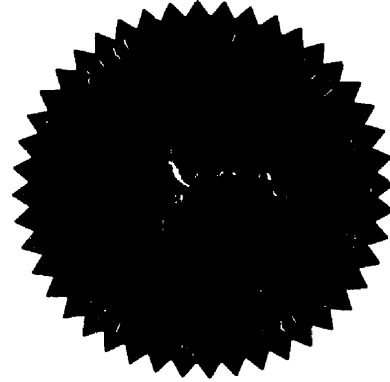


**BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION**

DOCKET NO. 000731-TP

In the Matter of

**PETITION BY AT&T COMMUNI-
CATIONS OF THE SOUTHERN STATES,
D/B/A AT&T FOR ARBITRATION OF
CERTAIN TERMS AND CONDITIONS OF
A PROPOSED AGREEMENT WITH
BELLSOUTH COMMUNICATIONS, INC.
PURSUANT TO 47 U.S.C.
SECTION 252.**



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PROCEEDINGS: PREHEARING CONFERENCE

**BEFORE: COMMISSIONER BRAULIO L. BAEZ
Prehearing Officer**

DATE: Tuesday, January 23, 2001

**TIME: Commenced at 9:30 a.m.
Concluded at 10:00 a.m.**

**PLACE: Betty Easley Conference Center
Room 152
4075 Esplanade Way
Tallahassee, Florida**

**REPORTED BY: JANE FAUROT, RPR
FPSC Division of Records & Reporting
Chief, Bureau of Reporting**

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5 behalf of AT&T Communications of the Southern
6 States, Inc.

7 DOUGLAS R. LACKEY, BellSouth
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10 32301, appearing on behalf of BellSouth
11 Telecommunications, Inc.

12 C. LEE FORDHAM, Florida Public Service
13 Commission, Division of Legal Services, 2540 Shumard
14 Oak Boulevard, appearing on behalf of the Commission
15 Staff.

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1 **P R O C E E D I N G S**

2 **COMMISSIONER BAEZ: Okay. We are on the record.**
3 **Counsel, read the notice.**

4 **MR. FORDHAM: Pursuant to notice this time and**
5 **place were set for a prehearing in Docket Number 000731-TP**
6 **for purposes as set forth in the notice.**

7 **COMMISSIONER BAEZ: Take appearances.**

8 **MS. RULE: Marsha Rule with AT&T.**

9 **MR. LACKEY: Doug Lackey representing BellSouth.**

10 **MR. FORDHAM: And Lee Fordham with Commission**
11 **staff.**

12 **COMMISSIONER BAEZ: Okay. All right, let's get**
13 **into this. We are working off a draft; and everybody has**
14 **got the same draft, I think. Do we have any changes to**
15 **Sections I through V? Is there anything you want to take**
16 **up beforehand or --**

17 **MR. FORDHAM: Excuse me, Commissioner. No, I**
18 **think the best thing is just to go through the --**

19 **COMMISSIONER BAEZ: Let's go through the order,**
20 **and then we will take up whatever is pending on the back**
21 **end. I through V. And I just want it noted for the**
22 **record that we are going to change the briefing limit to**
23 **50 pages in Section 4.**

24 **MR. FORDHAM: Correct, thank you.**

25 **COMMISSIONER BAEZ: Okay. All right, Section**

1 VI, order of witnesses. I am assuming there are some
2 changes there.

3 MR. FORDHAM: Commissioner, in a meeting with
4 the parties yesterday, I think we are in agreement that
5 instead of breaking them into direct and rebuttal, we will
6 expedite the proceedings and save time by just having each
7 witness testify once.

8 COMMISSIONER BAEZ: That's fine. The order will
9 reflect that.

10 MR. FORDHAM: Yes, sir, we will amend the order
11 to reflect that. And also the specific order on the
12 prehearing order is not that which the parties would
13 prefer. They have provided to us the order that they
14 would like to present their witnesses, and we will
15 incorporate that into the order.

16 COMMISSIONER BAEZ: Okay. You make the changes
17 accordingly. Question, staff witness, we are not going to
18 need him, Mr. Fogleman is not going to be testifying?

