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BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

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

RECEIVED	
Division of Records & Reporting	FPSC, Hearing Room 122
NOV 29 1990	Fletcher Building
	101 East Gaines Street
Florida Public Service Commission	Tallahassee, Florida 32399
	Wednesday, November 28, 1990

Met pursuant to adjournment at 12:30 p.m.

BEFORE: COMMISSIONER MICHAEL McK. WILSON, Chairman
COMMISSIONER BETTY EASLEY, Prehearing Officer

APPEARANCES:

DAVID M. FALGOUT, Southern Bell Legal
Department, 4300 Southern Bell Center, 675 West
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DOCUMENT NO.
10604-90
11-29-90

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5 on behalf of Southern Bell Telephone and Telegraph
6 Company.

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

11 ALAN N. BERG, Post Office Box 5000, Altamonte
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13 889-6018, appearing on behalf of United Telephone Company
14 of Florida.

15 RICHARD E. DOGAN, Director, Criminal Appeals,
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19 PETER A. ANTONACCI, Statewide Prosecutor,
20 Office of Statewide Prosecution, the Capitol, PL-01,
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23 Statewide Prosecution.

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1 APPEARANCES CONTINUED:

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6 CHERYL R. PHOENIX, Director, Florida
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17 LEE L. WILLIS, Ausley, McMullen, McGehee,
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20 behalf of Central Telephone Company of Florida.

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1 APPEARANCES CONTINUED:

2 JACK SHREVE, the Public Counsel, and CHARLES
3 J. BECK, Office of the Public Counsel, Claude Pepper
4 Building, Room 812, 111 West Madison Street, Room 801,
5 Tallahassee, Florida 32399-1400, Telephone No. (904)
6 488-9330, appearing on behalf of the Citizens of the
7 State of Florida.

8 ANGELA B. GREEN and JOHN ADAMS, FPSC,
9 Division of Legal Services, 101 East Gaines Street,
10 Tallahassee, Florida 32399-0863, Telephone (904)
11 487-2740, appearing on behalf of the Commission Staff.

12 PRENTICE P. PRUITT, FPSC Office of General
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14 Tallahassee, Florida 32399-0863, Telephone No. (904)
15 488-7464, Counsel to the Commissioners.

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18 EXCERPT REPORTED BY: SYDNEY C. SILVA, CSR
19 Official Commission Reporter

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1 P R O C E E D I N G S
2 (Hearing commenced 12:32 p.m.)

3 COMMISSIONER EASLEY: Let's go on the record.
4 I guess for the purposes of this we'll call it a
5 Special Hearing on the Documents and the request for --
6 on the Motion by Public Counsel for Production. Is
7 that the correct title of this procedure?

8 MS. GREEN: That's acceptable.

9 COMMISSIONER EASLEY: All right. I have
10 before me the one document, let's deal with that one
11 document first. The Company?

12 MR. FALGOUST: Commissioner, I have spoken to
13 Mr. Coker at noon, who tells me that his preliminary
14 results are that AT&T may have proprietary information
15 in that document. He was going to contact Mr. Tye, who
16 is AT&T's counsel here in Tallahassee, try to get Mr.
17 Tye to come over here if possible to allow AT&T to
18 assert their proprietary interests.

19 As I've stated, Southern Bell has no
20 proprietary interests; but out of courtesy to AT&T, we
21 wanted to protect that document for the time being
22 until AT&T could make its own determination.

23 CHAIRMAN WILSON: What kind of time frame, do
24 we have any idea at all what we're talking about?

25 MR. FALGOUST: Mr. Coker told me he was going

1 to try to get in touch with Mr. Tye immediately and try
2 to get Mr. Tye over here this afternoon.

3 COMMISSIONER EASLEY: How long ago was that?

4 MR. FALGOUST: That was at noon today that I
5 had that conversation.

6 COMMISSIONER EASLEY: Let me understand, now.
7 On this specific document, Public Counsel, have you
8 received this document?

9 MR. BECK: No, I haven't.

10 COMMISSIONER EASLEY: All right. And you are
11 withholding this document on the basis of proprietary
12 claim by AT&T?

13 MR. FALGOUST: Yes, that's correct. Pursuant
14 to a Motion for Protective Order, we can make it
15 available to Public Counsel, if that's what --

16 COMMISSIONER EASLEY: Mr. Beck?

17 MR. BECK: That was my question. I guess
18 you're dropping your objection on relevancy, which was
19 your basis for withholding it initially --

20 MR. FALGOUST: Commissioner, we have dropped
21 all of our objections to relevancy with respect to all
22 24 of these documents.

23 COMMISSIONER EASLEY: Then where does that
24 put us, Mr. Beck?

25 MR. SHREVE: I think we should receive the

1 documents.

2 COMMISSIONER EASLEY: I'm going to grant the
3 Temporary Protective Order, particularly until we can
4 get AT&T in here; and then we can make a final ruling
5 if it becomes necessary on proprietary.

6 MR. ANTONACCI: May I be heard?

7 COMMISSIONER EASLEY: So I will grant the
8 Temporary Protective Order on -- yes, sir?

9 MR. ANTONACCI: Very quickly. I don't see --
10 and I apologize to you and Mr. Pruitt for not knowing
11 local practice here -- but I don't see how this counsel
12 can assert rights on behalf of someone not before this
13 tribunal. I can't assert the Constitutional rights of
14 anyone else at this table and neither can you. And for
15 him to come in here and say he can assert the rights of
16 someone else to defeat the rights that the parties have
17 is simply beyond me.

18 MR. FALGOUST: It's a matter of courtesy to
19 AT&T, Commissioner.

20 COMMISSIONER EASLEY: Now, wait. Before we
21 get into this now, guys, my understanding is that this
22 document is also a joint effort document. Now, if it's
23 a joint effort document, it would seem to me that one
24 of the parties to the joint effort could make that
25 request.

