

BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

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In the matter of	:	
Comprehensive Review of	:	
the Revenue Requirements	:	DOCKET NO. 920260-TL
and Rate Stabilization	:	
Plan of SOUTHERN BELL	:	
TELEPHONE AND TELEGRAPH	:	
COMPANY.	:	

PROCEEDINGS: PREHEARING CONFERENCE NO. 1

BEFORE: COMMISSIONER SUSAN F. CLARK  
Prehearing Officer

DATE: Friday, January 8, 1993

TIME: Commenced at 9:30 a.m.  
Concluded at 2:20 p.m.

PLACE: FPSC Hearing Room 109  
Fletcher Building  
101 East Gaines Street  
Tallahassee, Florida

REPORTED BY: JOY KELLY, CSR, RPR  
Official Commission Reporter

DOCUMENT NUMBER-DATE  
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FPSC-RECORDS/REPORTING

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14 behalf of the Commission Staff.

## 15 ALSO PRESENT:

16 ROBIN NORTON, Florida Public Service Commission,  
17 Division of Communications.

18 CAROLYN MASON, Department of General Services.

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P R O C E E D I N G S

(Hearing convened at 9:30 a.m.)

COMMISSIONER CLARK: Angela, do we have a notice we need to read?

MS. GREEN: Yes, ma'am. Are you ready to begin?

COMMISSIONER CLARK: I'm ready.

MS. GREEN: Pursuant to notice this time and place was set for the first prehearing in Docket No. 920260-TL, which is the review of the revenue requirement and rate stabilization plan of Southern Bell Telephone and Telegraph Company.

COMMISSIONER CLARK: Let's take appearances.

MR. ANTHONY: Hank Anthony, Doug Lackey and Nancy White on behalf of Southern Bell Telephone and Telegraph Company.

MS. KAUFMAN: Vicki Gordon Kaufman of the law firm of McWhirter, Grandoff and Reeves, on behalf of the Florida Interexchange Carriers Association.

MR. BELL: Donald Bell of the law firm of Foley & Lardner, on behalf of the American Association of Retired Persons.

MR. MELSON: Richard Melson of the law firm Hopping Boyd Green & Sams on behalf of MCI Telecommunications. Also Michael J. Henry on behalf of

1 MCI.

2 MR. TWOMEY: Mike Twomey, Office of the  
3 Attorney General.

4 MR. SHREVE: Jack Shreve and Charlie Beck,  
5 Office the Public Counsel on behalf of the Citizens of  
6 the State of Florida.

7 MR. NYCE: Peter Q. Nyce, N-Y-C-E, Jr., on  
8 behalf the Department of Defense and the Federal  
9 Executive Agencies.

10 MR. SELF: Floyd R. Self of the Messer,  
11 Vickers law firm, on behalf of McCaw Cellular  
12 Communications.

13 MS. WILSON: Laura Wilson of the Messer law  
14 firm, P. O. Box 1876, Tallahassee 32302, on behalf of  
15 the Florida Pay Telephone Association.

16 MR. DUNBAR: Peter Dunbar; Haben, Culpepper,  
17 Dunbar & French, 306 North Monroe, Tallahassee, on  
18 behalf of the Florida Cable Television Association.

19 MR. BOYD: Everett Boyd of the Ervin, Varn,  
20 Jacobs, Odom & Ervin law firm of Tallahassee, and  
21 Chanthina Bryant on behalf of Sprint.

22 MR. TYE: Michael W. Tye, 106 East College  
23 Avenue, Suite 1410, Tallahassee, Florida 32301,  
24 appearing on behalf of AT&T Communications of the  
25 Southern States, Inc.

1 COMMISSIONER CLARK: Angela, before you make  
2 an appearance.

3 MS. GREEN: May I enter any appearance?

4 COMMISSIONER CLARK: Yes.

5 MS. GREEN: Angela B. Green on behalf of the  
6 Commission Staff.

7 And, Commissioner Clark, I wanted to let you  
8 know that I received a telephone call this morning  
9 regarding the Florida Consumer Action Network, who is  
10 not able to appear today. Counsel for them, Mr.  
11 Hendrickson, I believe is his name, also works for the  
12 Public Defender's Office and he is at the jail right  
13 now, with some clients. (Laughter) He has indicated  
14 that he discussed this situation with Public Counsel,  
15 who will be conveying information to him if that meets  
16 with your approval.

17 COMMISSIONER CLARK: That's fine. Also, Mr.  
18 Wiggins is due here shortly, and he'll make appearance  
19 then.

20 MS. MASON: Doug Metcalf, representing Ad  
21 Hoc. He can't get out of Orlando this morning. He's  
22 been flying around for a hour and a half and has just  
23 landed in Orlando. So, Mr. Dickens is supposed to be  
24 here. He's meeting Doug at the airport, so he should  
25 be here any minute.

1 COMMISSIONER CLARK: And it's Ben Dickens,  
2 representing Ad Hoc? Okay.

3 Angela.

4 MS. GREEN: Yes.

5 COMMISSIONER CLARK: Did you make an  
6 appearance?

7 MS. GREEN: Yes, I did.

8 COMMISSIONER CLARK: And no legal advisor?  
9 (Laughter) It's okay with me.

10 MS. GREEN: It was my understanding that  
11 that's the way it was to be this morning.

12 COMMISSIONER CLARK: Okay.

13 MS. GREEN: Also appearing in this matter  
14 with me from time to time will be Tracy Hatch and  
15 Patrick Lee Thomas, also of the Commission Staff.

16 COMMISSIONER CLARK: Okay. I don't have any  
17 script for the rest of this proceeding. Angela, do you  
18 have a recommendation as to how we proceed and what we  
19 have to take care of today?

20 MS. GREEN: There are a number of ways that  
21 you could proceed. It's strictly a matter of how you  
22 would like to do it.

23 We had a pre-prehearing. I believe all the  
24 folks that I see here today, maybe with the exception  
25 of one, were at that pre-prehearing. They have been --

1 all had copies of the draft Prehearing Order for a few  
2 days. We had discussions at that pre-prehearing  
3 regarding the items that we believed needed to be  
4 resolved before the hearing begins.

5 As you are aware, there will be a second  
6 prehearing conference next Friday, January the 15th, at  
7 9:30 in this same location, so that will be the  
8 opportunity to resolve any other matters that may  
9 remain pending at that time.

10 Several things that we had hoped to get  
11 accomplished today would be to set some type of order  
12 for the witnesses in this proceeding. That's something  
13 that we all discussed at the prehearing. Staff either  
14 has or will distribute some documents setting forth a  
15 possible scenario for that. We have been working on  
16 that.

17 We also had some issues we discussed  
18 stipulating or dropping that we need to go through, and  
19 then it might be good to just start out with, I think,  
20 an overview of where we're at. And, unfortunately, I  
21 haven't had a chance to talk to you this morning, so  
22 I'm not sure if you even know about the recommendation  
23 that the Staff has filed in this matter.

24 So, that may be as good a point to start as  
25 any, because that basically deals with two pending

1 motions for review by the full Commission of your  
2 procedural orders. And my recollection of how our  
3 recommendation goes is basically nothing will have  
4 changed.

5 It seems to me that you can rule on any or  
6 all of the motions that are ripe for disposition,  
7 because there's nothing in here -- if this Commission  
8 adopts this recommendation, there is nothing in here  
9 inconsistent with anything you have done thus far.

10 COMMISSIONER CLARK: So it's your  
11 recommendation that we start with the motions that are  
12 ripe for consideration?

13 MS. GREEN: I think we need to do that.

14 COMMISSIONER CLARK: Okay.

15 MS. GREEN: Because there are a lot of people  
16 who are not sure what we need to do next, if this  
17 person is going to testify or not and that type of  
18 thing.

19 COMMISSIONER CLARK: All right.

20 What motion do you want me to start with?

21 MS. GREEN: I think we need to first discuss  
22 the outstanding motions to compel discovery. It seems  
23 a lot of things are very pivotal on those.

24 COMMISSIONER CLARK: Let me just stop a  
25 minute.



1 Mr. Beck, why don't you direct the motion.  
2 You have most of the motions to compel; is that right?

3 MR. BECK: Yes, I believe that's true.

4 COMMISSIONER CLARK: Why don't you decide the  
5 order and let's take them up as you think they need to  
6 be decided.

7 MR. BECK: I'll just go chronologically.

8 COMMISSIONER CLARK: All right. Good.

9 MR. BECK: Commissioner, do you want me to  
10 start addressing the motions?

11 COMMISSIONER CLARK: I think you better tell  
12 me the title.

13 MR. BECK: Citizens First Motion to Compel  
14 and Request for In Camera Inspection of Documents.

15 COMMISSIONER CLARK: Okay.

16 MR. BECK: It was filed May 8th, 1992. It  
17 also has a supplement entitled, "Citizens' Supplement  
18 to Their First Motion to Compel and Request for In  
19 Camera Inspection of Documents," that was filed June  
20 2nd 1992.

21 COMMISSIONER CLARK: All right. Did you get  
22 any resolutions of those things you compelled  
23 production of?

24 MR. BECK: No.

25 COMMISSIONER CLARK: Let me see this. In

1 your Motion for Review of Additional Order on  
2 Prehearing Procedure, filed November 23rd, this is the  
3 one you list first as a Motion to Compel dispute over  
4 definitions, documents withheld under claim of  
5 relevancy, objections based on work product privilege,  
6 request in camera inspection of documents withheld.  
7 That's the one I'm dealing with.

8 MR. BECK: Yes. And there's two separate  
9 pleadings. There's a motion filed May 8th, and there  
10 is a supplement filed on June 2nd, 1992.

11 COMMISSIONER CLARK: All right. Now, Staff,  
12 it was my understanding that these were taken care of.  
13 And that appears to be an error.

14 MR. THOMAS: To which request or motion are  
15 you referring?

16 COMMISSIONER CLARK: I'm talking about the  
17 first motion filed on May 8th. (Pause)

18 They were not taken care of by me, but I had  
19 understood the Staff had a telephone conversation with  
20 you about whether or not they had been resolved. I may  
21 be in error.