19 MR. FORDHAM: Since the issues that he would
20 testify on are being deferred to a generic docket, he will
21 not be a witness in this proceeding.

22 COMMISSIONER BAEZ: Okay. And when you say you
23 are going to change the order of witnesses, then the
24 issues that they will be testifying in will be reflected
25 accordingly?

1 **MR. FORDHAM:** Yes, Commissioner. The changes
2 will reflect the issues that they will be testifying on
3 along with the change in order.

4 **COMMISSIONER BAEZ:** Anything else on the witness
5 section? No.

6 **MS. RULE:** This is Marsha Rule. I would just
7 note that I appreciate staff giving us the draft. I would
8 like to review just the issue numbers to make sure there
9 are no scrivener's errors, but I can get with staff later
10 on that if I identify anything. It looks like it was
11 taken directly from our prehearing --

12 **MR. FORDHAM:** That's correct. Before we submit
13 the final prehearing order we will just confirm those
14 issues with the parties.

15 **COMMISSIONER BAEZ:** Are you all right with that,
16 Ms. Rule? Okay. Let's move on to Section VII, then.

17 **MR. FORDHAM:** Nothing from staff.

18 **COMMISSIONER BAEZ:** We can go issue-by-issue.
19 Nothing from staff.

20 **AT&T,** do you have any changes that you wish to
21 make?

22 **MS. RULE:** No, it looks good to me.

23 **COMMISSIONER BAEZ:** Mr. Lackey?

24 **MR. LACKEY:** No, sir.

25 **COMMISSIONER BAEZ:** All right. Give me a moment

1 here.

2 Mr. Fordham, we had discussed some issues, are
3 there any changes that need to be made?

4 MR. FORDHAM: Yes, Commissioner. On the
5 specific issues, the only changes from those in this
6 draft, Issue Number 16, in a meeting, a conference
7 yesterday afternoon it was agreed by the parties and staff
8 that Issue Number 16 would be deferred to a generic
9 docket.

10 COMMISSIONER BAEZ: Okay. Show that issue
11 deferred.

12 MR. FORDHAM: There was some ambiguity on Issue
13 34 regarding line sharing versus line splitting, and in
14 the conference yesterday afternoon that we discussed --
15 excuse me, that was Issue 33 -- and I think that we came
16 to a consensus that we are all talking about the same
17 thing. And so I believe the parties and staff are all
18 comfortable with proceeding with Issue 33 as it appears,
19 now that we know we are talking the same language.

20 However, there would be one amendment to Issue
21 34, that amendment being that the line sharing would be
22 excepted from that issue. In other words, we would add to
23 that issue, "except for line sharing."

24 COMMISSIONER BAEZ: Are the parties in agreement
25 with that?

1 **MR. LACKEY:** Yes. I had just simply written,
2 "except for rates related to line sharing," but that is
3 the concept we are after.

4 **COMMISSIONER BAEZ:** Are you okay with staff's
5 language?

6 **MR. LACKEY:** Yes.

7 **COMMISSIONER BAEZ:** Okay.

8 **MS. RULE:** And I had it, "except for the line
9 sharing rate," so I think we are all on the same page.

10 **MR. FORDHAM:** We will use the word rates, then,
11 "also line sharing rates," and we will make that amendment
12 in the order.

13 **COMMISSIONER BAEZ:** Very well. Ms. Rule, do you
14 have anything else to add?

15 **MS. RULE:** Not to this issue.

16 **COMMISSIONER BAEZ:** Well, I'm sorry. Staff, are
17 you done with your issues?

18 **MR. FORDHAM:** Yes, Commissioner, I think on
19 issues that is all staff had.

20 **COMMISSIONER BAEZ:** Okay. AT&T.

21 **MS. RULE:** AT&T has a motion to compel, and in
22 the normal --

23 **COMMISSIONER BAEZ:** I'm sorry, if we are going
24 to discuss the motion to compel, let's just get through
25 the rest of the issues.

1 **MS. RULE:** Oh, I thought we were. I'm sorry.