1 MR. ANTONACCI: Why haven't they?

2 COMMISSIONER EASLEY: They just did, this is
3 one of the parties to --

4 MR. ANTONACCI: He doesn't represent AT&T,
5 Commissioner, --

6 COMMISSIONER EASLEY: No. Am I --

7 MR. FALGOUST: I represent --

8 MR. ANTONACCI: And he's waived all
9 objections on behalf of his client.

10 COMMISSIONER EASLEY: Mr. Pruitt?

11 MR. PRUITT: Madam Chairman, we're not in a
12 Court of Law trying a first degree murder case, we're
13 in a quasi judicial proceeding under the Administrative
14 Procedures Act of the State of Florida and you have a
15 broad discretion how you want to run this hearing. And
16 if somebody has represented to you through -- if they
17 sent you a note by a boy on a mule and said, "My name
18 is Mike Tye, I'm at my office and I'll be here just as
19 soon as I can get there to look into something that
20 might help the Commission," you have the authority and
21 the power to afford him that courtesy.

22 MR. ANTONACCI: I don't challenge your
23 authority, Commissioner Easley. I'm enunciating what I
24 think is a basic principle of law.

25 COMMISSIONER EASLEY: Mr. Shreve?

1 MR. SHREVE: I don't challenge your authority
2 but that must be the slowest mule in the world because
3 it's been out there for five months and the only thing --

4 (Simultaneous speaking)

5 -- they have waived whatever rights they have, they
6 have raised one objection to relevancy and they waived
7 that.

8 COMMISSIONER EASLEY: Mr. Shreve, I'm going
9 to get you all a document under the protective order.
10 The only thing I've said I'm not going to do is release
11 the document, period, until AT&T gets here. Now,
12 you've got, this gives you the information; are you
13 damaged in any way by doing that?

14 MR. SHREVE: At this point, that's probably
15 the best that you can do. But yes, we are damaged
16 because they sat on this thing for months.

17 COMMISSIONER EASLEY: Well, that's not at
18 issue here now -- not right here, not right now. I am
19 here only to dispose of the argument over these
20 documents.

21 Now, I have granted the Protective Order, you
22 may see the documents. Does that Protective Order
23 extend to any of the other parties?

24 MR. FALCOUST: I would hope so, Ms. Chairman.

25 COMMISSIONER EASLEY: Good.

1 MR. BECK: I didn't get a chance to -- the
2 one observation I would like to make is that Bell has
3 not asserted the grounds for -- they have said somebody
4 claims it is proprietary, but that's not the basis for
5 the claim. There must be some basis for it somewhere.
6 They can say that the moon is made of cheese because
7 they think it's so, but they have to show a basis; and
8 they have not provided any basis for showing that this
9 document is proprietary other than somebody claims it.
10 And I submit to you that's an insufficient basis to
11 grant it for.

12 MS. GREEN: Not under our rule. There's
13 provisions in the rule for a Notice of Intent to
14 request confidential treatment, and during that time
15 period the person espousing that position has 21 days
16 to get it together.

17 COMMISSIONER EASLEY: Well, I'm going to
18 shortcut this because we've got to get back in there at
19 1:00 o'clock and we still have a biggie to get through
20 yet. I'm granting the Temporary Protective Order. It
21 will be good until close of business today. That will
22 give Mr. Tye the opportunity, that will give me the
23 opportunity, it will give the parties the opportunity
24 to look at the document under the Protective Order.

25 Okay. Next request?

1 MS. GREEN: Before we get off of the
2 Protective Order, could we clarify to whom it extends?
3 Because under the statute, anyone who is subject to the
4 Public Records Act would be in the same shoes as Mr.
5 Beck.

6 COMMISSIONER EASLEY: My intent and my
7 understanding is that that is the way it would work.

8 MS. GREEN: Okay. I'm trying to think
9 quickly if there's anyone else that's not under the
10 Public Records Act.

11 MR. SHREVE: If there's a Protective Order,
12 it covers it.

13 MS. GREEN: Okay.

14 COMMISSIONER EASLEY: That means I -- let me
15 ask for my own benefit, then. There is one party that
16 I'm going to assume is not covered by Florida's Public
17 Records Law, and that's the group for -- I can't even
18 think of the name.

19 MR. RAMAGE: Cheryl Phoenix and --

20 COMMISSIONER EASLEY: Yes, thank you. Are
21 they covered or not?

22 MR. FALGOUST: Commissioner Easley, the only
23 party that has requested this document is Public
24 Counsel; therefore, the only party that ought to get it
25 is Public Counsel.

1 MR. ANTONACCI: They're subject to the Public
2 Records Law.

3 COMMISSIONER EASLEY: They've got the
4 Protective Order on that.

5 MS. GREEN: I can't let that statement go
6 completely without responding because in case it has
7 some precedential effect by being said. And that is
8 we've had a lot of parties that are not familiar with
9 the practice before this Commission and they have
10 relied in believing that they would receive these
11 things because they are on the service list rather than
12 be overly litigious and file repetitive requests for
13 the same information.

14 COMMISSIONER EASLEY: Well, now I heard the
15 Chairman specifically talk about -- beg your pardon?

16 MR. SHREVE: Why don't you make the
17 Protective Order cover all of the parties in this case?

18 COMMISSIONER EASLEY: Well, I'm not going to
19 create a precedent, though, Mr. Shreve. I want no --

20 MR. SHREVE: That's not a precedent, that's
21 done time after time.

22 COMMISSIONER EASLEY: I'm being very
23 cautious. This is the first time I've had to deal with
24 this and you all are arguing among yourselves about a
25 lot of things that don't have anything to do with this

1 case and I'm not going to get caught in the middle of
2 that. And as a result, I'm being very careful not to
3 set any kind of precedent on either side.

4 Now, I heard the Chairman talk about the
5 prejudicial nature of any of this information in the
6 way it is treated and that the party had to have
7 requested the document before he can claim he was
8 damaged by not getting the document. I remember
9 hearing that one very clearly and I want to be sure I'm
10 not in any way altering that by this ruling.