22 MS. GREEN: All right. We have a set of  
23 notes that we don't have with us that Mr. Hatch just  
24 went to get. But my recollection of this motion is  
25 that this is the one that deals with the privileged

1 matter, and it requests discovery of matters that are  
2 identical to pending discovery requests that are under  
3 dispute in the investigation docket, the duplicative  
4 request. And to the extent that it is identical, if  
5 that in is my recollection, and that discovery is being  
6 pursued in the other dockets, and you have ruled that  
7 we are not going to hear it twice, that is, I think the  
8 use of the term "taken care of," which is not totally  
9 accurate. It's duplicative.

10 COMMISSIONER CLARK: Okay. Mr. Beck, the  
11 discovery that you're requesting in this motion, is it  
12 identical, substantially similar to the request in the  
13 other dockets?

14 MR. BECK: Only in part, because there is a  
15 number of different items addressed by the motion and  
16 its supplement. Let me address the supplement first.

17 The supplement goes to a number of audits  
18 that Southern Bell has objected to providing. Among  
19 them, and one I'd like to focus on, is an audit of the  
20 Schedule 11 reports that Southern Bell submits to this  
21 Commission.

22 COMMISSIONER CLARK: Is that also the one for  
23 which you are requesting penalties be imposed?

24 MR. BECK: Well, it relates to that, yes. It  
25 relates to that.

1 COMMISSIONER CLARK: Okay.

2 MR. BECK: Now, there's other audits also,  
3 but this is the -- the Schedule 11 audit, I think, is  
4 the one that is so directly relevant to the matters  
5 that are going to hearing January 25th.

6 COMMISSIONER CLARK: And these are the ones  
7 for which they claim an attorney-client privilege.

8 MR. BECK: That's correct. The Schedule 11  
9 audit are audits of the reports that they submit to the  
10 Commission on the quality of service. For example, it  
11 tells what percentage of out-of-service lines are being  
12 repaired within 24 hours, and a whole slew of others.

13 Commissioner, we need the ruling on this  
14 motion now, and we needed it earlier. Quality of  
15 service is at issue in this case, and that is going to  
16 hearing January 25th. The issue of a penalty for  
17 quality of service is at issue in this case, and that  
18 is going to hearing January 25th. We have issues on  
19 the incentive plan, what are the good or the positive  
20 and the negative aspects of the incentive plan.

21 Staff has filed testimony on Bell's quality  
22 of service. And, specifically, Staff witness McDonald  
23 has referred to the reports that Southern Bell files  
24 with the Commission. We need this information in order  
25 to be able to cross examine the Staff witness. We need

1 this information in order for us to be able to file  
2 testimony addressing the quality of service issue  
3 that's going to hearing January 25th.

4 Now, I could go through in more detail, and  
5 Ms. Richardson, who is also working on the case, can go  
6 in greater detail there.

7 COMMISSIONER CLARK: I want to know what is  
8 still outstanding, what we need to resolve, and is it  
9 just the Schedule 11 --

10 MR. BECK: No.

11 COMMISSIONER CLARK: -- Audit?

12 MR. BECK: No. There's four separate audits.

13 And so far I've only addressed the supplement to the  
14 first Motion to Compel.

15 COMMISSIONER CLARK: Okay.

16 MR. BECK: So there's four separate audits  
17 there that need to be addressed.

18 COMMISSIONER CLARK: Under your Motion to  
19 Compel filed May 8th; is that right?

20 MR. BECK: And it's supplement. And let me  
21 mention how that came about with the supplement.

22 One of the request for production of  
23 documents that was sent to Southern Bell on March 20,  
24 1992, asked for all their audits or internal audits.  
25 Southern Bell came back and objected on privilege but

1 didn't tell us what audits they were that they were  
2 objecting to.

3           After we filed our Motion to Compel, Southern  
4 Bell responded and gave us a list of the audits that  
5 they did not provide. In that list we learned for the  
6 first time that Southern Bell had conducted an audit of  
7 its Schedule 11 reports. The list indicated that the  
8 audit had significant adverse findings, which is the  
9 worst type of result you can get in an internal audit.  
10 It was at that point that we proceeded to file the  
11 supplement for the Motion to Compel, because it wasn't  
12 until that point that we knew that there was an audit  
13 of their quality of service reports, with significant  
14 adverse findings, that they had withheld.

15           Now, the first motion itself goes to a number  
16 of matters. It goes to them not producing documents in  
17 the possession of the parent corporation, BellSouth  
18 Corporation.

19           COMMISSIONER CLARK: That's still at issue?

20           MR. BECK: Yes. It goes to definitions of  
21 "you" and "your," definitions of "document" that are in  
22 our discovery request. I've already gone through them  
23 in detail in the written pleadings. But, basically,  
24 the problem is Southern Bell comes back with general  
25 objections to our request.

1 I have no idea what they have withheld or  
2 what they have withheld based upon those general  
3 objections. We need rulings from you on these  
4 definitions and the other matters so that it's clear  
5 that they have produced the documents that are  
6 responsive to the requests.

7 With regard to BellSouth Corporation  
8 documents in their possession, this is a matter that's  
9 at issue in a number of the motions to compel that we  
10 have, which, I guess, we'll get to later this morning.

11 Just very briefly, BellSouth Corporation is  
12 basically funded by ratepayer funds. Southern Bell's  
13 Florida regulated customers pay tens of millions of  
14 dollars to help fund BellSouth Corporation. Southern  
15 Bell feels they shouldn't have to produce any documents  
16 that are in the possession of BellSouth Corporation.

17 We have been through this numerous times  
18 before. The Commission in the incentive plan case that  
19 preceded this one ultimately ruled with us for the  
20 parent corporation to produce documents. We had to  
21 have -- in that case it was done -- the orders were  
22 done late, and we had to have a supplemental hearing to  
23 address the documents that were produced after hearing.  
24 We have had this happen in Caller ID, where the same  
25 thing happened there. The Commission has ordered the

1 company to produce the documents in possession of the  
2 parent corporation.

3 COMMISSIONER CLARK: Mr. Beck, do you have a  
4 listing of the specific items which were not responded  
5 to?

6 MR. BECK: It's their objection. They have,  
7 I think, if I recall correctly, they have a general  
8 objection; simply to all requests to producing  
9 information in the parent corporation's possession.

10 Now, the actual document request, I think,  
11 had over 30 document requests. And, basically, we  
12 consider this one our most fundamental type of  
13 discovery. You know, it asks for variance reports; any  
14 documents that evaluate the variances of income between  
15 budgeted and actual. Those are the types of basic  
16 discovery that you use to try to get more information  
17 about the test year. I think it's highly likely, at  
18 least in my opinion, that the parent corporation would  
19 have such documents since they own the subsidiary  
20 corporation and would be reviewing their income and  
21 seeing what types of variances there have been.

22 COMMISSIONER CLARK: Nothing in your -- you  
23 have had -- everything that you have filed a Motion to  
24 Compel on May 8th and supplemented to that remains  
25 outstanding?



1 MR. BECK: Well, as far as the motions go.  
2 They have produced some documents. You know, we've  
3 reviewed a lot of documents at Southern Bell. The  
4 motion goes to those things they've objected to.

5 COMMISSIONER CLARK: Do you have a list of  
6 those things that remain outstanding?

7 MR. BECK: Everything in the motion. You  
8 mean by document request?

9 COMMISSIONER CLARK: Yeah. I want to know  
10 specifically those items that have been requested and  
11 not produced. Because it was my understanding that  
12 some things had been produced or were related to  
13 another docket.

14 MR. BECK: Commissioner, the difficulty of  
15 answering that is they have a general objection section  
16 in their responses. And in that general objection they  
17 said, "We're not going to produce anything in the  
18 possession of the parent corporation." That applies to  
19 every request we give them. And I don't know what  
20 documents they have withheld based on that objection.  
21 I think the only answer I could give you is it's every  
22 request we have, because we don't know what they have  
23 withheld. They simply apply that objection to every  
24 request.

25 COMMISSIONER CLARK: Well, let me ask

1 Southern Bell to respond to that.

2 MS. WHITE: Yes, Commissioner Clark.

3 Southern Bell does put in a general objection when it  
4 answers Public Counsel's production of document request  
5 concerning a couple of things.

6 One is the inclusion of BellSouth Corporation  
7 as a party to the proceeding. BellSouth  
8 Telecommunications, Southern Bell has produced all of  
9 BellSouth Corporation documents that it has in its  
10 possession and that we could find in a good faith  
11 reasonable search. We have not specifically searched  
12 the files of BellSouth Corporation.

13 The reason we put this objection in there --  
14 there are a couple of reasons. One, is that under the  
15 provisions of the case of Medivision of East Broward  
16 County v. the Department of Health and Rehabilitative  
17 Services, in order to get to the documents of the  
18 parent company, Public Counsel has to prove that the  
19 parent company and Southern Bell acted as one for the  
20 purposes of the subject of the specific discovery  
21 request. They have not done that.

22 The other reason that this general objection  
23 is put in our response is because Southern Bell in  
24 Florida has several thousand employees. It has several  
25 thousand employees in its headquarters bureau. We have

1 produced hundreds of thousands of pages of documents  
2 and discovery requests in this docket, and we put that  
3 in there as a precaution. We make a good faith  
4 reasonable search for responsive of documents to Public  
5 Counsel's request, but we cannot guarantee that one  
6 slip of paper out of hundreds of thousands of pages is  
7 going to be missed. So to protect ourselves we do make  
8 this general objection for that reason also.

9           Another general objection that Southern Bell  
10 makes is Public Counsel's definition of the term  
11 "document." We find it overbroad under the terms of  
12 the case of Caribbean Security Systems versus Security  
13 Control Systems. I mean, if you look at the definition  
14 of "document" that he uses in his production of  
15 document request, I mean it's everything: Any written,  
16 recorded film, graphic matter, whether produced this  
17 way or that way. Again, we make a good faith  
18 reasonable effort search for all responsive documents  
19 to his request and we give them to him. But we put  
20 this objection in there, again, as a protection because  
21 there's, you know -- of the hundreds and thousands of  
22 pages there is always that chance that one slip of  
23 paper, unbeknownst to anybody who is searching, is  
24 going to be out there.

