

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Request by Escambia Board of)	DOCKET NO. 871268-TL
County Commissioners for Extended)	
Area Service between all Escambia)	ORDER NO. 21237
County Communities)	
<hr/>		ISSUED: 5-16-89

Pursuant to Notice, a Prehearing Conference was held on May 10, 1989, in Tallahassee, Florida, before Commissioner John T. Herndon, as Prehearing Officer.

APPEARANCES:

DAVID B. ERWIN, Esquire, Mason, Erwin and Horton, P.A., 1020 East Lafayette Street, Suite 202, Tallahassee, Florida 32301, on behalf of Southland Telephone Company.

E. BARLOW KEENER, Esquire, and DAVID M. FALGOUST, Esquire, c/o Marshall M. Criser, Suite 400, 150 South Monroe Street, Tallahassee, Florida 32301, on behalf of Southern Bell Telephone and Telegraph Company.

MICHAEL W. TYE, Esquire, AT&T Communications of the Southern States, Inc. 315 South Calhoun Street, Suite 505, Tallahassee, Florida 32301, on behalf of AT&T Communications of the Southern States, Inc.

JOHN R. MARKS, III, Esquire, Katz, Kutter, Haigler, Alderman, Eaton, Davis and Marks, P.A., Post Office Box 1877, Tallahassee, Florida 32302-1877, on behalf of Escambia County.

TRACY HATCH, Esquire, and ANGELA B. GREEN, Esquire, Florida Public Service Commission, 101 East Gaines Street, Tallahassee, Florida 32399-0850, on behalf of Commission Staff.

WILLIAM BAKSTRAN, Esquire, Florida Public Service Commission, 101 East Gaines Street, Tallahassee, Florida 32399-0850, on behalf of the Commissioners.

PREHEARING ORDERI. BACKGROUND

This docket was initiated upon a request for countywide Extended Area Service (EAS) filed by the Escambia Board of County Commissioners on December 1, 1987. The request for countywide EAS involves the following exchanges; Pensacola, Cantonment, Molino, Walnut Hill, Davisville and Century. These exchanges are served by either Southland Telephone Company (Southland) or Southern Bell Telephone and Telegraph Company (Southern Bell).

In addition to involving intercompany routes, this request also involves interLATA (Local Access Transport Area) routes. Southern Bell's Century exchange and Southland's Davisville and Walnut Hill exchanges are located in the Mobile, Alabama LATA. The remaining exchanges, consisting of Southern Bell's Pensacola and Cantonment exchanges, and Southland's Molino exchange, are located in the Pensacola, Florida LATA.

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Order No. 18615, issued December 29, 1987, directed Southern Bell and Southland to complete traffic studies on the affected routes. A subsequent order, Order No. 19000, granted the companies an extension of time to complete and submit the traffic data due to the complexities inherent in completing an interLATA traffic study. Additionally, the Prehearing Officer granted both companies' requests that the results of their traffic studies be accorded confidential treatment. The Prehearing Officer ruled the traffic data confidential on the basis that the disclosure of the traffic volume on the interLATA routes would aid competitors to the detriment of the long distance carriers which currently provide service on the affected routes.

At the October 14, 1988 Agenda Conference, we voted against surveying the customers on the implementation of the alternative toll plan known as the 25/25 plan. Instead we directed Southern Bell and Southland to develop a flat-rate plan for implementation of countywide EAS, which would be voted on by all exchanges except the Pensacola exchange. That plan was submitted for our review on November 21, 1988. The plan contained EAS additives that would have resulted in an increase for all exchanges but the Pensacola exchange and would have placed the same EAS additive on each exchange, except Pensacola, regardless of the particular exchange's current rates and EAS calling scope.

Presently both Cantonment and Molino have EAS to one another as well as to Pensacola. With the implementation of countywide EAS, the Cantonment and Molino exchanges would gain an additional 2,874 access lines. This gain in access lines is in sharp contrast to Century subscribers' gain of 115,744 access lines; Davisville subscribers' gain 116,026 access lines; and Walnut Hill's gain of 116,026 access lines. Additionally, Pensacola subscribers would only gain 2,874 access lines from the addition of EAS to the Century, Davisville and Walnut Hill exchanges.