11 MR. SHREVE: I don't know what you want to
12 do. I mean, if you want to protect the parties --

13 COMMISSIONER EASLEY: I want to protect --

14 MR. SHREVE: If the counsel is worried about
15 someone walking in under the Public Records Law and
16 demanding the document and it going out, then the
17 Protective Order should cover all of the parties. If
18 you're going to just make it to us, then you have a
19 Protective Order just over us. I'm not sure where
20 she's going.

21 MS. GREEN: Well, I had assumed you were
22 going to let everyone have the document when I made
23 that first statement.

24 MR. PRUITT: At this stage of it I would
25 recommend that the Commissioner rule that the

1 inspection of the document be limited to the parties
2 who have requested it.

3 COMMISSIONER EASLEY: I'm going to follow the
4 advice of the eminent counsel and I will clarify that
5 the Temporary Protective Order extends to those parties
6 who have requested the document.

7 MR. RAMAGE: I'd like to show an objection to
8 that ruling on the part of the Department of Law
9 Enforcement, the Statewide Prosecutor and the
10 Department of Legal Affairs. It's been our posture
11 throughout the discovery process that, rather than
12 litigate and file cumulative discovery responses, to
13 the extent that the documents were made available
14 through and to the Office of the Public Counsel and
15 they have made all the documents that have been turned
16 over through the discovery process accessible to the
17 three parties, we have not felt obliged to make formal
18 discovery requests.

19 COMMISSIONER EASLEY: And as soon as there is
20 a ruling on the confidentiality or on the proprietary
21 nature of this document, whatever remains will be made
22 available to everybody. The Protective Order extends
23 to 5:00 o'clock this afternoon.

24 MR. ANTONACCI: I'm satisfied, Your Honor.

25 COMMISSIONER EASLEY: All right. Next

1 request?

2 MR. BECK: The next request, Commissioner
3 Easley, goes to the documents in the possession of
4 BellSouth Corporation, which is a parent corporation to
5 Southern Bell. In the Motion to Compel, I have showed
6 you a number of things that tie BellSouth to Caller ID
7 in specific.

8 COMMISSIONER EASLEY: I need a copy of that.
9 I'm sorry.

10 MR. PRUITT: I didn't get mine.

11 COMMISSIONER EASLEY: I don't have mine.

12 MR. FALGOUST: I will be happy to lend you
13 mine if I can have it back.

14 COMMISSIONER EASLEY: That would be fine.
15 That would be quicker. Thank you.

16 Okay, this is the Motion to Compel dated
17 August 7?

18 MR. BECK: Yes.

19 COMMISSIONER EASLEY: All right.

20 MR. BECK: Commissioner, first attachment,
21 Attachment No. 1, there's a number there that leads you
22 through BellSouth's involvement. Attachment 1 is a
23 memo dated November 1, 1988, dealing with Caller ID and
24 the policies that Southern Bell and BellSouth have
25 pursued. And as you'll see there -- Attachment 1 is a

1 document I received in discovery -- it goes through
2 four possible different alternatives. It mentions that
3 BellSouth's policy is to deliver all numbers; and then
4 it states, "As before, Southern Bell has a different
5 recommendation. We still feel strongly that private
6 listing customers be allowed to inhibit their calls on
7 a per-call basis," and then it gives you a number of
8 reasons why in the attachment. So there you have a
9 conflict of policies between BellSouth and Southern
10 Bell.

11 Attachment 2 is a memo dated January 12,
12 1989, which deals with the resolution of that conflict.
13 And the way it was resolved was that a Regional
14 Marketing Council decided that the BellSouth position
15 would be to deliver all numbers, essentially overruling
16 the Southern Bell position that had been there.

17 For your information, the Regional Marketing
18 Council is made up of representatives of both Southern
19 Bell, South Central Bell, BellSouth Services, and
20 BellSouth Corporation. So it has people from all those
21 corporations in there. But they had the power to
22 decide what the policy would be throughout all the
23 BellSouth companies.

24 Attachment 3 put in there for your
25 information is a memo from Linda Linn, who is the

1 Product Manager of White Pages Product Team. And it
2 somewhat laments that, you know, that this paper was
3 moot because of the decision of the BellSouth position
4 that was adopted by the Regional Marketing Council.
5 Nonetheless, this shows that at least this part of
6 Southern Bell or the people in this product team were
7 opposed to the position that was ultimately adopted by
8 the Regional Marketing Council.

9 Now, not only do we have these positions
10 being overruled, I actually have one document from the
11 BellSouth Vice President and Comptroller, this being
12 the BellSouth Corporation, the parent corporation, and
13 that's Attachment 4. And in here he goes through a
14 number of concerns about Call Trace and people's
15 reactions to advertisements, makes specific
16 recommendations about Call Trace and what they should
17 be doing.

18 Again, this is showing a web of
19 interrelationships of BellSouth Corporation, the parent
20 corporation, getting involved in Caller ID, which is an
21 offering of the subsidiary, Southern Bell. Again, we
22 just happened to get this document because it happened
23 to have been in the possession of Southern Bell and so
24 it was captured by the document request. What Southern
25 Bell is refusing to do is do a document search of

1 BellSouth Corporation, the people who wrote memos like
2 attached here as Attachment 4, because they have not
3 provided anything that a search of BellSouth
4 Corporation would have produced.

5 In addition to these documents that we
6 happened to be fortunate enough to get, our motion also
7 gives you the interrelationships in a more broad sense
8 between Southern Bell and its parent corporation. We
9 have attached documents showing the daily transactions
10 between Southern Bell and BellSouth Corporation, the
11 amount of money that flows in between them. You'll see
12 there's millions of dollars charged to Southern Bell's
13 ratepayers in Florida to support BellSouth
14 Corporation's services and that they interact back and
15 forth on a continuing basis, on a daily basis.