2 **COMMISSIONER BAEZ:** I just want to make sure.

3 That's all right. Mr. Lackey.

4 **MR. LACKEY:** I obviously haven't had an
5 opportunity to review the whole thing, but I assume you
6 just copied our positions in here and it ought to be fine.

7 **MR. FORDHAM:** That's correct. The positions are
8 taken right off of your prehearing statement.

9 **MR. LACKEY:** Perfect. The only issues we had
10 were 16, 33, and 34, and I think we have got those.

11 **COMMISSIONER BAEZ:** Great.

12 **MR. FORDHAM:** Okay.

13 **COMMISSIONER BAEZ:** Now we can move on to this
14 motion to compel?

15 **MR. FORDHAM:** I think the exhibit list,
16 Commissioner, is acceptable. Again, it came from the
17 prehearing statements. So we will ask that the parties
18 confirm those as they review this order, and notify staff
19 if there are any errors in the exhibit list.

20 **COMMISSIONER BAEZ:** Any errors to bring up now?

21 **MS. RULE:** None.

22 **COMMISSIONER BAEZ:** Get with staff and let them
23 know if there is anything.

24 **MS. RULE:** I would like to know if staff has a
25 time frame within which they anticipate issuing it so we

1 can get you any possible comments within --

2 MR. FORDHAM: We would like to get it out within
3 the week, just so that we have as much lead time as
4 possible to prepare for the hearing, but --

5 MS. RULE: So would Thursday close of business
6 be acceptable?

7 MR. FORDHAM: Yes, even Friday close of business
8 would be acceptable to staff. Proposed stipulations, I
9 think, Commissioner, we have addressed those on the issues
10 list. Because all the stipulations relate to the issues,
11 and we have already discussed those.

12 COMMISSIONER BAEZ: Right.

13 MR. FORDHAM: So that brings us two pending
14 motions. There is only one motion pending, Commissioner,
15 and that is a motion to compel which was filed by AT&T, in
16 reference, objections from BellSouth on several
17 interrogatories.

18 Though staff will make a recommendation that the
19 motion is not timely in that six weeks passed between the
20 filing of the objections and the filing of the motion to
21 compel, it is a motion that apparently the parties feel
22 rather strongly about. So staff would recommend that the
23 parties be given a few minutes to address the motion.

24 COMMISSIONER BAEZ: Very well. AT&T is the
25 moving party?

1 **MS. RULE: Yes, sir.**

2 **COMMISSIONER BAEZ: Ms. Rule.**

3 **MS. RULE: Given that staff has already made a**
4 **preliminary recommendation, I am wondering whether it**
5 **makes sense to address that first. In the normal course**
6 **of events I would argue my position, Mr. Lackey would**
7 **respond, and then I would respond to him.**

8 **COMMISSIONER BAEZ: Well, I'm hoping that in the**
9 **course of your argument you are going to give us a fine**
10 **reason why we should take up an untimely motion, and --**

11 **MS. RULE: Then I'll do that first.**

12 **COMMISSIONER BAEZ: -- then I'm assuming Mr.**
13 **Lackey is going to do his best to dissuade us of that, but**
14 **you go ahead and make your argument.**

15 **MS. RULE: Well, then I will do that first. And**
16 **I want to point out, first, that all the parties in this**
17 **case, including staff, have filed discovery. And, of**
18 **course, as you know, that is a basic right in an**
19 **evidentiary hearing and this is an evidentiary hearing.**

20 **And discovery should only be cut off or limited**
21 **under very compelling circumstances, and BellSouth has not**
22 **presented any compelling circumstances either in its**
23 **argument with regard to timeliness or its argument with**
24 **regard to the substance.**

25 **Basically, if I understand Mr. Lackey's motion**

1 correctly, BellSouth is arguing that the Commission should
2 put a new requirement into a procedural order in this
3 docket. And to give you a little background, AT&T has
4 filed several sets of discovery. BellSouth objected to
5 some of the interrogatories and request for production of
6 documents, and thereafter AT&T filed a motion to compel
7 responses.