25           There is another general objection that

1 Southern Bell makes to the production of document  
2 request, and this has been upheld by the Commission on  
3 several occasions, and that is the position that we do  
4 not include any documents that have -- let me take that  
5 back. We remove from documents information that  
6 pertains to other states in the BellSouth  
7 Telecommunications region. Every document we give has  
8 Florida information on it. If that document has  
9 information from North Carolina, or Mississippi or  
10 Georgia, we remove that state's information. And the  
11 Commission has found that other state's information is  
12 irrelevant under Orders 19681 and 19685, plus on many  
13 other occasions.

14 We also remove any information that deals  
15 with deregulated businesses, over which the Commission  
16 does not have jurisdiction. We feel that that's not  
17 relevant to this proceeding, and the Commission has  
18 agreed with that in an Order 19420. And, again,  
19 they've agreed with that on other occasions as well.

20 Those are the general objections that  
21 Southern Bell does put in many of its responses to  
22 production of document requests, particularly those of  
23 Public Counsel, because they are so voluminous, and so  
24 broad, that, you know, as I said, I believe that at  
25 last count it's close to a million pages of documents

1 that have been produced by Southern Bell in this docket  
2 so far on discovery.

3 As to -- on the first Motion to Compel, and  
4 those general objections, by the way, are common to all  
5 of Public Counsel's motions to compel, or our responses  
6 to Public Counsel's Motion to Compel.

7 On the specific issue of the first Motion to  
8 Compel, we have provided -- Public Counsel asked for  
9 all internal audits relating to a specific time period.  
10 We provided all of those audits but four on which we do  
11 claim an attorney-client, attorney-work product  
12 privilege.

13 With regard to these audits, these four  
14 audits were specifically requested, or ordered to be  
15 done by the Legal Department of Southern Bell. And  
16 under Upjohn v. U.S., we believe that they constitute  
17 attorney-client communications.

18 They involved legal advice sought from  
19 counsel with regard to the Company's compliance with  
20 Commission rules, as well as legal advice concerning  
21 lawsuits. The audits were made in confidence. They  
22 had a very limited distribution. They were performed  
23 at the specific request of the Legal Department. They  
24 were not done in the ordinary course of business. They  
25 were not routine audits. There's an affidavit that

1 we've attached to our response to Public Counsel's  
2 first Motion to Compel from the internal auditing  
3 manager which specifically states that these audits  
4 would not have been performed --

5 COMMISSIONER CLARK: Ms. Johnson?

6 MS. WHITE: Yes, Shirley Johnson. That they  
7 would not have been performed without being at the  
8 direct request of the Legal Department.

9 In addition, we also claim the work product  
10 privilege on these. Hickman v. Taylor and Surf Drug,  
11 specifically state that investigative materials  
12 prepared in anticipation of litigation by an attorney  
13 or an employee investigator are protected. The only  
14 way that that privilege is overcome is if the  
15 opposition can make a showing of need or inability to  
16 obtain the same information without undue hardship.  
17 Again, as Shirley Johnson's affidavit shows, she went  
18 into the method of how she conducted these audits.

19 COMMISSIONER CLARK: What were these audits  
20 of?

21 MS. WHITE: Well, there was an audit on the  
22 Schedule 11 reports.

23 COMMISSIONER CLARK: They were a audit to  
24 determine whether or not the Commission's rules had  
25 been complied with; is that correct?

1 MS. WHITE: That's correct.

2 COMMISSIONER CLARK: Well, how about if I  
3 order you to do such a audit? You can give me what  
4 your attorney did or you can do it again.

5 MS. WHITE: Well, that's one of the points  
6 that is --

7 COMMISSIONER CLARK: Well, it seems to me as  
8 a Commissioner, or the Commissioner could have asked  
9 you for the exact same audit. If we wanted you to  
10 verify that, in fact, your Schedule 11 information was  
11 correct, could we order the same audit?

12 MR. WHITE: I would assume that that would be  
13 in the power of the Commission.

14 COMMISSIONER CLARK: And it would be your  
15 choice to conduct the audit again or use one you have  
16 already done.

17 MS. WHITE: I believe so.

18 COMMISSIONER CLARK: That causes me somewhat  
19 of a dilemma as to how the attorney-client privilege  
20 applies in this case. Because if I can order you to do  
21 it, because I need to know or we have a suspicion that  
22 the Schedule 11 information is not correct, then it  
23 seems to me that I can require you to do that.

24 MR. ANTHONY: Commissioner Clark, if I might,  
25 Hank Anthony, on behalf of Southern Bell. That

1 basically has been our position throughout the series  
2 of motions to compel, that Public Counsel is free to  
3 get the underlying data and to perform the same sort of  
4 investigation Southern Bell has. But what Public  
5 Counsel is not entitled to is to get the actual work  
6 performed by Southern Bell.

7 In this particular instance for example, it  
8 goes beyond this particular audit. If we were to give  
9 you this one audit as you suggest, then we've waived  
10 the privilege. If we waive the privilege as to this  
11 audit, we've waived the privilege to our entire  
12 investigation, and the Company simply is not in a  
13 position to be able to do so. It's entitled to that  
14 privilege. It's a fundamental concept of American  
15 jurisprudence that we are entitled to the  
16 attorney-client privilege. The Company has conducted  
17 an investigation, but there is nothing that would  
18 prohibit, over the last year and a half, Public Counsel  
19 duplicating the efforts that Southern Bell has made and  
20 presenting that evidence to you. What we have objected  
21 to is their using the fruits of our labors and our  
22 interpretations --

23 COMMISSIONER CLARK: Let's assume Public  
24 Counsel hasn't asked for it, that the Commission has  
25 reason to believe that your Schedule 11 information



1 provided to us is inaccurate for any reason, and we  
2 direct you to conduct a audit to determine the accuracy  
3 of your Schedule 11 audits. You can use what you've  
4 already done or you can do it again.

5 MR. ANTHONY: Yes, ma'am. But what you  
6 cannot do is order us to waive a privilege that is  
7 validly enacted and we're entitled to assert. And if  
8 you were to order us to take that choice, we would have  
9 to go out and redo the audit.

10 Now, you'd be entitled up to a point to get  
11 that. I don't know how far. I haven't thought about  
12 it in those terms,; how far you could order us to do  
13 things. But I don't think we would say you're not  
14 entitled to ask us to do an audit in the first place.  
15 But what can't be done is to order us to release a  
16 privileged audit or any other privileged document.

17 COMMISSIONER CLARK: Well, what about a  
18 request for admission, a request for you to make a  
19 statement, as a company, that the information filed in  
20 our Schedule 11 reports from the time period in  
21 question are correct?

22 MR. ANTHONY: I suppose it would depend on  
23 what the request for admission would say, and,  
24 honestly, I haven't thought it. Maybe you could; maybe  
25 you couldn't. I don't know. I haven't thought about

1 it in those terms. But to get the actual underlying  
2 work product -- the data that goes into this privileged  
3 material is not privileged. And anybody who has the  
4 right to discovery can ask us for that data, and we can  
5 provide that. It's a sample. It doesn't require  
6 somebody to go in and look at every piece of paper  
7 that's in there, unlike some of the discovery requests  
8 that have been made to us, and that gets at some of the  
9 later motions. But they can duplicate it.

10 We've provided the information on how this  
11 audit was performed. Nothing would have prevented  
12 Public Counsel from coming back and duplicating this  
13 audit, and then drawing their own conclusions. And  
14 then we can argue to the Commission whether their  
15 conclusions are correct or not. But what they can't do  
16 is circumvent that process and come in and simply ask  
17 for this privileged material. We're not trying to hide  
18 anything from the Commission. We're not trying to hide  
19 anything from the public. We're simply saying that  
20 they have to do the work themselves because they can't  
21 invade the privilege.

22 COMMISSIONER CLARK: Okay.

23 MR. BECK: May we respond? Ms. Richardson  
24 will address the privilege and I need to address some  
25 other things other than privilege matters.

1 MR. RICHARDS: I'm Sue Richardson on behalf  
2 of the Office of Public Counsel.

3 I think first of all to address this question  
4 of privilege is that Southern Bell has just simply  
5 concluded they have a privilege. They have a burden of  
6 proof before this Commission to prove that the  
7 privilege applies.

8 Upjohn v. United States is a federal case law  
9 statement of privilege. Under federal law, under the  
10 Evidence Code of privilege, the federal courts have  
11 adopted the common law definition of privilege for  
12 attorney-client and other privileges. In the state of  
13 Florida the Legislature has mandated what  
14 attorney-client privilege means under Section or  
15 Chapter 90. Under Chapter 90 corporations do have  
16 attorney-client privilege, but "client" is not defined.  
17 So just to take wholesale the U. S. Supreme Court  
18 decision in Upjohn and say it applies in Florida is not  
19 necessarily so because the basis for the privilege is  
20 different.

21 MS. RICHARDSON: So my first assertion is  
22 that Southern Bell has not proven that the  
23 attorney-client privilege applies to this material.  
24 They must first show that it was produced by client,  
25 that it was a communication between the client and

1 in-house attorneys, that it was made in confidence,  
2 that it was kept in confidence.

3 COMMISSIONER CLARK: You're talking about  
4 privilege now, not the work product or are they the  
5 same thing?

6 MS. RICHARDSON: I can address work product  
7 also.

8 COMMISSIONER CLARK: No, finish. I just want  
9 to be clear. You're talking about privilege.

10 MS. RICHARDSON: Just privilege. Also, they  
11 must show that the privilege material, if it is  
12 privileged, has been kept in confidence.

13 Some discovery that we have done in depositions  
14 that we have done indicates that this information had a  
15 broader dissemination than Southern Bell has indicated.  
16 Broader within the context of the corporation itself. It  
17 has been disseminated to the Personnel Department,  
18 personnel human resources managers have disseminated it  
19 down the chain, not necessarily the actual documents  
20 themselves but information and summaries from the  
21 documents. And I think if you look at Southern Bell's  
22 response to our eighth Motion to Compel, you'll see some  
23 fact information regarding that dissemination.

24 This also, summaries of the summaries then  
25 were used to discipline a number of managerial

1 employees. So how far does the confidence rule stretch  
2 on this?