16 Based on that, we feel that they've met the
17 standard enunciated in the Medivision case, which I
18 cite on Page 8 of the brief, saying that if they act as
19 one, the parent corporation is amenable to a document
20 request, essentially. That when they act as one, the
21 parent corporation will have to produce documents as
22 well as the sub when requested. In fact, I have noted
23 in the argument that we even have more in this case
24 than we did in Medivision; because in this case, we
25 have the parent corporation being financed by charges

1 that flow through to the regulated ratepayers of
2 Southern Bell, which is not something you had in that
3 case.

4 Commissioner Easley, there has been other
5 occasions recently which the Commission has ordered
6 BellSouth Corporation to produce documents; most
7 recently, that was in the cost allocation docket where
8 the relief granted by the Commission was precisely what
9 we're requesting in this case. And I think this case
10 is an even stronger one than we showed in that and that
11 you should order a search of BellSouth Corporation to
12 produce documents responsive to our request.

13 COMMISSIONER EASLEY: This indicates that
14 you're talking about documents responsive to your First
15 and Second Requests for Production.

16 MR. BECK: Right, those are dated June 21st
17 and June 19th of 1990.

18 COMMISSIONER EASLEY: Do I have a copy of
19 that?

20 MR. BECK: I don't know if you have that or
21 not.

22 MR. FALGOUST: It's in the booklet.

23 COMMISSIONER EASLEY: It's in the booklet?

24 MR. FALGOUST: Yes, ma'am. Commissioner, may
25 I respond to some of that?

1 COMMISSIONER EASLEY: Sure, go right ahead.

2 MR. FALGOUST: Commissioner Easley, you put
3 your finger right on it when you said that what's being
4 disputed here are a lot of issues that have nothing to
5 do with this case. Mr. Beck would concede that the
6 law in the State of Florida does not allow a nonparty
7 to be subject to discovery. There is an exception to
8 that law, a very narrow exception, under the case he
9 refers to, Medivision.

10 He would concede that BellSouth Corporation
11 is not a party to this litigation. He would concede, I
12 think, that Southern Bell indeed did produce all
13 BellSouth Corporation documents that were in Southern
14 Bell's possession. What we have a dispute about is
15 whether Medivision applies to this case.

16 Now, the one BellSouth Corporation document
17 that he cites is a document that was written a full
18 nine months after the "BellSouth," quote/unquote,
19 policy was adopted. Now, Mr. Beck didn't tell us about
20 the depositions he took in Atlanta in mid August after
21 he filed this Motion to Compel in which he explored the
22 meaning of the term "BellSouth." He was told the
23 reference to BellSouth there meant BellSouth Services
24 and meant generally the region, the nine-state area,
25 and not necessarily the BellSouth Corporation.

1 So for him to rely on that one document as
2 sufficient to support Medivision's exception to the
3 general rule of law I suggest to you is inappropriate
4 and insufficient.

5 Medivision, and you have the case, but
6 Medivision held that the parent corporation was subject
7 to discovery where the subsidiary had been created for
8 the sole purpose of applying for a license or a permit
9 of some kind. And, in fact, if you look at the last
10 paragraph, I think, of the court's decision, the court
11 actually stated that the holding in that case was to be
12 construed narrowly, that it didn't mean that it would
13 apply to every case of every parent corporation. And I
14 suggest to you that for Public Counsel to rely on one
15 document from BellSouth Corporation which was written
16 nine months after a Southern Bell policy was adopted is
17 not sufficient to meet the Medivision standard.

18 MR. BECK: Commissioner, I think counsel has
19 not correctly stated the results of the deposition. I
20 did not have that deposition when filing the motion but
21 I do have copies now. And I would encourage you to
22 look at it -- as a matter of fact, I urge you to let me
23 introduce that in this motion hearing to let you read
24 the deposition of Allan Price, who is an officer, I
25 guess, at Southern Bell now. He was at --

1 MR. FALGOUST: He's not an officer.

2 MR. BECK: He's an Assistant Vice President.

3 And I would urge you to read that deposition, it's not
4 lengthy. It would give you an even clearer idea of the
5 BellSouth connection on Caller ID. Because he explores
6 at length those documents that I went through, showing
7 the Southern Bell position, the Regional Marketing
8 Council, and decisions that was made, he explores that
9 at length in deposition. Or I asked him about it and
10 his answers go into that at length.

11 I ask you to read that. I have copies in the
12 other room, I'll be glad to go get them.

13 MR. FALGOUST: And, Commissioner, if you're
14 going to read that, I suggest that you also read
15 Southern Bell's responses to Public Counsel's
16 Interrogatories which asks about the composition of the
17 market accounts --

18 COMMISSIONER EASLEY: Guys, I'm going to try
19 and deal with the reason I'm in here. I'm going to
20 make that attempt, especially since we only have ten
21 minutes.

22 MR. PRUITT: I think it's eight.

23 COMMISSIONER EASLEY: Eight.

24 The difficulty I'm having --and I'll be as
25 up-front with you as I possibly know how to do, because

1 I'm going to be looking for help from Mr. Pruitt. The
2 two document requests appear to be almost identical in
3 what you are requesting, Mr. Beck; that is, "Each
4 document," and it goes through several topics, but it's
5 "Each document in your possession, custody or control,
6 discussing, evaluating or otherwise commenting on the
7 effect of Caller ID or Call Trace, or whatever." And
8 it appears to be that is pretty much the language
9 throughout.

10 You referred to a "document search." Is
11 that what this is, a document search?

12 MR. BECK: What the Company would normally do
13 when being presented with requests for documents, they
14 would go through those people who would be reasonably
15 likely to have documents responsive to the request and
16 have them identify what documents they have. That's
17 what Southern Bell has refused to do with respect to
18 BellSouth Corporation.