8 And BellSouth is now arguing that the motion is
9 too late. But before we go any farther with BellSouth's
10 theory, I would like to point out that the motion has been
11 filed within the deadline for discovery. The discovery
12 cut off was January 18th and the motion was filed January
13 11th. So, at the onset you can say we could have even
14 filed interrogatories on January 11th and been very
15 timely.

16 And BellSouth is still, in fact, in the process
17 of answering discovery or responding to discovery, because
18 staff filed some interrogatories on January 18th. So
19 clearly the discovery process, itself, is still underway
20 according to the order.

21 Now, the Commission operates under the Rules of
22 Civil Procedure, that is a basic given. But the
23 Commission may modify those in certain circumstances under
24 rule or order. So, before -- or in order to look at
25 whether the motion is timely, we first have to look at the

1 **Rules of Civil Procedure to determine whether there is any**
2 **time period set for a motion to compel. And I can submit**
3 **to you that there is nothing in the Rules of Civil**
4 **Procedure that places any time limitation whatsoever on**
5 **motions to compel.**

6 **The rules do discuss the number of**
7 **interrogatories, they do set a time for responding to**
8 **interrogatories, they set a time for objecting to**
9 **interrogatories, but they don't file any limitation**
10 **whatsoever on a motion to compel.**

11 **And since there is no limitation in the Rules of**
12 **Civil Procedure, then you move on to the Commission's**
13 **rules and orders. And I can't find any rule, either in**
14 **the Commission's rules or in the uniform rules that put**
15 **any time limitation. So the only thing that is left as a**
16 **basis for BellSouth's argument is the Commission's order,**
17 **so let's take a look at that.**

18 **And, in fact, there have been several orders**
19 **here. The one that I think is applicable was dated**
20 **September 13th, 2000. And the only discussion of time**
21 **frames for discovery in that rule is on Page 2, and there**
22 **are two sentences. Neither one of these sentences**
23 **discusses motions to compel. And, incidentally, while**
24 **these sentences do discuss objections to interrogatories,**
25 **that is a direct modification to a Rule of Civil**

1 **Procedure. So if the Commission wanted to modify the**
2 **rules, it had to put it in the order. If the order**
3 **weren't there, BellSouth would have a full 30 days to**
4 **object to interrogatories.**

5 **And, let's look at what the order actually says.**
6 **It says when discovery requests are served and the**
7 **Respondent intends to object or ask for clarification, the**
8 **objection or request for clarification shall be made**
9 **within ten days of service of the discovery request. It**
10 **doesn't say anything about motions to compel. It**
11 **discusses discovery requests and objections to discovery.**

12 **So if we paraphrase this for our case, we would**
13 **have to say the following: When discovery requests are**
14 **served by AT&T, and the Respondent, BellSouth, intends to**
15 **object or request for clarification, BellSouth's objection**
16 **or request must be made within ten days.**

17 **So by its terms, when you apply it the way it**
18 **says to be applied, it doesn't say anything about and**
19 **thereafter AT&T shall file a motion to compel if at all**
20 **within a certain amount of time.**

21 **And, BellSouth also places a good deal of**
22 **reliance on the next sentence, so let's take it look at**
23 **that. It says, "This procedure is intended to reduce**
24 **delay in resolving discovery disputes," but this sentence**
25 **is clearly indicative of why the Commission put the first**

1 sentence in there. It doesn't say, "And the parties shall
2 do everything else within these times frames."

3 Now, I think the Commission could well put some
4 time frames in here for motions to compel, and if they did
5 we would certainly comply. But, this sentence just
6 doesn't do it. It doesn't talk about motions to compel.

7 So, if I understand BellSouth's argument
8 correctly, they are saying AT&T knew about these two
9 sentences, they should have assumed they also applied to
10 motions to compel. They should have assumed that the
11 Commission wanted to modify the Rules of Civil Procedure
12 that don't impose any limitations and impose a
13 specifically limitation on motions to compel. And, as I
14 said, the Commission could have done so, but it didn't.
15 And as I also pointed out, we have already filed our
16 motion well within the discovery limits, there is no
17 further hardship on BellSouth to respond now when they are
18 still in the process of responding to timely filed
19 discovery.