3           The next one then is waiver. Attorney-client  
4 privilege can be waived by disclosure of the  
5 information. How limited a disclosure, how broad a  
6 disclosure, how much waiver. Personnel department  
7 notes that were summaries of some of this claimed  
8 privileged information have been produced to Public  
9 Counsel. We assert that that is now a public record,  
10 although there is a request for confidentiality, I  
11 think, or some such treatment by Bell into the  
12 Commission on those particular documents.

13           So we've asserted that not only: one, are  
14 these personnel notes public records, but now that has  
15 waived the privilege to the underlying information.

16           So, first of all, I think Southern Bell must  
17 prove that the attorney-client privilege even applies  
18 under Florida Statutory law. I think they've got that  
19 burden. I don't believe they have met it.

20           The second part of my presentation on privilege  
21 is one that I think you've broached, Commissioner Clark,  
22 and that is one of privilege in the context of this  
23 Commission's proceedings as opposed to the broader civil  
24 court context within the state of Florida.

25           Southern Bell is a monopoly. As a monopoly,

1 it enjoys a unique position as a corporation in this  
2 state. As part of that unique position, it has the  
3 right and opportunity to provide a monopoly service to  
4 the ratepayers of this state. And in return for that,  
5 this Commission has been given broad investigatory  
6 authority to determine that the rates and services  
7 maintain an efficient and top quality of service, so  
8 that customers get what they're paying for.

9 Now, in those terms then, the policy argument  
10 that I want to make is that since the Commission has  
11 such broad investigatory policy or powers, that the  
12 attorney-client privilege should be very narrowly  
13 applied in Commission proceedings.

14 As you pointed out, the Commission could just  
15 order the Company to do this audit or to redo the  
16 audit. So "client" for the purposes of this  
17 Commission's proceedings should be very narrowly  
18 defined to only those managerial group of people within  
19 the Company who have the authority to invoke and/or  
20 waive the attorney-client privilege; not to every  
21 employee; not to every auditor; not to every system's  
22 staff person that has had some information disseminated  
23 to him or her based upon this audit information; not to  
24 every craft person who may have heard of some of this  
25 information disseminated through the personnel ranks to

1 them.

2           So I believe that under public policy argument  
3 I'm bringing out, I think the client definition and the  
4 proof for client is really the burden of Company and I  
5 don't believe they have shown that.

6           COMMISSIONER CLARK: Let me ask Staff: These  
7 four audits also are the subject of a Motion to Compel  
8 in the other docket or dockets?

9           MR. HATCH: It's my belief that they are. I  
10 believe there is some question as to the Schedule 11,  
11 but clearly that is an issue in the other dockets.

12           COMMISSIONER CLARK: Okay.

13           MS. RICHARDSON: Actually, Commissioner,  
14 there are five audits. Southern Bell failed to  
15 disclose their audit of their -- their 1991 audit of  
16 their operational review in Attachment A to their  
17 response to our first motion in this case. When we  
18 discovered that through deposition of Ms. Johnson,  
19 their internal auditor, we immediately requested it in  
20 910163, and I believe Staff has also requested that  
21 fifth audit. Southern Bell has claimed that that fifth  
22 audit is also privileged information.

23           COMMISSIONER CLARK: Okay.

24           MS. RICHARDSON: I can address work product  
25 now if you'd like.

1           COMMISSIONER CLARK: Go ahead.

2           MS. RICHARDSON: Again, I believe that the  
3 Company, under case law and Florida law, the Company  
4 has the burden of proof that these audits are covered  
5 by the attorney work product doctrine. The work  
6 product doctrine is not statutory, it is under the  
7 Florida Rules of Civil Procedure. So it is a judicial  
8 doctrine rather than a statutory privilege. It was  
9 designed to protect an attorney's mental processes, his  
10 legal strategies, his theories, any advice she may give  
11 a client.

12           So the work product privilege was designed by  
13 courts, instructed by courts. It started off with Hickman  
14 v. Taylor, in the U.S. Supreme Court decision in 1947, to  
15 protect one attorney from taking information and the work,  
16 basically the sweat-of-the-brow, of the other attorney in  
17 forming the case. It was never intended to hide the facts  
18 at issue from either of the parties.

19           Florida Civil Procedure 1.280 mandates a very  
20 liberal discovery policy. Since liberal discovery is  
21 the general rule, then anything that prevents liberal  
22 discovery is an exception to that rule and should be  
23 very narrowly construed. So the work product privilege  
24 is very narrowly applied, both in a civil context and  
25 then I would argue a reference also within the context



1 of a regulatory authority.

2           Taking that into consideration as what I  
3 believe to be the standard, I don't believe that  
4 Southern Bell has shown that these audits and this  
5 information is attorney work product. I believe you  
6 will see in some of their responses that these audits  
7 contain factual information.

8           In my deposition of Ms. Johnson, she indicated  
9 that there were a team of auditors, a team of systems  
10 analysts, individuals involved, there were some staff  
11 network people and statisticians involved in preparing  
12 these five audits. It took these individuals  
13 approximately seven months to produce these five audits.  
14 These individuals, within that period of time, produced 27  
15 large binders of information that comprise these five  
16 audits according to Ms. Johnson's deposition.

17           I do not believe that the factual information  
18 that is contained in these audits are attorney-client  
19 work privilege. If they are shown to be, if Southern  
20 Bell proves them to be to your satisfaction or to this  
21 Commission's satisfaction, then that privilege in  
22 Florida can be overcome for fact work product on the  
23 basis of need, a citizen's showing of need, and an  
24 undue hardship of obtaining substantially similar  
25 information from another source.

1 All right, based upon the information I've  
2 just briefly outlined in terms of the length, the  
3 number of people involved, let me also explain to you  
4 the systems involved.

5 According to Ms. Johnson's affidavit, for  
6 these five audits, or at least four of these audits,  
7 the Company's system, which she refers to as MTAS,  
8 Mechanized Trouble Analysis System, is a computer  
9 system that is run off an interrelated linkage of  
10 systems within their entire computer program format.  
11 Southern Bell knows their system much better than I do.  
12 I'm just trying to give you gloss of what I think  
13 happens.

14 It begins when a customer calls in, makes a  
15 trouble report. What they have is a loop maintenance  
16 operation system, which is an audit; they have also  
17 audited that system. We've requested that.

18 COMMISSIONER CLARK: Let me interrupt you for  
19 one minute. Is it Public Counsel's position that these  
20 audits not only relate to the matters at issue in the  
21 other three dockets, but that because Schedule 11 is  
22 your quality of service information, and it relates to  
23 errors in that, it is the quality of service issue that  
24 I have said remains in this docket?

25 MR. BECK: Yes, Commissioner Clark. We

1 needed to address the quality of service issue and the  
2 incentive regulation issue because we believe the  
3 quality of service relates to the incentive issue. We  
4 need it in order to file testimony on that. We need it  
5 in order to cross examine the Company. We need it in  
6 order to cross examine the Staff witness who refers to  
7 these reports.

8           COMMISSIONER CLARK: And necessarily any  
9 decision I would make on discovery or not discovery  
10 would be -- the other Prehearing Officer would be hard  
11 pressed to say -- to rule in the opposite directions,  
12 so you need the same ruling in both dockets.

13           MR. SHREVE: Commissioner, we're dealing with  
14 a rate case docket here with discovery before this  
15 Commission and we deserve a ruling on it.

16           I'd like to very briefly address the  
17 situation we have here. And I'm sure Counselor White  
18 is not familiar with it as you and I may be because she  
19 wasn't involved in that last case.

20           She referred to information that's been  
21 deleted by Southern Bell out of Bell documents and  
22 allocations to other states. You and I know that we  
23 went through this same thing in the last rate case and  
24 actually got a ruling at the hearing, at the final  
25 hearing. And when that happens, there is no due

1 process allowed to the parties.

2           You need the discovery. You need to get it  
3 -- now Bell has the opportunity and the right, the  
4 right to come in and take the positions they are  
5 taking. We have the right to have rulings and to get  
6 the discovery that we are successful in obtaining.  
7 Whether there is a motion pending in another docket has  
8 nothing to do with the ruling in this docket. I'm sure  
9 you'd like to have the same ruling, and perhaps you  
10 will, but that doesn't have anything to do with whether  
11 or not we're entitled to it at this point.

12           We need the information, not just the  
13 rulings, but the information or the opportunity to go  
14 after the information, if you rule with us. Because if  
15 you rule against us, we're going to go and appeal it  
16 and ask for reconsideration. If you rule with us, I'm  
17 sure they are going to do the same thing. We're both  
18 entitled to those rights.

19           The Legislature actually changed some wording  
20 in the statutes having to do with the prohibition  
21 against us getting that BellSouth information last time  
22 that has already been deleted and alluded to by her as  
23 to taking it out of the other states. It's a brand new  
24 argument because that argument was that that is  
25 relevant to rates, and that's changed.

1           At this point, I don't even know how you're  
2 going to have a prehearing conference without the  
3 information that's been requested in the discovery much  
4 less go forward with the hearing. I'm sorry to take  
5 this much time, but if we're talking about delaying a  
6 ruling on this motion, on this discovery because it's  
7 pending in another docket, the rulings in the other  
8 dockets aren't moving either. We need the rulings; we  
9 need the discovery; we need the information in order  
10 that we can be afforded due process to carry out the  
11 rights of the Citizens in this docket.

12           COMMISSIONER CLARK: Jack, I wasn't talking  
13 about timing. I was talking about is it the same  
14 information? Is it the same argument and material that  
15 you want? Okay.

16           MR. SHREVE: I guess what I'm saying is it  
17 doesn't make any difference.

18           MR. BECK: Commissioner, to answer your  
19 question, with respect to the audits, it's the same; with  
20 respect to the remainder of the motions, it is not.

21           COMMISSIONER CLARK: You're talking about the  
22 dispute over the definition --

23           MR. BECK: And so forth.

24           COMMISSIONER CLARK: -- of the documents and  
25 the idea of getting information from of the parent

1 company.

2 MR. BECK: Corporation. Let me just very  
3 briefly mention the other dockets, the schedule in  
4 those dockets presently requires us to file testimony  
5 three weeks from Monday in the other docket. Again,  
6 there's been no rulings there either. We do need a  
7 ruling.