19 COMMISSIONER EASLEY: All right. The Motion
20 to Compel is on what basis? Is it --

21 MR. BECK: They have, let me try and reword
22 this. With respect to the documents that BellSouth
23 Corporation might have that are responsive to any of
24 these requests, they have objected in total. In other
25 words, they said, "We're not going to provide you any

1 documents responsive to any of these requests that are
2 in the possession of BellSouth Corporation." And what
3 I have asked you to do and what this motion says is to
4 have them do that, have them give us the documents in
5 the possession of BellSouth Corporation that are
6 responsive to any of these because --

7 COMMISSIONER EASLEY: But are you claiming --
8 what are you claiming that your need for these
9 documents is?

10 MR. BECK: They relate to the subject matter
11 of this dispute or of this whole hearing. I don't
12 think there's any claim by Southern Bell that these
13 requests request irrelevant information. I don't think
14 there's any dispute about that. They just don't want
15 to give it by that corporation.

16 MR. FALGOUST: Commissioner Easley, again, as
17 Mr. Beck points out, ordinarily one would search for
18 documents in that company. We're talking about a
19 separate legal entity here. And yes, there are
20 specific rules concerning cost allocation methodologies
21 where affiliated companies can provide information,
22 that's not at issue here. What's at issue is this
23 Medivision case, which is an exception to the rule; and
24 I suggest to you that they have not, that Public
25 Counsel has not met the test of Medivision in this

1 casa.

2 COMMISSIONER EASLEY: Mr. Pruitt, do you need
3 to see any of this? Do you need to see the motion?

4 MR. PRUITT: I doubt if I'd have time to look
5 at it.

6 COMMISSIONER EASLEY: Well, I'd rather be
7 late going back in there if you feel the need to look
8 at this.

9 MR. PRUITT: I don't think so.

10 COMMISSIONER EASLEY: Okay.

11 MR. PRUITT: I'm going to just try to tell
12 you what I think the law is about it, and that is that
13 neither the Federal Constitution nor the Constitution
14 of the State of Florida or the statutes of the State of
15 Florida or the Rules of Procedure, the Rules of
16 Evidence or whatever, does not prohibit you or the
17 people practicing before you from examining
18 transactions between a public utility and its
19 affiliates. You have the authority to do that. And
20 that, I've got a case I like, IT&T v. GTE, 518 Fed.2d
21 913, 1972 case. And also reported at 449 Fed.Sup. 1158.

22 MR. FALGOUST: Commissioner?

23 MR. PRUITT: If the question of relevancy is
24 out of the way --

25 COMMISSIONER EASLEY: Yeah.

1 MR. PRUITT: -- and if it falls into the
2 category of a transaction between this Utility and its
3 affiliates or the affiliate and the Utility, you can
4 require that the document be produced.

5 MR. FALGOUST: We've already produced
6 transactional documents; the documents that were in our
7 possession, we've produced those. What he is wanting
8 you to do is for us to go to BellSouth Corporation and
9 ask BellSouth Corporation to inspect their own books
10 for any of these documents that may comment on, relate
11 to, or whatever the request is for. Not transactional.
12 We've already produced transactional documents.

13 COMMISSIONER EASLEY: Aren't going to make it
14 easier.

15 MR. PRUITT: If there's still material out
16 there that BellSouth and Southern Bell or whoever
17 produced together, you can still require them to be
18 produced.

19 COMMISSIONER EASLEY: All right. That really
20 gets me to my question: Does the requesting party have
21 to be able to identify those documents or may the
22 requesting party simply say to the Company, "Go on a
23 search and find anything that I think is in that area"?

24 MR. PRUITT: Wait a minute, I have something
25 on that, too.

1 COMMISSIONER EASLEY: They can do that, is
2 that what you're telling me?

3 MR. PRUITT: No, it's not that broad.

4 (Chairman Wilson joins the hearing)

5 COMMISSIONER EASLEY: Mr. Chairman, come on in.

6 CHAIRMAN WILSON: I don't know that I want to.

7 MR. PRUITT: Come on in. (Pause)

8 Commissioner, I found what I'm looking for
9 when you're ready for it.

10 COMMISSIONER EASLEY: I'm ready.

11 MR. PRUITT: A request for all documents and
12 other objects and materials that support an allegation
13 in a pleading has been upheld. I'll give you the case
14 if you want it. But in that case -- I'm trying to
15 speed it up -- the request was broad but the category
16 was limited and definite. "However, requests for all
17 correspondence, instructions, memoranda, orders,
18 sheets, work sheets, books, records, invoices,
19 financial statements including audit reports, memoranda
20 received from internal and independent auditors and
21 employees, balance sheets, profit and loss statements,
22 trial balances, journal and subsidiary ledgers, diaries
23 and other papers of all witnesses, statements to all
24 incident reports and similar broad requests are not
25 proper. The principle correctly stated is: A general

1 and unlimited request is improper, while a broad
2 request in a refined category is proper."

3 If anybody wants the case citations, I'm glad
4 for them to have them.

5 MR. BECK: Commissioner, I think we're
6 getting way off point. There's no objection to our
7 requests as being over-broad, because I think that's
8 what Mr. Pruitt is referring to, that our requests were
9 so broad that they thought it was a fishing expedition
10 or whatever. There's no objection on that basis.
11 They've not objected saying that these items are
12 irrelevant or over-broad, they're simply saying, "We're
13 not going to produce anything responsive by BellSouth
14 Corporation because it's another corporation." That's
15 the only issue that's really before you.

16 COMMISSIONER EASLEY: The only trouble that I
17 see with that is that Mr. Pruitt tells me I can request
18 those documents that are transactional. Now, if the
19 request is for "every document in the possession of
20 BellSouth having to do with," how is that
21 transactional?

22 MR. BECK: It's not just transactional.
23 First of all, the case is not limited in that way.
24 Second of all, the Commission as a whole has done this
25 in the cost allocation docket. It was just very

1 recently that the whole Commission ordered BellSouth
2 Corporation to produce documents responsive to the
3 request. I think the Commission has already determined
4 that you have the authority to do that because you've
5 done it, and it was the whole Commission that did it.