20 And I can submit to you I have practiced at the
21 Commission for 6-1/2 years, and seven years had a
22 Commission practice after that, and I have just never seen
23 this interpretation of these sentences before. I don't
24 think it is a reasonable one, and I certainly don't think
25 it is a reasonable one to impose after the fact.

1 **And I would also like to point out to you a very**
2 **practical problem with BellSouth's argument. Apparently**
3 **BellSouth believes that motions to compel should be filed**
4 **in the same time frame as objections to discovery. That**
5 **is they get ten days to object, we get ten days to compel.**

6 **Well, under BellSouth's theory, AT&T would have**
7 **had to file a motion to compel before the interrogatory**
8 **responses were due. BellSouth had 30 days to respond to**
9 **the interrogatories. So what we would have to do under**
10 **their theory is ten days before the responses were due,**
11 **and they weren't in default, we would have to move to**
12 **compel them. And I can just imagine the response I would**
13 **have gotten from BellSouth had I done that. It simply**
14 **makes no sense.**

15 **It seems to me that if the Commission wishes to**
16 **impose on a going-forward basis a motion to compel**
17 **limitation, we will comply with it. It should at least be**
18 **after the time that the responses were due, not before.**
19 **But BellSouth filed their responses on December 13th and**
20 **December 22nd, and we filed our motion to compel a month**
21 **after that. And that is certainly not an unreasonable**
22 **time period, it is well within the discovery deadline, and**
23 **I can't come up with any reasonable interpretation of the**
24 **Commission's order that justifies cutting off AT&T's basic**
25 **right to discovery.**

1 **Now if you would like, I can go ahead and argue**
2 **issue-by-issue why we believe our discovery requests are**
3 **directly relevant to the case, but --**

4 **COMMISSIONER BAEZ: Are you going to be within**
5 **your five minutes?**

6 **MS. RULE: Well, yes.**

7 **COMMISSIONER BAEZ: Just sum up.**

8 **MS. RULE: Each and every one of these requests**
9 **relates to an issue that is at -- or a case and issue in**
10 **this docket. BellSouth's argument boils down to this.**
11 **Our position is different from yours, if our position is**
12 **right, then you don't need to inquire into these issues.**
13 **Well, clearly we disagree with BellSouth's position. We**
14 **have a different position. And we are entitled to inquire**
15 **into information that may help disprove BellSouth's**
16 **position or prove ours.**

17 **Mr. Lackey, I believe in the motion, also argued**
18 **that some of the questions are relevant only to**
19 **performance measures. And without arguing issue-by-issue**
20 **I would like to direct you specifically to Issues**
21 **31B and C. AT&T asks basically for equivalent access to**
22 **OSS. We want electronic ordering, we want electronic**
23 **processing.**

24 **And, yes, there are some measures that would**
25 **reflect or would also be reflected in the performance**

1 measures docket, but we have got a request before the
2 Commission here. In order to show that we are not getting
3 equivalent access, we are entitled to inquire into the
4 type of access BellSouth has to its own systems. That is
5 how quickly their orders are processed, the rate at which
6 they are processed, the rate at which they fall out,
7 because we are entitled to parity. And that is the basis
8 for all of our discovery.

9 COMMISSIONER BAEZ: Thank you, Ms. Rule.
10 Mr. Lackey.

11 MR. LACKEY: Thank you, sir. Let me say first
12 that what stirred this was a motion to compel and a
13 request for an expedited order filed six weeks after I
14 made my objections. Quite frankly, if I had to reflect on
15 it, I think the request for expedited order was what
16 really set me off.

17 But the truth of the matter is this Commission
18 has set up a procedure to expedite discovery. And
19 Ms. Rule is exactly right, the sentence that she was
20 talking about and that I relied on talks about filing
21 objections and requests for clarification within ten days,
22 but it is for the specific purpose of reducing delay and
23 resolving discovery disputes.