8 MS. RICHARDSON: Just to briefly finish this  
9 off without giving you a very long exegesis of their  
10 system. It's a very complex interrelated computer  
11 system. We don't have that. We don't have the ability  
12 to reconstruct that computer system. There are  
13 hundreds of thousands of customer trouble reports that  
14 go through that computer system. I have no idea how  
15 many thousands were statistically sampled, or even  
16 looked at by the computer to pull a statistical sample  
17 from in order to produce these audits.

18 For Southern Bell to say that Public Counsel  
19 has the ability to reproduce these audits, I appreciate  
20 the compliment. Southern Bell gives us very few. But  
21 I just don't believe that's the case. So I think that  
22 we have adequately shown need. There is supporting  
23 information in my motion to show need, to demonstrate  
24 need for that.

25 COMMISSIONER CLARK: I'd like to take a

1 ten-minute break until 10:30. Angela, I'd like to see  
2 you and Mr. Thomas. I want to go over -- you had a  
3 list of the documents, a more specific list of the  
4 discovery and I wanted to look at that again.

5 MS. GREEN: Okay. Certainly.

6 (Brief recess.)

7

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8 COMMISSIONER CLARK: Let's take two more  
9 appearances right now.

10 MR. WIGGINS: Thank you, Commissioner.  
11 Patrick K. Wiggins, law firm of Wiggins and Villacorta,  
12 P. O. Box 1657, Tallahassee 32302, appearing on behalf  
13 of Intermedia Communications of Florida, Inc., and I  
14 apologize for being delayed this morning.

15 MR. DICKENS: Thank you, Commissioner. Good  
16 morning. I apologize because I walked in with  
17 Mr. Wiggins. (Laughter) Same excuse.

18 My name is Benjamin H. Dickens, Jr. of the  
19 law firm of Blooston, Mordkofsky, Jackson and Dickens,  
20 2120 L Street, Northwest, Washington, D.C., appearing  
21 on behalf of the Ad Hoc Committee. Thank you.

22 COMMISSIONER CLARK: All right. Now, let me  
23 ask you a question: Have you completed your argument  
24 on the May 8th Motion to Compel and its supplement?

25 MR. BECK: I have just a few comments to make

1 that go to the other matters, not the claims of  
2 privilege by Southern Bell.

3 First of all with respect to our definition  
4 of the term "document," as pointed out in the written  
5 pleadings, Southern Bell has used that definition  
6 itself almost word for word in its document request.  
7 It's a little odd to hear them complain about the same  
8 definition they use.

9 With respect to information on other states,  
10 let me give you an example of the problems we have. We  
11 just recently received a document that talks about  
12 incentive regulation. It's passed between high level  
13 officers at the Company. In there it talks about  
14 incentive regulation being implemented, and then there  
15 are two lines of blank and then it goes on from there.  
16 It's pretty clear of what it does. It talks about the  
17 states where incentive regulation has been implemented  
18 and then the others it hasn't. But it's ridiculous,  
19 first of all, that they would blank out two lines that  
20 say, "Here are the states that incentive regulation has  
21 implemented in," particularly in light of the fact they  
22 filed testimony here talking about that topic.

23 We face this day in and day out on all of the  
24 documents we get from Southern Bell. There's redacted.  
25 There is white-outs. By the time we get the documents



1 from Southern Bell, we do not know what has been whited  
2 out or what hasn't been. So we have asked you to look  
3 at those documents, conduct a in camera inspection and  
4 determine whether it's relevant or not. Like the  
5 example I just gave you, it's obviously relevant, they  
6 filed testimony on it

7 COMMISSIONER CLARK: When you say "in  
8 camera," it's because they claim an exemption under the  
9 Public Records Law?

10 MR. BECK: No, it's because they haven't  
11 produced the documents without the items being  
12 eliminated from the document. So, I don't know what  
13 they have whited out or what -- or whether there are  
14 documents in their entirety that are responsive to the  
15 request that they just simply haven't provided. We're  
16 asking you to look at those things and determine  
17 whether it's relevant or not.

18 With respect to their deletion of all  
19 unregulated matters, I submit to you, first of all, the  
20 information on unregulated matters is relevant to the  
21 cost allocation issue that is before the Commission,  
22 particularly with respect to inside wire. I know you  
23 have not included that as an issue. We have filed  
24 testimony suggesting that Southern Bell be treated  
25 differently than the other companies, and that the

1 Commission immediately regulate Southern Bell's inside  
2 wire activities to the fullest extent it can because of  
3 circumstances unique to Southern Bell during the last  
4 few years. I understand you have not included that  
5 issue. We have that on appeal to the full Commission,  
6 but we believe it's relevant on that. That's all I have  
7 on the first Motion to Compel.

8 COMMISSIONER CLARK: Is there anything  
9 further? Before you respond, is there any other party  
10 that wanted -- have you filed a Motion to Compel?

11 MR. TWOMEY: No, ma'am, I have not. But if  
12 you would entertain a short observation and comment,  
13 I'd appreciate the opportunity.

14 COMMISSIONER CLARK: Go ahead.

15 MR. TWOMEY: Briefly.

16 I think it is a dangerous notion that this  
17 Company or any other regulated by this Utility -- by  
18 this Commission, by the device of having an attorney  
19 order an audit, suggest that it should be withheld, not  
20 only from the ratepayers that it serves, but from the  
21 Commission that it regulates, and that's what I see  
22 happening here. I think that's dangerous

23 Secondly, the notion that ratepayers, whether  
24 it's Public Counsel or any other group of commercial  
25 users and so forth should have to, at their expense,

1 replicate complicated work the Company has done,  
2 presumably at ratepayer expense, is somewhat  
3 ridiculous.

4           Lastly, if I understand this situation  
5 correctly, this Company has, in a case, the main rate  
6 case where there are allegations concerning the quality  
7 of their service, both with respect to quality of  
8 service and the incentive ratemaking, has conducted an  
9 internal audit addressing the very question of whether  
10 they have complied with this Commission's rules on  
11 quality of service.

12           If I understand this, the status of this  
13 correctly, not only does Public Counsel not have that,  
14 your own Staff doesn't have it two weeks, or  
15 approximately two weeks, before the hearing. And I  
16 think that's troubling.

17           COMMISSIONER CLARK: Anything else?

18           MR. TWOMEY: No.

19           COMMISSIONER CLARK: Good. Go ahead.

20           MR. ANTHONY: Commissioner Clark, I guess what  
21 I find dangerous is the apparent belief of some of the  
22 parties to this proceeding that a double standard  
23 applies. It applies to -- privileges apply to some  
24 people and some entities but not to others. I don't  
25 see any evidence of that concept anywhere in Florida,

1 the United States, or any other state within the  
2 country. It simply isn't the case. And a lot of their  
3 argument appear to revolve around that. The fact is  
4 that we have a privilege. It was a privilege that was  
5 properly created. It was a privilege created in  
6 connection with litigation. It was created by the  
7 attorneys. It was created so they could help litigate  
8 this case, and there's nothing wrong with that  
9 privilege and it should stand. The argument that  
10 because Southern Bell is a monopoly and, therefore, it  
11 should be held to some other standard is absurd.  
12 That's not the case. We're a citizen, we have standing  
13 to raise these kinds of arguments. The same rules  
14 apply to us. It's equal protection. And I haven't  
15 seen any evidence that a regulated utility is entitled  
16 to some standard of equal protection different from any  
17 other entity. It just isn't the case.

18           There were arguments about waivers. There  
19 was an argument that because which inadvertently  
20 disclosed a few pages of privileged material that all  
21 the privileged material has lost its privilege. Well,  
22 there is not a case, that I've found at least, that  
23 would support that proposition. There are cases that  
24 say inadvertent disclosure doesn't even waive the  
25 privilege insofar as the document that was

1 inadvertently disclosed. There is no case that I'm  
2 aware that Public Counsel has cited that would support  
3 the proposition that all material is, therefore,  
4 waived.

5           There are arguments that the Personnel  
6 Department received some of the information. I realize  
7 this goes beyond just these audits, but it was raised  
8 by Public Counsel. I feel I need to respond.

9           Those people had a reason to be involved in  
10 the process. It was part of the ongoing investigation  
11 process. They are within that circle that had to have  
12 knowledge of the contents and they were, therefore,  
13 included. Nobody was unnecessarily informed of the  
14 contents of any of this material, and, therefore,  
15 again, I don't see any waiver.

16           As far as the work product arguments are  
17 concerned -- one other thing, Ms. Richardson mentioned  
18 something about even craft people having had the  
19 information disseminated to them. If she can provide  
20 any support for that I'd be surprised, because there is  
21 no support for that anywhere in this record.

22           As far as work product is concerned, it's a  
23 valid work product. It was people working under the  
24 direction of Southern Bell's lawyers trying to come up  
25 with information necessary for the lawyers to litigate

1 these cases. They involve the lawyers' thought  
2 processes just in terms of what was being investigated  
3 by these people, what was being analyzed.

4 There was some discussion about Public  
5 Counsel and other parties being unable to duplicate it.  
6 Well, they have had these requests for information  
7 outstanding for probably close to a year now. I think  
8 that Mr. Beck said that the first Motion to Compel was --

9 COMMISSIONER CLARK: Let me ask you a  
10 question. Do you dispute the representation that they  
11 took seven months to -- the audit took seven months to  
12 conduct?

13 MR. ANTHONY: Yes, ma'am. I think what was  
14 said was that all the audits were conducted over a  
15 period of seven months, and there were people who  
16 worked on various portions of the audits.

17 But what's important here is that we've  
18 provided much of the same type of information, if not  
19 all of the information. I can't say for certainty that  
20 it's all, but much of the information, certainly, that  
21 was reviewed by Southern Bell in these audits has been  
22 provided to various parties. We have given tapes, for  
23 example, to the Staff of MTAS, what's called MTAS  
24 records; tapes they have requested. We have given  
25 hundreds of thousands of documents to Public Counsel.

1 We've made the offer. If you ask us what you want, if  
2 you ask us for a sample, we'll provide the sample.

3 We've made that offer.

4 We haven't looked at every piece of paper,  
5 every computer record that we have in our systems.  
6 That would be impossible. What we have done is a  
7 sample. There's nothing that says that Public Counsel  
8 can't do the same thing. And even if, even if it were  
9 so burdensome that they couldn't duplicate it, the fact  
10 remains that these are privileged under the  
11 attorney-client privilege. And whether or not the  
12 attorney work product privilege applied or not, there  
13 would still be privileged from disclosure under the  
14 attorney-client privilege. Thank you.