6 That's really -- whether you have that
7 authority or not I don't think is at issue, it's
8 whether you're going to do it or not. And the new
9 statute, Commissioner Easley, goes even further than
10 ever before on giving you authority to order documents
11 in the possession of an affiliate, not just
12 transactional but in the possession of an affiliate.

13 MR. FALGOUST: Commissioner, I think the new
14 statute is, A, limited to the Staff; and, B, limited
15 also to cost allocation. There's nothing to do with
16 cost allocation here. Medivision controls these facts
17 in Southern Bell's opinion.

18 COMMISSIONER EASLEY: Off the record.

19 (Pause)

20 CHAIRMAN WILSON: Let me ask, what is Account
21 Match?

22 MR. BECK: Account Match is a service that
23 would, when you call up a business, that Southern Bell
24 -- and they plan to offer this in 1992, as I understand
25 it -- that would call up whatever database that the

1 business might have on customers. You know, if you
2 called that company, they would say, "Hello, Mr.
3 Wilson, have you enjoyed the product you ordered from
4 us? You know, the Dominos Pizza you ordered last
5 week?"

6 CHAIRMAN WILSON: Spiegel already does that
7 to me.

8 MR. BECK: That's what Account Match is.

9 CHAIRMAN WILSON: The telephone company does
10 that?

11 MR. BECK: They plan to offer it in 1992, I
12 think that's the last thing I recall them saying, it's
13 a system they plan to offer like that. I think they
14 call it Record Retrieval Service is what Southern Bell
15 calls it.

16 Chairman Wilson, one of the things you missed
17 when we went through the documents linking BellSouth to
18 Southern Bell on Caller ID, they're all attached to the
19 motion, I've already argued them.

20 CHAIRMAN WILSON: I'm sorry?

21 MR. BECK: There are a number of documents
22 linking BellSouth specifically on the Caller ID issue.
23 I've gone through them, I have already argued them to
24 Commissioner Easley, I thought you ought to be aware
25 that there are some documents linking BellSouth

1 Corporation. In particular, there's a memo from the
2 Comptroller of BellSouth Corporation addressing it.

3 MR. FALGOUST: Southern Bell has disputed the
4 characterization of Public Counsel on that issue.

5 (Pause)

6 I'm glad I could finally be some help today,
7 Commissioner. (Pause)

8 COMMISSIONER EASLEY: I am prepared to give
9 our ruling (Laughter). And I appreciate the help,
10 believe me. This is our first one, let's make sure I
11 say it right.

12 I'm going to grant in part the Motion for
13 Production and deny in part, and put a condition on or
14 a subsequent condition on production. I will grant the
15 Motion for Production of everything except Account
16 Match and the item listed in 5v, which is "Each service
17 the Company plans to offer," that's something in the
18 future.

19 The restriction then would be that each
20 document produced would be subject to an objection to
21 production -- each individual document would be subject
22 to an individual objection to production if they have
23 grounds. That way, we're not dealing with the
24 universe, we have an opportunity to deal with the
25 documents.

1 MR. FALGOUST: Commissioner Easley, not
2 having the document in front of me, let me make sure I
3 understand it. The motion is granted with respect to
4 everything except Account Match and those services that
5 are planned to be offered in the future?

6 COMMISSIONER EASLEY: It says, "Please
7 provide your business plan for each service, regulated
8 or unregulated, you plan to offer that will or may use
9 Caller ID." I am not granting the motion for that.

10 MR. FALGOUST: Since BellSouth Corporation is
11 a separate company, what time restraints is the
12 Commission going to impose for the conduct of that
13 search?

14 CHAIRMAN WILSON: Let me ask you a question.
15 Are you suggesting that if you as Southern Bell request
16 of BellSouth documents, they're not going to give them
17 to you?

18 MR. FALGOUST: Commissioner, I'm suggesting
19 that they won't give them to me happily. If the
20 Commission orders Southern Bell to --

21 CHAIRMAN WILSON: Well, you won't ever give
22 them to the Commission happily. We're not talking
23 about mood here, we're talking (Laughter) it's when we
24 order you to produce those with gladness.

25 MR. FALGOUST: We have produced transactional

1 documents -- in other words, BellSouth documents in our
2 possession, transactional documents. What Mr. Beck has
3 asked for are documents that are in BellSouth
4 Corporation's possession. We're going to have to ask
5 them to conduct a search, because it's a separate
6 company, it's a parent company.

7 CHAIRMAN WILSON: I appreciate that. But if
8 you're talking about implementing SS7 throughout each
9 of the companies in your system, you are talking about
10 generic offerings of products, regulated products, by
11 the companies; that's an integral part of the
12 technology that's being deployed through the system.
13 In your own testimony that's been presented, in the
14 testimony we've heard thus far this morning have been
15 citing to other states and other data for examples of
16 customer demand or customer response or reactions to
17 this kind of service; and these studies and information
18 have been flowing back and forth, I'm sure, between
19 BellSouth and Southern Bell on how this is to be
20 structured, how it is to be offered, the kind of
21 technology available and the implementation of it --

22 MR. FALGOUST: I'm not sure that's a correct
23 assumption, Commissioner. I think my first response
24 is that services that are going to be offered are not
25 going to be offered by BellSouth Corporation.

1 CHAIRMAN WILSON: I appreciate that.

2 MR. FALGOUST: Secondly, I'm not sure that it
3 is a safe assumption to make that this information has
4 been transported between BellSouth Corporation and
5 Southern Bell. Information is exchanged between
6 BellSouth Services and Southern Bell because it's a
7 subsidiary of Southern Bell created for that purpose
8 and all of those documents have been produced. In
9 addition, documents that BellSouth Corporation did
10 generate -- and there's only one. There's one document
11 from the security officer, and security is set up
12 differently for specific reasons, the BellSouth Vice
13 President in charge of security wrote a memo nine
14 months after the policy of Southern Bell was adopted
15 that commented on what the impact of that policy might
16 be on security.