24 We have a discovery dispute. Ms. Rule hasn't
25 resolved that discovery dispute in a timely fashion. We

1 could have resolved this back in November or December and
2 we wouldn't be here before you today. I'm not saying that
3 they had to respond within ten days, I'm not saying they
4 had to respond within 15 days, I didn't say they had to
5 respond within 20 days. What I objected to was them
6 waiting six weeks until we were in the middle of this. We
7 are now two days before the depositions begin, three days
8 before the depositions they want to use these supposed
9 discovery requests in, and I think they simply can't sit
10 on their hands for that long.

11 You know, one of the things you didn't hear in
12 Ms. Rule's discussion is why. Why did they wait until
13 January 11th? These are -- at least six of these requests
14 are the same ones that we had this huge fight about in
15 North Carolina last summer. They filed a motion to compel
16 last summer, we argued -- you don't argue it up there, you
17 just submit your thing on the record, and they were
18 decided.

19 I mean, my point is when we filed our
20 objections, they are the same objections we filed in North
21 Carolina. They knew what they had to do. They needed to
22 file a motion to compel if they wanted us to respond to
23 them. It wasn't any surprise. No reason to wait six
24 weeks.

25 Ms. Rule may well be right that there is no

1 rule, Commission order, no rule of civil procedure, but
2 clearly a trial judge has a right to control the abuse of
3 discovery, and that is what this is. By waiting until the
4 point they did, they are abusing the discovery process.
5 You clearly have the authority to control that. There has
6 been no good reason for this delay. It poses an
7 unreasonable burden on us to respond to these at this late
8 date, and we think that it constitutes an abuse that you
9 can simply reach a conclusion on.

10 With regard to the substance of them, there are
11 two issues that they try to relate all of these to. Issue
12 31B and C. And I may get them backwards. But Issue 31B
13 says we want to submit every one of our orders to you
14 electronically. We don't want to have to submit any of
15 them to you manually. The testimony shows that about 88
16 percent of the orders come electronically, 12 percent come
17 mechanically. They don't want to have to submit the 12
18 percent mechanically. Issue 31C says once we submit them
19 electronically, they have to flow all the way through
20 without human intervention. Now, those are the two issues
21 that we are talking about and the things the Commission is
22 going to have to resolve.

23 Do we have to allow them to -- are they entitled
24 to be able to flow everything through electronically, are
25 they entitled to have everything flow-through without

1 human intervention. Those are the issues. And the
2 questions that are being asked here aren't going to help
3 with that. The questions -- and I can get the numbers,
4 but they are asking about flow-through. You know, give me
5 your flow-through calculations from last September. And
6 what flow-through means is how many orders start here and
7 how many orders go through to a service order entry. How
8 many orders does BellSouth enter for its retail operations
9 into the service order control system and how many
10 successfully pass-through and issue a service order.

11 They are asking for how often or how frequently
12 do you return clarifications, or how quickly do you return
13 clarifications. Clarifications occur after the firm order
14 confirmation has been issued. I mean, it's not even in
15 the part of the process we are talking about. Beyond that
16 they are asking for nine state information, they are not
17 even asking for information limited to Florida.

18 Clearly what they are doing is they are trying
19 to get information now for this performance measurements
20 docket that is scheduled for April, and that is
21 inappropriate. That is not what this forum is about. We
22 have agreed to defer those issues, and that is where this
23 discovery, which I may or may not object to then, ought to
24 be sent. I have probably chewed up my five minutes, sir.

25 COMMISSIONER BAEZ: You can sum up, go ahead.

1 **MR. LACKEY:** Well, I think basically the summary
2 is that while there may not be a rule, sitting on these
3 objections for six weeks is an abuse of the process and we
4 object to answering them. If you want to get through that
5 to the merits of it, I think that they are really
6 stretching to try to relate these interrogatories to any
7 of the issues that remain here.

8 **Ms. Rule** talked about what these things related
9 to. You know, we had to answer four of these in North
10 Carolina, for North Carolina alone, and I don't remember
11 them making any use of them up there. So maybe that
12 would be an interesting question, too. If they are
13 related to these issues, what is this information going to
14 be used for? I don't think we heard anything like that or
15 about that. So I don't see any basis for pursuing it at
16 this point.