By Order No. 20605, issued January 17, 1989, we proposed granting countywide EAS in Escambia County. We rejected the plan developed by the companies in response to our directive and ordered the companies to survey the customers in the Century, Davisville, Walnut Hill and Molino exchanges at the rates currently in effect in Pensacola and Cantonment. Those rates are shown below:

Current Rates:

R-1	B-1	PBX
\$9.15	24.90	55.99

We noted that for the subscribers in all exchanges but the Molino exchange, the ballot would ask them to vote to increase their rates while considerably expanding their local calling scope. Molino subscribers would be asked to vote to decrease their current rates by \$.30. Southland was to endeavor to develop a survey letter that appropriately designated this decrease to its Molino subscribers.

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The subscribers in the exchanges to be surveyed were to be balloted by the appropriate company within thirty (30) days of the issuance of the consummating order. Prior to balloting Southern Bell and Southland were to submit their survey letters to our staff for approval.

After the survey was completed and the ballots were tabulated, a simple majority of the total eligible customers would have to vote affirmatively in order to obtain countywide EAS. If the survey passed we directed that countywide EAS be implemented within twelve months of the survey results.

On February 2, 1989, before the proposed agency action became final, Southland filed its Petition protesting the action proposed by the Commission.

On March 23, 1989, an Issue Identification Meeting defined the issues to be addressed at the hearing. On March 31, 1989, the Prehearing Procedural Order No. 20970 was issued.

In response to Southland's Petition, we set this matter for hearing for the purpose of receiving testimony and exhibits. This hearing has been scheduled for May 23, 1989, at 4:00 p.m. and 6:00 p.m., in Walnut Hill, Florida. At the 4:00 p.m. session, we will accept the testimony of citizens concerning their toll calling needs. The 6:00 p.m. session will be divided into two phases; during the first phase we will again accept testimony of citizens. The second phase of the 6:00 p.m. session will be for the purpose of receiving testimony and exhibits from the parties.

At the Prehearing Conference of May 10, 1989, the procedure to govern the hearing was established. It was established that Southland and Southern Bell would initiate each public hearing with a brief presentation of their respective positions. The evidentiary portion of the hearing will take place subsequent to the public hearing, as described above.

II. TESTIMONY AND EXHIBITS

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

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

NOTE: In the interest of saving time, the presentation of Direct and Rebuttal Testimony by each witness has been consolidated to a single appearance on the witness stand. Witnesses are cautioned that they remain subject to recall, if necessary, for clarification or in order to avoid confusion from the presentation of testimony out of normal sequence.

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III. ORDER OF WITNESSES

<u>Witness</u>	<u>Exhibit Number</u>	<u>Appearing For</u>	<u>Date</u>
<u>DIRECT</u>			
Wolfe	1A - 1E	Southland	5/23/89
Sanders	2A - 2I	So. Bell	5/23/89
Bailey	3A	So. Bell	5/23/89
Barkley		So. Bell	5/23/89
<u>REBUTTAL</u>			
McGehee*		Southland	5/23/89

*Southland has identified this witness to testify, if needed, in response to public witnesses.

IV. BASIC POSITIONS

SOUTHLAND'S BASIC POSITION:

The basic position of Southland is that the Commission should not deviate from its rules pertaining to EAS, but that in the event EAS or an alternative calling plan is found to be appropriate by the Commission, Southland must be permitted to charge rates that will achieve adequate cost recovery.

SOUTHERN BELL'S BASIC POSITION:

Southern Bell does not advocate establishing traditional two way non-optional EAS between Century and Pensacola. The Company takes this position primarily because the traffic studies on these routes indicate that there is very little interests in calling from Pensacola to Century.

Requiring all customers in these exchanges to share the additional costs associated with providing flat rate non-optional EAS would be unfair to telephone customers in the Pensacola Exchange who would make little or no use of the expanded capability. Optional service arrangements that offer customers greater choice in service selection are more suitable because they allow customers to tailor their telephone bills and calling scopes based on their individual calling habits, desires and needs. Under intraLATA circumstances, Southern Bell would recommend EOEAS in the Century to Pensacola route. However, because this route is interLATA, it is inappropriate for Southern Bell to propose this plan.

Finally, Southern Bell believes that there should be no revenue sharing between Southland and Southern Bell if the Commission orders EAS or a toll alternative whereby Southland and Southern Bell do not equally recover costs. Southern Bell

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believes that the cost causer should pay for the costs incurred and that the costs should not be recovered from customers not benefiting from an EAS plan.