17 COMMISSIONER EASLEY: The difficulty we have
18 and I share with OPC their frustration in that, without
19 seeing something, there it is, you know.

20 MR. FALGOUST: I appreciate that,
21 Commissioner. The question is really a legal question,
22 and that is, just like the government can't compel your
23 son or daughter to do things on your behalf, I mean,
24 this is a separate legal entity and there are
25 exceptions to that rule.

1 MR. ANTONACCI: And I would like to raise
2 that point, Commissioners, since you're both in here.
3 I would like to know if Mr. Falgoust is speaking on
4 behalf of BellSouth? What he has been ordered to do as
5 counsel for Southern Bell, I assume, he has been
6 ordered to produce documents. As you indicated,
7 Commissioner, all he has to do is take that order up to
8 BellSouth. If they have a beef, Commissioner, you're
9 still here. He's not representing BellSouth.

10 MR. FALGOUST: That's exactly correct, I do
11 not represent BellSouth Corporation.

12 MR. ANTONACCI: Well, he's sitting here
13 raising BellSouth's objections, and along the same
14 lines of the objection that I was raising a few minutes
15 about, about him raising objections on behalf of AT&T.
16 Who does he represent?

17 MR. FALGOUST: That's technically correct but
18 we don't want to put you through this any more than you
19 have to go through it.

20 COMMISSIONER EASLEY: Gentlemen, I'm through
21 it, okay? The ruling stands and we will -- yes?

22 MR. BECK: You didn't give them a date by
23 which to do this.

24 COMMISSIONER EASLEY: A date. Before the --
25 when is the hearing scheduled?

1 MS. GREEN: Today and tomorrow only.

2 CHAIRMAN WILSON: How voluminous is the data,
3 or do you know?

4 MR. FALGOUST: I have no idea.

5 COMMISSIONER EASLEY: He has no idea, there's
6 no way to know.

7 When are the briefs going to be due?

8 MR. BERG: Briefs are due the 11th of
9 January.

10 COMMISSIONER EASLEY: 11th of January?

11 MR. ANTONACCI: If we could have them in time
12 to supplement the appendix, I think that --

13 CHAIRMAN WILSON: If I could make a
14 suggestion, I would suggest a list of what is available
15 now and that can be produced be available by Friday
16 afternoon, and a statement of what can't be available
17 and could be available will be provided at that time,
18 and give an outside date for the actual production.
19 Seems to me that the sooner the parties see this stuff,
20 the better.

21 I think what, and this may be an incorrect
22 assumption, but I'm assuming that a lot of stuff that
23 you're going to see is going to be somewhat redundant
24 to things -- I mean, if we have studies in five
25 different states and we already have two of the states,

1 you're probably going to see a lot of overlap from one
2 to the other. It's going to be cumulative kind of
3 evidence, it may be, but we'll have to see the
4 documents to make that kind of determination.

5 What are we, two weeks from today?

6 COMMISSIONER EASLEY: Two weeks, if you took
7 it to December 15th, I believe, is a Saturday; so if
8 you took it to December 14th, that would put it about
9 midway on the briefs.

10 MR. FALGOUST: I would be glad to -- well,
11 again, I don't represent BellSouth Corporation. I
12 think what we can do is make the request; if they want
13 to come in here and urge, as counsel suggests, their
14 own objection, fine, they'll be back.

15 COMMISSIONER EASLEY: Tell them I want the
16 list of documents they can produce by Friday afternoon,
17 5:00 o'clock. The additional list that you
18 characterized as what?

19 CHAIRMAN WILSON: Of when they're going to
20 produce the balance of it, what the balance of it is
21 and when they're going to produce it. The thing we
22 don't want to do is get in the position where BellSouth
23 waits one month or 15 or 20 days and then objects and
24 says, "We want to argue it in front of the Commission."
25 We want to know immediately whether there's going to be

1 that objection and whether they intend to argue it so
2 there's not further substantive delay.

3 COMMISSIONER EASLEY: Yes, and then the
4 production actually by the 14th of December.

5 MR. FALGOUST: By when?

6 COMMISSIONER EASLEY: The 14th of December,
7 5:00 o'clock Friday afternoon, the 14th of December.

8 MR. BECK: Commissioner, I'd like to ask you
9 to set a hearing sometime after the 14th of December
10 but before the end of the year to review the prejudice
11 that we have experienced from the way you've approached
12 the documents. And that would be a couple of different
13 aspects, one is from the documents that they're going
14 to produce on the 14th, the other is from their late
15 production -- months late production of documents --
16 that we were not able to incorporate into our --

17 MR. FALGOUST: I object to that
18 characterization.

19 MR. BECK: The documents that were only
20 produced Wednesday at 5:00 o'clock, so we can look at
21 what the relief might be. A hearing to explore what
22 has happened, what relief we might get and what kind of
23 prejudice we have experienced.

24 COMMISSIONER EASLEY: Unless my boss here
25 contradicts me, it would be my inclination to take that

1 motion under advisement for review at such time as we
2 have seen the list of documents and we have heard some
3 of the testimony, because there's no way I'm going to
4 schedule a hearing on prejudice when I doesn't know
5 whether any has occurred or not.

6 MR. BECK: Well, I've already got some, and they
7 argued that earlier, and that's the documents we were not
8 able to incorporate into our direct testimony --

9 COMMISSIONER EASLEY: And I believe you ruled
10 we would not deal with prejudice until later? What was
11 your ruling on that?

12 CHAIRMAN WILSON: I think that's what was
13 said.

14 MR. BECK: Yeah, I don't think we can do it
15 until we have all the --

16 COMMISSIONER EASLEY: I'll set a date so that
17 we have the time reserved since it has been requested,
18 but that's as far as I'm willing to go at this moment.
19 The motion will have to be renewed.