17 **COMMISSIONER BAEZ:** Thank you, Mr. Lackey. I'm
18 going to take the arguments under advisement, and then I
19 hope to hear from staff on a recommendation the end of
20 the week, is that fair?

21 **MR. FORDHAM:** We can do that.

22 **MS. RULE:** Commissioner, may I have an
23 opportunity to respond very briefly?

24 **COMMISSIONER BAEZ:** Please.

25 **MS. RULE:** Okay. With regard to the merits of

1 the motion, everything Mr. Lackey discussed relates
2 directly to electronic processing and electronic ordering,
3 that is what flow-through is. And since we are entitled
4 to parity, we are entitled to investigate what BellSouth
5 has for electronic flow-through for its own systems and
6 what it reports for ALECs. It is directly and inevitably
7 related to a specific issue in this case.

8 COMMISSIONER BAEZ: Well, I guess my question
9 would be would the information change your position on
10 whether you want electronic --

11 MS. RULE: No. But it would enable us to help
12 prove to the Commission what parity is, and that is what
13 we are entitled to.

14 COMMISSIONER BAEZ: Is there -- as part of the
15 issue, and I guess I'm trying to understand, because you
16 raised a point, I think Mr. Lackey raised a point, an
17 interesting point, or made an interesting allegation is
18 that if the information isn't relevant to exactly the
19 request that you are making or the position that you are
20 taking on the issue, which is that you want electronic --
21 I'm sorry, I'm at a loss for the word.

22 MS. RULE: Ordering and processing.

23 COMMISSIONER BAEZ: Electronic ordering and
24 processing, then the flow-through or whatever rates that
25 you are requiring, it is what it is. I mean --

1 **MS. RULE: And that is what we are entitled to,**
2 **and that is what we are not getting. I mean, we are**
3 **entitled to investigate the level of electronic**
4 **processing, ordering, how many orders fall out, how many**
5 **orders fall through, the rate at which they are processed,**
6 **because that is exactly what AT&T is entitled to. And if**
7 **BellSouth is making assertions about nondiscriminatory**
8 **access in its testimony, which it is, we are also entitled**
9 **to that information to disprove their testimony.**

10 **And, in effect, you know, not only have we put**
11 **it on the table in our issue, BellSouth has put testimony**
12 **on the table that we are entitled to rebut. And they are**
13 **required to give us the information to review to see if we**
14 **can rebut it.**

15 **I would also like to point out two things. A**
16 **lot of the information that we are requesting, BellSouth**
17 **already keeps certain data, they publish that data. We**
18 **are inquiring into the methodology behind it. So it is**
19 **certainly not a huge undertaking for BellSouth to tell us**
20 **how and why they gather certain data.**

21 **I would like to end with one thought, and that**
22 **is what the Rules of Civil Procedure say about discovery.**
23 **And they say that parties may obtain discovery regarding**
24 **any matter not privileged that is relevant to the subject**
25 **matter. It is no ground for objection that the**

1 information sought would be admissible at trial if the
2 information sought appears reasonably calculated to lead
3 to the discovery of admissible evidence. I'm telling you
4 this is discoverable and it is admissible. And we can
5 even back up further than that. It doesn't even have to
6 be admissible for it to be discoverable. Thank you.

7 **COMMISSIONER BAEZ:** Point taken. Thanks. We
8 will stand on the -- get something by Friday?

9 **MR. FORDHAM:** Yes.

10 **COMMISSIONER BAEZ:** Okay. And my understanding
11 is we are going to hold the confidentiality matters --

12 **MR. FORDHAM:** Yes, we will hold those until the
13 hearing and see what materials are used at hearing.

14 **COMMISSIONER BAEZ:** Great. Anything else?

15 **MR. FORDHAM:** Commissioner, there are two other
16 minor items. One would be the matter of whether there
17 will be opening statements, and the other item would be
18 whether you wish to impose time limits on testimony
19 summaries.