AT&T'S BASIC POSITION

The proposal in this case would result in EAS between Southern Bell's Century Exchange, Southland's Davisville and Walnut Hill Exchange (all of which are in the Mobile, Alabama LATA) and other exchanges which are in the Pensacola LATA. AT&T submits that implementation of the proposed interLATA EAS is not in the public interest, inasmuch as it could result in higher toll costs for other interLATA customers. The solution to the calling problems which may be faced by residents of Escambia County lies in reducing the access charges which interexchange carriers incur in the completion of interexchange calls. Reduction of such charges will lead to appropriate reductions in long distance rates, thereby making calling more affordable between the affected communities.

ESCAMBIA COUNTY'S BASIC POSITION

Countywide EAS should be granted to the extent it does not unduly disadvantage one group of customers vis a vis another group of customers.

STAFF'S BASIC POSITION:

No position.

V. ISSUES AND POSITIONS

ISSUE 1: Is there a sufficient community of interest on the toll routes in Escambia County to justify implementing extended area service as currently defined in the Commission rules?

SOUTHLAND'S POSITION: Pursuant to Rule 25-4.060. F.A.C., only one route qualifies for further investigation.

SOUTHERN BELL'S POSITION: The Southern Bell traffic studies, as provided for in Rules 22-4.059-61, Florida Administrative Code, indicate that a one-way community of interest exists on a single interLATA toll route in Escambia County, that being the Century to Pensacola route.

AT&T'S POSITION: AT&T has no position on this issue at this time.

ESCAMBIA COUNTY'S POSITION: No position.

STAFF'S POSITION: No position.

ISSUE 2: What factors should be considered when determining whether a community of interest exists in Escambia County?

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SOUTHLAND'S POSITION: See Prefiled Testimony of Tom Wolfe, page 3, line 17 through page 4, line 11 and Exhibit TW-1.

SOUTHERN BELL'S POSITION: The factors set forth in Rule 22-4.060, Florida Administrative Code, are the primary factors which should be considered and should be accorded the most weight. Other factors that should be considered include the location of medical/emergency facilities, fire/police departments and county offices.

AT&T'S POSITION: AT&T has no position on this issue at this time.

ESCAMBIA COUNTY'S POSITION: No position.

STAFF'S POSITION: No position.

ISSUE 3: What plans, including the plans listed below, should be considered, and what is the economic impact of each plan on the customer and the company (summarize in chart form and discuss in detail);

- a. EAS countywide (as ordered),
- b. EAS countywide (full cost recovery),
- c. EAS (on qualifying routes at full cost recovery, no leapfrogging),
- d. Toll Pac (30% discount), and
- e. Other (specify).

SOUTHLAND'S POSITION: See Prefiled Testimony of Tom Wolfe, page 5, line 9 through page 10, line 9 and Exhibit TW-2.

SOUTHERN BELL'S POSITION: Southern Bell has investigated several plans for calling within the county. The economic impact on customers and Southern Bell has been estimated for the following plans:

1. Countywide EAS as ordered by the Commission in Order No. 20605;
2. Countywide EAS at full cost recovery to Southern Bell;
3. EAS on qualifying routes including non-qualifying routes necessary to prevent leapfrogging exchanges; and
4. Toll-Pac.

Each of these plans is discussed in detail in the testimony and exhibits prefiled by Sandy E. Sanders and Edna Bailey.

AT&T'S POSITION: AT&T has no position on this issue at this time.

ESCAMBIA COUNTY'S POSITION: No position.

STAFF'S POSITION: No position.

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ISSUE 4: What are the specific cost items that should be considered in determining the proper cost of the implementation of EAS?

SOUTHLAND'S POSITION: The specific cost items that should be considered are contained in Rule 25-4.061, F.A.C., and, in addition, similar kinds of items that have come into being since adoption of the rule should also be considered, i.e., originating access, terminating access, billing and collecting charges.

SOUTHERN BELL'S POSITION: Specific cost items required to implement EAS are switching investment, trunk facilities, annual charges, directory cost, leasing cost, toll and FX revenue reduction.

AT&T'S POSITION: AT&T has no position on this issue at this time.

ESCAMBIA COUNTY'S POSITION: No position.

STAFF'S POSITION: No position.

ISSUE 5: Are Southland and Southern Bell entitled to recover the costs of implementing EAS?

SOUTHLAND'S POSITION: Yes.

SOUTHERN BELL'S POSITION: Yes. It is Southern Bell's position that any company implementing EAS should be allowed to recover the cost.

AT&T'S POSITION: AT&T has no position on this issue at this time.