15 COMMISSIONER CLARK: Mr. Beck, I'd like to  
16 move on to your May 13th, and go through your list of  
17 motions that you maintain are still outstanding. And I  
18 believe some of those are the same arguments. Let me  
19 ask you a question first.

20 You mentioned that the definition of  
21 "documents" that you use is virtually the same as  
22 Southern Bell's.

23 MR. BECK: Yes.

24 COMMISSIONER CLARK: Do you advocate using  
25 the definition Southern Bell has used? Can we use that

1 and settle this?

2 MR. BECK: The one I referred to, I think  
3 they served one on the Pay Telephone Association. If  
4 we use the same one that they use, that would be fine.

5 COMMISSIONER CLARK: How about that?

6 MR. ANTHONY: Commissioner, I think it's like  
7 Ms. White said earlier, we've produced every document  
8 that we can find.

9 COMMISSIONER CLARK: In accordance with that  
10 definition?

11 MR. ANTHONY: We haven't withheld any  
12 documents, to my knowledge, under that definition that  
13 Public Counsel has raised. As Ms. White stated  
14 earlier, we raised that general objection as a  
15 protection for us.

16 COMMISSIONER CLARK: I think everyone  
17 understands you make a good faith effort to find it and  
18 produce these documents.

19 MR. ANTHONY: Yes, ma'am.

20 COMMISSIONER CLARK: And you have produced  
21 documents that you know of and that you have made a  
22 good faith effort to find in accordance with that  
23 definition. So, I think that point has been settled.  
24 Do you understand that it as being settled? They say  
25 they have made a good faith effort and produced the



1 documents that fall under the definition that you all  
2 concur in this case. Now, I realize that doesn't apply  
3 to the BellSouth information, but within Southern Bell.

4 MR. BECK: Here's the problem I have again:  
5 If they have done the search in accordance with that  
6 definition, then I guess there's no problem.

7 COMMISSIONER CLARK: That's their  
8 representation.

9 MR. BECK: But then why are they objecting to  
10 the definition? If they can represent with respect to  
11 every discovery request that their search, and what  
12 they have provided us, has been in accordance with that  
13 definition, and that they've provided the responsive  
14 documents within that definition, then the issue is  
15 settled.

16 COMMISSIONER CLARK: Okay?

17 MR. SHREVE: They could provide us a list, an  
18 affidavit of all the documents that have been excluded,  
19 so then we would have the opportunity to determine, or  
20 argue whether or not they should have been included.

21 MR. ANTHONY: I don't have to style an  
22 affidavit on that basis. I can tell you that no  
23 document has been excluded on the basis of that  
24 objection or that definition.

25 COMMISSIONER CLARK: Okay. All right. Go

1           COMMISSIONER CLARK: Okay. All right. Go  
2 ahead, Mr. Beck, with respect to the May 13th. I  
3 understand that to be the same -- your argument would  
4 be the same with respect to the parent corporation,  
5 that they do, in fact, act in concert and you are  
6 entitled to a search of their records, too.

7           MR. BECK: Yes. It may be that this motion  
8 is moot. What happened is we sent a request to  
9 Southern Bell. They objected to the definition,  
10 objected to providing documents from the parent  
11 corporation. We moved to compel. In the response they  
12 said, "We provided the documents from the parent  
13 corporation." I don't know. If they can represent  
14 that they have provided every document responsive to  
15 our request, without regard to their general  
16 objections, then it's moot. But, personally, I have no  
17 idea why they objected to producing documents from the  
18 parent and then went ahead and did it.

19           MS. WHITE: Commissioner Clark, I can  
20 represent that we have produced every document from  
21 BellSouth Corporation that was in our possession and  
22 Southern Bell's possession that was responsive to the  
23 document, to the document request.

24           COMMISSIONER CLARK: All right. So that  
25 remains outstanding.

1 MR. BECK: Yeah.

2 COMMISSIONER CLARK: Okay.

3 MR. BECK: If all they have done is produce  
4 documents in Southern Bell's possession, that's no good  
5 as far as we're concerned. The third motion?

6 COMMISSIONER CLARK: Yeah. Those are the  
7 audits?

8 MR. BECK: Give me a moment. (Pause)

9 I think we have already covered the -- this  
10 covers primarily BellSouth. I think we've made all the  
11 arguments that are presented in there. They are simply  
12 provided with respect to different requests for  
13 production of documents.

14 COMMISSIONER CLARK: What I have listed is  
15 the June 5th. Your position is you need to obtain  
16 responsive documents in possession of the parent  
17 corporation.

18 MR. BECK: Yes.

19 COMMISSIONER CLARK: Okay.

20 MR. BECK: And then it goes into the "you"  
21 and "your," as well as the definition of "document."

22 COMMISSIONER CLARK: Well, I am taking it  
23 that the definition of "document" is settled and that  
24 they have produced that information.

25 MR. BECK: Then it's the definition of "you"

1 and "your" that are the problems, and that would  
2 include the BellSouth.

3 COMMISSIONER CLARK: It's the parent  
4 corporation?

5 MR. BECK: Yes.

6 COMMISSIONER CLARK: Okay. And then for the  
7 July 13th is the inside wire, and then the parent  
8 corporation. Okay. Do you want to make any further  
9 argument on those motions to compel?

10 MR. BECK: Well, we've covered three. Now,  
11 the fourth motion, on the July 2nd Motion to Compel  
12 responses from BellSouth Vice President Sanders, and  
13 their General Manager of Human Resources, Cuthbertson,  
14 that's a whole other issue.

15 COMMISSIONER CLARK: All right. Let me get  
16 that before me.

17 MS. GREEN: I don't believe we have that, or  
18 that you have that, because I believe that's in another  
19 docket.

20 MR. BECK: This motion was filed jointly in  
21 this docket and in the investigation docket on repair  
22 activities.

23 MS. GREEN: And that one --

24 MR. BECK: And it's listed in the Prehearing  
25 Order draft.

1 MS. GREEN: Well, that's because that's taken  
2 off of a diskette out of your prehearing statement, but  
3 it has been, to my understanding, forwarded to the  
4 people that are handling that docket.

5 MR. BECK: It was filed in this docket and  
6 the other docket. I have it in front of me.

7 MS. GREEN: That's also been a continuing  
8 problem, and that's been the list of various motions  
9 and notices in docket numbers that happen to suit  
10 someone's particular need at the moment. It's been  
11 very confusing to follow where they are, and we've  
12 attempted in a good faith manner to forward those to  
13 the persons handling the appropriate dockets. That  
14 deposition --

15 COMMISSIONER CLARK: No. I understand what  
16 is going on here. I understand the fact that you have  
17 filed it that way because you believe it's relevant to  
18 both of them.

19 MR. BECK: Yes.

20 COMMISSIONER CLARK: I understand that  
21 continuing point. We'll find it, and we'll try and  
22 deal with it today. Let's move on to other motions.  
23 You have a motion with respect to some service hearings  
24 and other things, and I want to get through those if we  
25 can.

1 MR. BECK: Commissioner, okay. You're going  
2 to deal with the motion on Sanders and Cuthbertson  
3 later?

4 COMMISSIONER CLARK: Yeah. Give me a chance  
5 to look at it, but there are other motions you have  
6 pending that I need to look at.

7 MS. GREEN: Are you going to finish on the  
8 motions to compel and let them begin arguments on new  
9 motions? Do you want to finish the motions to compel  
10 first?

11 COMMISSIONER CLARK: Do you have, at this  
12 point, some recommendations on the motions to compel?

13 MS. GREEN: Yes, ma'am.

14 COMMISSIONER CLARK: All right. Let me take  
15 those.

16 MS. GREEN: I'm prepared to address the  
17 general definitions in everything except the privilege  
18 issue, and then Mr. Hatch would address the issue  
19 dealing with the audits and the privilege.

20 Southern Bell has objected to Public  
21 Counsel's definitions of "you" and "yours" as being  
22 overly broad. And, frankly, the Staff cannot agree  
23 with that objection, particularly as to the parent  
24 company, BellSouth Corporation. And as you have heard,  
25 Southern Bell has stated to you today that they have

1 conducted a good faith search of their own company for  
2 responsive documents, but that does leave the question  
3 of the parent corporation, and that, it's my  
4 understanding, has been no search of that.

5 Not only is the Medivision standard an  
6 appropriate one, and that's the acting-as-one standard,  
7 and clearly that can apply in many context in the  
8 provision of regulated services by these entities, but  
9 also what is relevant is the statutory change that  
10 either Mr. Shreve or Mr. Beck had referred to. And  
11 that clearly gives this Commission the authority to  
12 require production of the documents from the parent,  
13 and I believe that same reasoning would apply here.  
14 And if there are documents that are responsive to  
15 discovery requests for which the relevancy is not at  
16 issue, then we believe Public Counsel should be granted  
17 his Motion to Compel and receive those documents of the  
18 parent corporation.

19 COMMISSIONER CLARK: Okay. Any other  
20 recommendations?

21 MS. GREEN: Yes. Did you all -- did I  
22 understand that you agreed that there either is not a  
23 dispute about the definition of document, or that you  
24 would use Southern Bell's own definition?

25 COMMISSIONER CLARK: No. I think that

1 Mr. Beck mentioned that there is a definition that  
2 Southern Bell used in the Pay Tel case.

3 MR. BECK: I'm not sure of the case. It's in  
4 my motion, but it was a motion or a request for  
5 documents that was sent to the Florida Pay Telephone  
6 Association.

7 COMMISSIONER CLARK: And Southern Bell has  
8 represented that they have produced those documents  
9 meeting that definition within their possession, so  
10 that is no longer an issue.

11 MS. GREEN: Okay. And we really did not  
12 believe there was any particular problem with Public  
13 Counsel's definition of the words "document." So, we  
14 just don't have any problem with their definition of  
15 the word "document."