20 **COMMISSIONER BAEZ:** We have been going with five
21 minutes on testimony summaries, and I'm just going purely
22 from memory.

23 **MR. FORDHAM:** That seems to be the trend more
24 recently.

25 **COMMISSIONER BAEZ:** All right. We will limit

1 testimony summaries to five minutes.

2 MS. RULE: Commissioner, if I may respond.

3 COMMISSIONER BAEZ: Yes, ma'am.

4 MS. RULE: We had a discussion yesterday with
5 staff and BellSouth, and I think at least BellSouth and
6 AT&T agreed that up to ten minutes would be reasonable
7 from our point of view.

8 We have some witnesses who wouldn't need it.
9 But, for example, we have one witness who covers a wide
10 range of issues, he has filed a lot of testimony, and it
11 would not be helpful to the Commission to try and
12 summarize that in five minutes.

13 COMMISSIONER BAEZ: Well, Ms. Rule, the problem
14 that I have with that is that the time -- the time limit
15 is not for your benefit, it is for the benefit of the rest
16 of us up here. And, I mean, I think if the Chairman is
17 willing to indulge a certain -- you know, a particular
18 witness, I think that is probably his prerogative at the
19 bench. But for now we are going to go ahead and go with
20 five minutes for everyone, including counsel's opening
21 statements.

22 And if you feel a need on a particular witness
23 to have his time run over, I think you can probably point
24 it out to the Chairman at the time and deal with it that
25 way. But as long as we are going to be discussing it,

1 let's set it up now for everyone and with exceptions as
2 necessary.

3 **MR. LACKEY:** Could I ask -- I just forgot
4 something. Do we have the videotape here?

5 **COMMISSIONER BAEZ:** It's not of me, is it?

6 **MR. LACKEY:** Well, they have got a 12 or 13
7 minute videotape that one of the witnesses uses in his
8 summary that we are going to have to address somewhere.

9 **MS. RULE:** My understanding is the hot cut issue
10 is still in, although it is close to being settled. We do
11 have at least two witnesses that I can tell you right now
12 we would request an exception for, so just to let you
13 know. As Mr. Lackey said, we do have a video that we
14 think helps the Commission quite a lot and it goes several
15 minutes over.

16 **COMMISSIONER BAEZ:** And understand, Ms. Rule,
17 I'm not interested in curtailing any efforts that you want
18 to make to help us understand all of this, and I think Mr.
19 Lackey, I see him nodding there, if there is not an
20 objection as to the two witnesses that you will identify
21 for us, I think we can make that accommodation. But I
22 just don't want this -- you know, I'm trying to think back
23 to Chairman Deason at the time, and certainly Chairman
24 Jacobs is probably going to have an issue of people
25 running over. And if we can do our best to address it and

1 keep it in mind, so be it.

2 I think we can -- you know, speaking for the
3 rest of the Commissioners, presumptively, I think we can
4 probably make an accommodation for some.

5 MS. RULE: Thank you.

6 COMMISSIONER BAEZ: Anything else?

7 MR. FORDHAM: That's all from staff,
8 Commissioner.

9 COMMISSIONER BAEZ: Parties?

10 MR. LACKEY: Nothing further from BellSouth.

11 MS. RULE: No.

12 COMMISSIONER BAEZ: We are adjourned.

13 MR. LACKEY: Thank you.

14 MS. RULE: Thank you.

15 (The Prehearing Conference concluded
16 at 10:00 a.m.)

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 :
COUNTY OF LEON) **CERTIFICATE OF REPORTER**

I, JANE FAUROT, RPR, Chief, FPSC Bureau of Reporting
FPSC Commission Reporter, do hereby certify that the
Prehearing Conference in Docket No. 000731-TP was heard by
the Prehearing Officer at the time and place herein
stated.

It is further certified that I stenographically
reported the said proceedings; that the same has been
transcribed under my direct supervision; and that this
transcript, consisting of 27 pages, constitutes a true
transcription of my notes of said proceedings.

I FURTHER CERTIFY that I am not a relative, employee,
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