ESCAMBIA COUNTY'S POSITION: No position.

STAFF'S POSITION: No position.

ISSUE 6: Is it appropriate to implement EAS at less than full cost recovery if Southland is earning a negative rate of return or anything less than the floor of its authorized rate of return?

SOUTHLAND'S POSITION: No.

SOUTHERN BELL'S POSITION: It is Southern Bell's position that any company implementing EAS should be entitled to recover the cost associated with EAS. Southern Bell concurs with Rule 25-4.062, Florida Administrative Code, which states that EAS should not be provided at an economic disadvantage to a local exchange carrier.

AT&T'S POSITION: AT&T has no position on this issue at this time.

ESCAMBIA COUNTY'S POSITION: No position.

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STAFF'S POSITION: No position.

ISSUE 7: If the Commission orders EAS or a toll alternative whereby Southland and Southern Bell do not equally recover costs and lost revenues, should some form of compensation agreement be established between the two companies?

SOUTHLAND'S POSITION: Yes.

SOUTHERN BELL'S POSITION: Southern Bell's position is that there should be no revenue sharing between local exchange carriers for EAS or toll alternatives. Southern Bell believes that the users of a particular service, i.e., the cost causers, should pay for the cost incurred. Compensation to a local exchange carrier and the source of the compensation depends on the type of EAS or toll options offered.

AT&T'S POSITION: AT&T has no position on this issue at this time.

ESCAMBIA COUNTY'S POSITION: No position.

STAFF'S POSITION: No position.

ISSUE 8: Should EAS be implemented on a countywide basis in Escambia County as ordered by the Commission on January 17, 1989 Order No. 20605?

SOUTHLAND'S POSITION: No.

SOUTHERN BELL'S POSITION: No, the Commission ordered non-optional, countywide EAS plan does not allow the providing telephone companies a complete recovery of costs. Southern Bell maintains that any two-way, non-optional EAS plan should permit the full recovery of costs and lost toll and access revenues associated with implementing the plan. Also, it would be unreasonable for Southern Bell's Escambia County customers who do not need, want or desire additional local calling to share in the cost of the plan.

AT&T'S POSITION: No, EAS along the proposed interLATA routes should not be implemented.

ESCAMBIA COUNTY'S POSITION: No position.

STAFF'S POSITION: No position.

ISSUE 9: If a survey is required, how should the survey be conducted?

SOUTHLAND'S POSITION: See Prefiled Testimony of Tom Wolfe, page 12, line 12 through line 20.

SOUTHERN BELL'S POSITION: Southern Bell concurs with Commission Rule 25-4.061, Florida Administrative Code, regarding the method of handling customer polls. Specifically,

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we concur with the portion of the rule that requires fifty-one percent of all voting subscribers to vote favorably in order to implement non-optional EAS. All customers who would receive an increase in their monthly rate for local service should be included in the poll. If the poll involves countywide EAS, the results of the ballot should reflect those voting favorably in the aggregate, not on a route-by-route basis. If the poll is conducted on a route-by-route basis, the EAS additives should be cost compensatory for each specific route.

AT&T'S POSITION: AT&T has no position on this issue at this time.

ESCAMBIA COUNTY'S POSITION: No position.

STAFF'S POSITION: No position.

ISSUE 10: What EAS plan or toll alternative plan, if any, should be implemented on the Escambia county routes?

SOUTHLAND'S POSITION: Only an EAS plan or toll alternative plan that is not violative of the Commission's EAS rules and is cost compensatory.

SOUTHERN BELL'S POSITION: The Commission has previously directed Southern Bell in Order No. 20162 to implement an Enhanced Optional Extended Area Service (EOEAS) plan on several toll routes. Southern Bell favors optional service arrangements such as EOEAS because they offer all customers greater choice in service selection depending on their particular calling patterns and amount of usage. Southern Bell's objective is to offer the customer an option of how he or she is to spend his or her money, not to burden the customer with the cost of EAS he or she does not use. Under intraLATA circumstances, Southern Bell would recommend EOEAS on the Century to Pensacola route, however, because this is an interLATA route, it is inappropriate for Southern Bell to propose this plan.

AT&T'S POSITION: AT&T submits that no EAS plan or toll alternative plan should be implemented along the interLATA routes in Escambia County. AT&T takes no position at this time with respect to intraLATA Escambia County routes.

ESCAMBIA COUNTY'S POSITION: No position.