20 MR. FALCOUST: Commissioner, may I make one
21 response to that? The characterization by Public
22 Counsel of "late-filed documents" is incorrect.
23 Southern Bell timely objected to his Motion to Produce
24 and Southern Bell even now has not been ordered to
25 produce anything except a list. Southern Bell on its

1 own volition produced the documents themselves.

2 MR. RAMAGE: Mike Ramage, FDLE. In order to
3 preserve the right of FDLE, the Statewide Prosecutor
4 and the Department of Legal Affairs, we are arguing
5 prejudice, we would orally at this time make and adopt
6 the same Motion for Discovery as has been filed by the
7 Office of Public Counsel but would waive production of
8 documents that have already been produced to the Office
9 of Public Counsel because we have been made accessible
10 to those documents. But as a matter of form, if, in
11 fact, there is a requisite that there be a demand for
12 discovery in order to have the standing to argue
13 prejudice, we would make that Oral Motion and Demand
14 for Discovery at this point.

15 MR. FALGoust: It's a little late for that,
16 they've never filed, Commissioner. They've never asked
17 for any documents.

18 CHAIRMAN WILSON: If you want to file
19 discovery, file discovery. If you wanted discovery,
20 you should have filed discovery. I think at this point
21 to make an oral motion like that is to posture
22 yourselves for procedural argument. Am I correct?

23 COMMISSIONER EASLEY: I agree.

24 MR. SHREVE: Commissioner, on your ruling as
25 to the time of the documents, I wonder, we really don't

1 know at this point, is counsel saying they have not
2 discussed this with BellSouth and possibly there has
3 been already a search made by BellSouth? We don't know
4 that. If there has --

5 COMMISSIONER EASLEY: Mr. Shreve, I don't
6 remember hearing that asked or answered.

7 MR. SHREVE: Well, that's what I'm wondering.
8 If there has already been a search made and the
9 documents have been made available, it might change the
10 time frame. I'm sure they must have discussed it with
11 BellSouth.

12 MR. FALGOUST: Once again, as far as I know,
13 there has been no discussion with --

14 COMMISSIONER EASLEY: Mr. Shreve? Counsel,
15 I'm going to interrupt you.

16 Mr. Shreve, the time has been set for Friday
17 afternoon, 5:00 o'clock production -- for the list.
18 The production of documents has been set, I hope I'm
19 right on the date, Friday the 14th of December,
20 whatever that Friday is, at 5:00 o'clock. If there is
21 any -- I'm more concerned about delay. If there is any
22 way that they can provide that list earlier, they are
23 urged to do so. I think that's about as far as I can go.

24 MR. SHREVE: Okay, I just thought you might
25 want that additional information if it's available.

1 COMMISSIONER EASLEY: I understand.

2 MR. FALGOUST: Are the statements that
3 Commissioner Easley made earlier concerning
4 precedential values still applicable to this order?
5 Because I'm not certain for purposes of appeal, for
6 example, I'm not certain of what the basis of the
7 Commission's order is. Does Medivision not apply?

8 COMMISSIONER EASLEY: I don't know that I'm
9 required to rule on Medivision at this point. I'm not
10 going to.

11 CHAIRMAN WILSON: That's a case, right?

12 COMMISSIONER EASLEY: Yeah.

13 CHAIRMAN WILSON: It's not a new service
14 being offered? (Laughter)

15 MR. PRUITT: The ruling speaks for itself.

16 COMMISSIONER EASLEY: Mr. Pruitt advises me
17 that the ruling speaks for itself.

18 MR. FALGOUST: Thank you.

19 COMMISSIONER EASLEY: Is there anything else
20 that we have to do right now?

21 MS. GREEN: Yes. Commissioner, you gave the
22 Temporary Protective Order until 5:00 p.m. today, do
23 you mean until the proceeding is closed today?

24 COMMISSIONER EASLEY: No, I mean the close of
25 business today, 5:00 o'clock today.

1 MS. GREEN: We may be here beyond 5:00
2 o'clock.

3 COMMISSIONER EASLEY: I don't care whether
4 we're here beyond 5:00 o'clock.

5 MS. GREEN: No, I mean for having to
6 interrupt the hearing at some point.

7 COMMISSIONER EASLEY: I mean for Mr. Tye to
8 get in here and deal with it. That's close of
9 business. If we have to interrupt the hearing before
10 5:00 o'clock, which I hope we will have to do, we will
11 do so. Right, Mr. Chairman?

12 CHAIRMAN WILSON: You're ruling at 5:00
13 o'clock that document becomes public absent Mr. Tye
14 having done something?

15 COMMISSIONER EASLEY: That's correct.

16 MS. GREEN: If that's your intent, that's
17 fine. I wasn't sure that was your intent.

18 COMMISSIONER EASLEY: No, that's my intent
19 loud and clear.

20 (Motions Hearing concluded at 1:22 p.m.)

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1 F L O R I D A)
2 : CERTIFICATE OF REPORTER
3 COUNTY OF LEON)

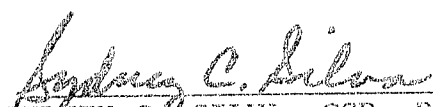
4 I, SYDNEY C. SILVA, CSR, RPR, Official
5 Commission Reporter,

6 DO HEREBY CERTIFY that the Motions Hearing in
7 the captioned matter, Docket No. 891194-TI, was heard by
8 the Florida Public Service Commission Prehearing Officer
9 at the time and place herein stated; it is further

10 CERTIFIED that I reported in shorthand the
11 proceedings held at such time and place; that the same has
12 been transcribed under my direct supervision, and that
13 this transcript, consisting of 43 pages, inclusive,
14 constitutes a true and accurate transcription of my notes
15 of said proceedings; it is further

16 CERTIFIED that I am neither of counsel nor
17 related to the parties in said cause and have no interest,
18 financial or otherwise, in the outcome of this docket.

19 IN WITNESS WHEREOF, I have hereunto set my hand
20 at Tallahassee, Leon County, Florida, this 29th day of
21 November, A.D., 1990.

22 
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