINI:** That concludes our

7 witnesses, Your Honor.

8           **THE COURT:** Do you wish to make a closing  
9 argument?

10           **MR. PELLEGRINI:** Yes, I would, please.

11           Your Honor, the Commission has presented  
12 clear and convincing evidence today that it believes  
13 upholds its objective of revoking Wilberth Gaviria's  
14 Certificate No. 3320 for the provision of pay  
15 telephone service. The Commission's evidence has  
16 shown that Wilberth Gaviria, beyond any serious doubt,  
17 is incapable and certainly unwilling to provide pay  
18 telephone service that is compliant with the  
19 Commission's rules and that well serves the public's  
20 interest. Therefore, Your Honor, the Commission  
21 respectfully requests that you enter a recommended  
22 order that the Commission revoke Wilberth Gaviria's  
23 Certificate of Public Necessity and Convenience,  
24 Certificate No. 3320. Thank you.

25           **THE COURT:** All right. Do you wish to

1 submit the past recommended order?

2 MR. PELLEGRINI: Yes, we will.

3 THE COURT: And how many days do you want?

4 MR. PELLEGRINI: It's at Your Honor's

5 convenience. 15 days?

6 THE COURT: Well, if you are going to have a  
7 transcript done, it's going to be between the time of  
8 transcripts done. If you're going to have it done in  
9 a while, 10 days is the normal time. And then that  
10 gives me 30 from the time it's filed.

11 MR. PELLEGRINI: 10 days following the  
12 transcript, you mean?

13 THE COURT: Once the transcript is filed.  
14 She'll file the original transcript with the Division  
15 of Administrative Hearing.

16 MR. PELLEGRINI: Yes.

17 THE COURT: From that date you will have 10  
18 days. Okay.

19 MR. PELLEGRINI: That's fine.

20 THE COURT: We'll go 10 days then.

21 MR. PELLEGRINI: That's fine.

22 THE COURT: Okay. Is there anything else?

23 MR. PELLEGRINI: I believe not, Your Honor.

24 THE COURT: This hearing is now closed.

25 MR. PELLEGRINI: Thank you.

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(Thereupon, the hearing concluded at

12.50 p.m.)

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1 STATE OF FLORIDA)  
2 COUNTY OF LEON )

CERTIFICATE OF REPORTER

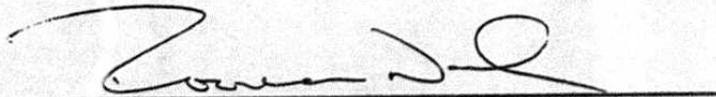
3 I, ROWENA NASH HACKNEY Official Commission  
4 Reporter,

5 DO HEREBY CERTIFY that the Hearing in DOAH  
6 Case No. 96-3925 was heard by the Division of  
7 Administrative Hearings at the time and place herein  
8 stated; it is further

9 CERTIFIED that I stenographically reported  
10 the said proceedings; that the same has been  
11 transcribed under my direct supervision; and that this  
12 transcript, consisting of 92 pages, constitutes a true  
13 transcription of my notes of said proceedings

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DATED this 2nd day of January, 1997.



ROWENA NASH  
Official Commission Reporter  
(904) 413-6736