STAFF'S POSITION: No position.

LEGAL ISSUE

ISSUE 11: Can the Commission legally waive its own rules pertaining to EAS, and if so, which rules should be waived, in what manner and to what extent?

SOUTHLAND'S POSITION: No, and rule waiver is inappropriate.

SOUTHERN BELL'S POSITION: The Commission may waive its procedural rules. See, United Telephone Company v. Mayo, 345

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So.2d. 648, 653 (Fla. 1977). Substantive rules may not be waived unless waiver is provided for within the rules themselves. Therefore, in order to determine if a particular EAS rule may be waived, the Commission should consider whether or not the rule is procedural or substantive in nature. If the rule is determined to be procedural and the ends of justice require waiver, the Commission, at its discretion, may waive the rule.

AT&T'S POSITION: AT&T takes no position on this issue at this time.

ESCAMBIA COUNTY'S POSITION: No position.

STAFF'S POSITION: No position.

VI. EXHIBIT LIST

<u>Witness</u>	<u>Proferring Party</u>	<u>Exh. No.</u>	<u>Title</u>
Wolfe	Southland	1A	TW-1: Results of Escambia Point-to-Point Study
		1B	TW-2: Economic Impact to Southland of Plans Under Consideration
		1C	TW-3: Land Area Data and Map
		1D	TW-4: Cost of Two-Way Non-Optional EAS to Southland
		1E	TW-5: Surveillance Report of Southland for Period Ending December 31, 1988
Sanders	So. Bell	2A	SES-1: Map of Escambia County Indicating Existing Telephone Exchanges and EAS Study Routes
		2B	SES-2: Southern Bell Telephone and Telegraph Company-Florida Long Distance Toll Information for Escambia County
		2C	SES-3: Southern Bell Telephone and Telegraph Company Monthly Messages and Calling Rate Per Access Line

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<u>Witness</u>	<u>Proferring Party</u>	<u>Exh. No.</u>	<u>Title</u>
Sanders	So. Bell	2D	<u>SES-4</u> : Long Distance Calling for Southern Bell Exchanges
		2E	<u>SES-5</u> : Economic Impact of Countywide EAS
		2F	<u>SES-6</u> : Economic Impact of Countywide EAS at Full Cost Recovery Rates
		2G	<u>SES-7</u> : Economic Impact of Route Specific EAS at Full Cost Recovery Rates
		2H	<u>SES-8</u> : Economic Impact of Route Specific Toll-Pac
		2I	<u>SES-9</u> : Economic Effect of Toll Alternatives on Century Customers
Bailey	So. Bell	3A	<u>EFB-1</u> : Economic Study for Providing EAS in Escambia County

VII. STIPULATIONS

No issues have been stipulated at this time.

VIII. PENDING MOTIONS

The following motions are currently pending:

1. Southern Bell's Request for Confidential Treatment for portions of its Exhibits submitted as 2, 3, and 4, filed May 2, 1989, along with a Request to Substitute Direct Testimony of Sandy E. Sanders, previously filed on April 24, 1989, with testimony and exhibits filed on May 2, 1989, and identified as Attachment B to the Request. Counsel for Southern Bell, AT&T and Staff are to file briefs by May 19, 1989, regarding how this Request should be handled. The data will be accorded confidential treatment in the meantime.

IX. RULINGS

1. Southern Bell's Motion for Extension of Time, filed April 12, 1989, seeking additional time in which to file an economic impact statement and updated traffic studies has been granted.

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2. Staff's Motion for Expedited Response to First Set of Interrogatories, filed April 17, 1989, is moot as to Southland and denied as to Southern Bell.
3. Southland's Request for Confidential Treatment for portions of its Exhibits submitted as TW-1, TW-2 and TW-4, filed April 24, 1989, was denied. However, the confidential status of these portions of these exhibits is to be preserved and AT&T has been given a deadline of May 19, 1989, to file its own Request for Confidential Treatment of this data.
4. Southland's Motion to Comply with Rule 25-4.060(3), F.A.C., and Narrow Scope of Proceeding, filed May 1, 1989, has been denied.

X. PROCEDURE FOR HANDLING CONFIDENTIAL INFORMATION

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

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

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

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

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

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

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

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

(AFTER THE ROOM HAS BEEN CLOSED)

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

It is therefore,

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

By ORDER of Commissioner John T. Herndon, as Prehearing Officer, this 16th day of MAY, 1989.

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

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