16 To the extent that there was also objections  
17 to producing documents previously provided in other  
18 dockets, and that was discussed back at the beginning  
19 of this discussion today. To the extent that the  
20 Company has not identified where those have been  
21 produced, they would need to be itemized. Is there  
22 still an issue about that?

23 MS. WHITE: I don't believe so. I thought  
24 that every place we said that we produced them  
25 elsewhere we had stated the docket and the



1 interrogatory or request for production. That's my  
2 belief, anyway.

3 COMMISSIONER CLARK: Did you hear what they  
4 said?

5 MR. BECK: No, I didn't.

6 COMMISSIONER CLARK: They represented with  
7 respect to when -- when they answer a request for  
8 information that they produced it elsewhere, that they  
9 have told you where it is.

10 MR. BECK: Yeah. I've not moved to compel on  
11 that basis. I have no problem with them doing that.

12 COMMISSIONER CLARK: All right.

13 MS. GREEN: And as far as the operations in  
14 the other states and documents related to unregulated  
15 services, the Company has argued that this docket  
16 relates solely to its earnings in Florida. But to the  
17 extent that any of the cost associated with  
18 nonregulated operations is allocated to Florida, that  
19 objection should be also held to be without merit. If  
20 there are any documents withheld on that basis of  
21 either unregulated services or other states, to the  
22 extent that the allocations need to be reviewed, they  
23 are relevant. That's the redaction claim.

24 COMMISSIONER CLARK: Okay.

25 MS. GREEN: And if Mr. Hatch would address

1 the privilege.

2 MR. ANTHONY: I'm sorry. Commissioner Clark,  
3 can I just clarify one thing, because I think it's  
4 important. It's an earlier matter. It's on our  
5 representation about the definition for the search for  
6 documents.

7 I want to clarify that the basis of our  
8 objection was that, for example, to search all 17,000  
9 employees in Florida who work for Southern Bell, their  
10 appointment calendars, for example, would be  
11 unreasonable. We've done a reasonable search, an  
12 extensive search, but we haven't looked at every check  
13 stub for example, I don't believe, that may be out  
14 there. What we are representing is that we have made  
15 an extensive reasonable search, and that we have not  
16 withheld any documents that we have found that are  
17 responsive based on this definition. I don't know that  
18 I can tell you today that --

19 COMMISSIONER CLARK: Well, Mr. Anthony, is  
20 that your definition that you apply to another company  
21 requesting information?

22 MR. ANTHONY: Yes, ma'am. Well, I think that  
23 it's a reasonableness standard, and what we have said  
24 is we've reasonably searched. We've done an extensive  
25 search.

1           COMMISSIONER CLARK: And then the question  
2 will become if something shows up later, whether your  
3 search was reasonable?

4           MR. ANTHONY: Yes, ma'am.

5           COMMISSIONER CLARK: And that's always at  
6 issue.

7           MR. ANTHONY: I just wanted to make that  
8 clear. I wasn't sure if it was. Thank you.

9           COMMISSIONER CLARK: Okay.

10          MR. HATCH: With respect to the issue of  
11 privilege, in the investigation dockets that has been  
12 an ongoing and continuing problem. Staff is in the  
13 process of formulating its recommendation on the  
14 privilege question. We are not prepared to make that  
15 recommendation to you today. It's complicated by the  
16 fact that we have two or several different dockets and  
17 different Prehearing Officers and we're trying to  
18 coordinate all of that as well.

19          COMMISSIONER CLARK: How many prehearing --

20          MR. HATCH: You and Commissioner Beard.

21          COMMISSIONER CLARK: Okay.

22          MR. HATCH: We have in the pipeline now a  
23 fairly significant set of interrogatories to Southern  
24 Bell that we hope will provide the factual basis for  
25 making an adequate and reasoned ruling on the

1 attorney-client and the work product privilege claims.  
2 We don't have that back. As soon as we get that back,  
3 I assume sometime next week, that we would then be  
4 ready to move towards making a ruling, or a  
5 recommendation and then you could certainly make your  
6 ruling.

7           COMMISSIONER CLARK: Okay. With respect to  
8 the first issue on Motion to Compel, and that is the  
9 search of parent company records, I will grant the  
10 Motion to Compel, that you conduct a reasonable search  
11 of the parent company's records. And with respect to  
12 documents of other states or unregulated entities, to  
13 the extent they deal with cost allocations, where those  
14 allocations are also made to Southern Bell, they will  
15 be produced to verify the allocations. Go ahead,  
16 Mr. Beck.

17           MR. BECK: Commissioner, we have redactions,  
18 and I gave you an example of a document about incentive  
19 regulation. What they do, is they white out references  
20 to other states, no matter how innocuous, whatever.  
21 And that makes many of the documents we get back  
22 incomprehensible, at least in part. To simply say --  
23 you know, with cost allocations it doesn't address the  
24 issue of all the other redactions and whether the  
25 information they are redacting is relevant or not.

1           COMMISSIONER CLARK: Okay. Angela, do you  
2 have a recommendation on that?

3           MS. GREEN: I'm not sure I even understood  
4 what he just said.

5           COMMISSIONER CLARK: I think what he is  
6 saying is they get documents, and when they relate to  
7 companies in other states, it's automatically taken  
8 out. Is that --

9           MS. GREEN: But I had thought that Southern  
10 Bell had represented that they had produced the  
11 responsive documents, and my recommendation had been  
12 that to the extent that something was not produced on  
13 the grounds of it being unregulated or in another state  
14 where it's an allocation issue, clearly it is relevant  
15 to this proceeding.

16           Now, I'm not sure what other type of  
17 information that leaves.

18           COMMISSIONER CLARK: All right. I'm going to  
19 require that information be produced. Mr. Beck, if you  
20 run across some things that they still don't produce  
21 and we need to address, we'll take care of those.

22           MR. BECK: The problem is, Commissioner, I  
23 don't know what they have not redacted. There are  
24 times when they have whited out items on a document  
25 that it's not at all apparent that there are things

1 missing from the document. I have seen that happen  
2 particularly in the last case. They white out things  
3 from documents. We have no idea what they whited out,  
4 or the fact they did white out the documents.

5 COMMISSIONER CLARK: Well, I think --

6 MR. ANTHONY: Commissioner Clark, if there are  
7 particular documents that Public Counsel has a concern  
8 over, if they could provide that to us, then we can  
9 review the documents and produce them.

10 COMMISSIONER CLARK: All right. On this  
11 issue -- let me just interrupt you -- over the lunch  
12 hour you all get together and see if you can reach some  
13 common grounds.

14 You're going to need to look at the documents  
15 and see if you have deleted some things where it's not  
16 apparent that they have been deleted, and give an  
17 explanation as to why they have been deleted. But I  
18 would hope that you could get together, and that  
19 information that you are looking at, and know you need  
20 to know on, that you communicate that to them.

21 That leaves the matter of the privilege and  
22 work product with respect to the audits.

23 Mr. Beck, let me elicit from you you're  
24 understanding of my position and my order with respect  
25 to the process we would follow in this case, and

1 specifically, then, go over with me once again your  
2 objections to those procedures. Because I thought I  
3 made it very clear in -- and I went back and reviewed  
4 the transcripts of the last prehearing we had, that it  
5 was not my intention to set rates twice. That we were  
6 going to conduct the rate proceeding, conduct the  
7 investigation proceeding, and take into account the  
8 information and the testimony produced as part of that  
9 investigation, in reaching a final decision. And  
10 evidently you didn't get that impression or it doesn't  
11 -- you believe something has to be changed, and I want  
12 to get that information from you now.

13 MR. BECK: Commissioner, I believe -- I don't  
14 have your order in front of me, but I believe the  
15 operative words were something to the effect that  
16 evidence related to matters in the other docket will  
17 not be heard in the January-February hearings. What  
18 that did in my view, first of all, it precludes us from  
19 cross examining Southern Bell's witness. So that, for  
20 example, when Tony Lombardo gets up and tells you,  
21 "Let's look at all the incentives that your incentive  
22 plan gave us," we would be unable to cross examine him  
23 about other incentives that occurred.

24 COMMISSIONER CLARK: Other incentives that  
25 have occurred?

1 MR. BECK: Such incentives to falsify  
2 documents or falsify reports given to this Commission.

3 COMMISSIONER CLARK: And we would not take  
4 those up in the other docket?

5 MR. BECK: Well, how am I going to cross  
6 examine Mr. Lombardo in the other dockets if he doesn't  
7 -- and all of their witnesses, for that matter, if they  
8 don't file testimony in the other proceedings? In  
9 other words, each witness gets up, you know, we need to  
10 be able to cross examine them on the positive and  
11 negative effects of incentive regulation on the quality  
12 of service.

13 COMMISSIONER CLARK: Well, one vehicle that  
14 comes to mind would be that you compel them as an  
15 adverse witness in those. But I understand your point  
16 is that you feel you need to cross examine them when  
17 they are presented.

18 MR. BECK: The other item is at the hearing  
19 in January and February, according to your order, is  
20 addressing the issue of quality of service; it's  
21 addressing the issue of whether a penalty should be  
22 imposed on Southern Bell for inadequate quality of  
23 service, and it addresses -- there's an issue about  
24 what are the positive and negative effects of incentive  
25 regulation.



1           COMMISSIONER CLARK: All right. Now, we had,  
2 if we didn't put it out in the order, we had set aside  
3 days in the hearing on the other matters to take up the  
4 impact of the findings in the investigation on  
5 incentive regulation.

6           MR. BECK: But you are hearing evidence on  
7 that in the January-February hearings. We need to be  
8 able to present evidence on those issues that are being  
9 heard in January. We need to be able to cross examine  
10 those witnesses, such as the Staff witness that  
11 addresses the quality of service reports submitted by  
12 Bell.

13           COMMISSIONER CLARK: So, your concern is  
14 basically the timing of it and that the same witnesses  
15 will not be available in the other proceeding?

16           MR. BECK: Yes.

17           COMMISSIONER CLARK: Okay.

18           MR. BECK: And the timing is both with  
19 respect to our ability to file testimony, as well as  
20 our ability to cross examine witnesses.

21           COMMISSIONER CLARK: What was your  
22 understanding of that order?

23           MR. ANTHONY: My understanding was that  
24 issues related to the investigations would be held over  
25 until the April hearings, and at that time we would

1 introduce both -- all of the parties would introduce  
2 testimony concerning that. Public Counsel certainly  
3 knows how to subpoena witnesses. We have a motion to  
4 quash a few of the subpoenas in this proceeding. And  
5 that after the January-February hearings, issues that  
6 could possibly be affected by the April hearings would  
7 be left open, and that after all evidence was received  
8 by this Commission, at that time --

9 COMMISSIONER CLARK: In both dockets?

10 MR. ANTHONY: In the investigation dockets, as  
11 well as the rate case docket. At that time you would  
12 take up and make your decisions on incentive  
13 regulation, penalties that may be requested by other  
14 parties, setting of ROE, all of those types of issues  
15 and how they might be affected by this quality of  
16 service question. That was my understand, and that's  
17 why we think to allow testimony in this  
18 January-February time frame would prejudice us.

19 We've conducted ourselves under your  
20 Prehearing Order as we understood it, as I have just  
21 explained. We're preparing testimony for the February  
22 1st deadline for the April hearings, and it would be  
23 prejudicial to us to require us to have to now, two  
24 weeks before the other hearings start, be told, "No,  
25 you're actually going to have to conduct hearings on

1 all of these issues." I think the Commission --

2 COMMISSIONER CLARK: Well, what about if we  
3 push them all back to the other hearings. I mean,  
4 we're talking about quality of service.

5 MR. ANTHONY: Right. Well, I think -- I  
6 don't have any objection to putting quality of service  
7 issues, as such, in the April hearings. I don't have  
8 an objection to that. I think that we still --

9 COMMISSIONER CLARK: And the resulting impact  
10 it should have on our evaluation of incentive  
11 regulation.

12 MR. ANTHONY: I don't have an objection to  
13 that.

14 COMMISSIONER CLARK: So you don't have an  
15 objection to moving quality of service issues and  
16 incentive regulation to the April proceeding?

17 MR. ANTHONY: Well, the incentive regulation  
18 is a different issue it seems to me.

19 I think there are two questions about  
20 incentive regulation. One is there are allegations  
21 that incentive regulation has had perverse incentives.  
22 We don't think so, but those are the allegations. And  
23 we'll have the opportunity to present evidence on that  
24 in April, if that's what you decide to do. But I think  
25 there's also a nuts-and-bolts question about, for

1 example, Southern Bell's proposal. There are just  
2 questions that ought to be considered by the Commission  
3 about whether any company proposed what we've called a  
4 price regulation plan, whether it was us or some other  
5 local exchange company, whether or not that is the  
6 proper framework for any company to have as an  
7 alternative regulation plan. And I think that's a  
8 complex issue that if you push back to the April  
9 hearings, it's going to be difficult to address that.  
10 There are a lot of witnesses who address that question.  
11 And I don't think that question, in and of itself, is  
12 something that would be in the best interest of the  
13 ratepayers in terms of rates, of questions about  
14 whether or not there are competitive forces facing  
15 Southern Bell today. All of those types of issues can  
16 be addressed separate and apart from these quality of  
17 service issues. And I think given the amount of time  
18 that we have for the two sets of hearings, it would  
19 well behoove us to keep those types of issues in the  
20 January-February time frame and then leave the quality  
21 of service issues, including whether or not the current  
22 incentive plan was a success or not.

23 COMMISSIONER CLARK: And what about any  
24 testimony on the perverse incentives that it may have  
25 generated?

1 MR. ANTHONY: I think that could be also  
2 handled in the April hearings.

3 You're going to hear all of that testimony  
4 before you make a decision. And I think the five  
5 members of this body are adept enough at putting all  
6 that information together that they can make a  
7 well-informed decision. There are hearings that are  
8 bifurcated on numbers of occasions, and I think there's  
9 nothing that says that -- I mean, if anything, from my  
10 perspective, you'll be hearing that kind of testimony  
11 closer to your decision. It's going to be freshest in  
12 my mind. So, if anything, that may prejudice me, but I  
13 don't have an objection to it. I think you can put the  
14 pieces together properly.

15 COMMISSIONER CLARK: So, you would not have  
16 an objection to moving quality of service to April?

17 MR. ANTHONY: Not quality of service, no. I  
18 wouldn't have an objection.

19 MR. SHREVE: Commissioner, I really think  
20 you're setting up the most -- a disjointed hearing in  
21 the worst possible way. I can certainly see why  
22 Southern Bell would like to go forward with their  
23 incentive regulation while postponing all of the  
24 investigation information that definitely has to do  
25 with this, with their incentive regulation.

1           COMMISSIONER CLARK: Well, let me ask you a  
2 different question.

3           MR. SHREVE: We want to put our case on in  
4 the way we want to put our case on; not in line with  
5 the way Bell wants to do it piecemeal, and then come in  
6 with something that may be detrimental at a later time.

7           COMMISSIONER CLARK: What would be your  
8 position? That we have the quality of service and the  
9 incentive regulation done, sort of isolate that to  
10 April?

11          MR. SHREVE: No. That we have the entire  
12 hearing together so that you get the full picture.

13          COMMISSIONER CLARK: Jack, I'd love to do  
14 that.

15          MR. SHREVE: Then we can do it.

16          COMMISSIONER CLARK: Well, maybe I should ask  
17 you to go in and look at the Commission calendar. The  
18 difficulty is --

19          MR. SHREVE: Are you saying you don't have  
20 time to do that?

21          COMMISSIONER CLARK: What I'm saying is we  
22 don't have a month's time altogether to do that. And  
23 that's the reason we have done it the way we have.  
24 It's a matter of trying --

25          MR. SHREVE: You mean this originally was

1 scheduled in this way so that you would not have the  
2 full hearing at the time that it was set for?

3 COMMISSIONER CLARK: Do you have anything  
4 else? I'm not going to answer that question,  
5 Mr. Shreve.

6 MR. SHREVE: I think that the hearing should  
7 be held all at one time, with the proper evidence being  
8 brought in by the parties in the way that they would  
9 like to present their case, when the issues that come  
10 up and the evidence that is relevant to those issues  
11 should be all presented at the same time, with all of  
12 the evidence and discovery being presented by the  
13 parties at the time of the hearing.

14 COMMISSIONER CLARK: Okay. Are there any  
15 more -- I would like to go ahead and take up some of  
16 the other motions that you have pending. And then I'm  
17 not going to rule on the privilege and work product  
18 before lunch; I may not rule on it after lunch, but I  
19 thought we could spend this time until noon looking at  
20 some other things. I do want to get information from  
21 Staff.

22 Beyond the motions, what else do you envision  
23 us taking up today? The draft Prehearing Order?

24 MS. GREEN: That's correct. There are some  
25 issues that can be stipulated. Otherwise, parties were

1 supposed to -- between now and the next prehearing,  
2 even, get back with me if there's any mistake on how  
3 things of theirs have been listed insofar as their  
4 positions.

5 But we walked through at the pre-prehearing  
6 some issues that can either be stipulated or deleted.  
7 We can go through those and take care of that, and the  
8 order of witnesses, at least insofar as exchanging  
9 those and talking about that conceptually. We need to  
10 get your viewpoint on what is an orderly way to conduct  
11 the proceeding. And I think we can do that  
12 irrespective of the pending motions, irrespective of  
13 that dispute.

14 COMMISSIONER CLARK: Okay.

15 MS. GREEN: We can still talk about those  
16 concepts. I think that that's basically it, unless  
17 someone can -- I mean, other than pending motions. You  
18 said other than those.

19 MR. ANTHONY: Commissioner Clark, just so I  
20 understand, you would still -- there are some motions  
21 that hinge off what your ruling would be on that last  
22 question about how you order the hearings. So I don't  
23 want to raise them. I just want to alert you that  
24 there are a couple of motions to strike and so on that  
25 would hinge on that ruling.



1 MR. WIGGINS: Commissioner Clark, on behalf  
2 of Intermedia, to the extent that this could be -- the  
3 prehearing conference portion on the prehearing order  
4 could be taken care of first, and the motions hearing  
5 could be taken up later, we would appreciate it.

6 Intermedia has not sponsored any witnesses.  
7 We've taken a limited number of positions and we have  
8 no strong preference with respect to the order of  
9 witnesses. And to the extent I can spare Intermedia  
10 the additional expense of attending the motions debate,  
11 I would like to do that if that's consistent with your  
12 schedule. Thank you.

13 COMMISSIONER CLARK: Let me be clear. It's your  
14 desire to go over the issues that may be stipulated in the  
15 proceeding, the draft Prehearing Order to the extent we can?

16 MS. GREEN: Actually, I don't think any of  
17 the other motions can be dealt with without decisions  
18 on the motions to compel and how the hearing is going  
19 to be ordered. In any event, I don't believe there's  
20 any other motions that you could dispose of. So we  
21 need to do the other matters.

22 COMMISSIONER CLARK: Okay. Let me just ask  
23 one question. I think, Mr. Shreve, you have a motion  
24 to set a service hearing in West Palm Beach?

25 MR. SHREVE: That's right.

1           COMMISSIONER CLARK: Okay. I've asked  
2 Chairman Deason to look at if we have any dates  
3 available. I have no objection to holding it if we  
4 have Commissioners.

5           MR. SHREVE: This is one of the first  
6 hearings we've had or first cases we've had with  
7 Southern Bell that there has not been a hearing in West  
8 Palm Beach, particularly with the population they have  
9 in Palm Beach County. And that's -- after hearing from  
10 the customers down there, that's the reason we  
11 requested it. And I appreciate your consideration in  
12 having him look at it.

13           COMMISSIONER CLARK: Is there any objection  
14 to that?

15           MR. ANTHONY: Commissioner Clark, we had filed an  
16 objection, but it was based on having the hearings prior  
17 to the January hearings just because of the timing. If  
18 you want to set them sometime before your final decision  
19 in this case, we'll have no objection to that.

20           COMMISSIONER CLARK: Mr. Shreve, did you hear  
21 that? We may have a problem in trying to get a hearing  
22 date before the January. Do you have any objection to  
23 holding it afterwards?

24           MR. SHREVE: I prefer to have it held before  
25 the hearing --

1 COMMISSIONER CLARK: So do I.

2 MR. SHREVE: -- but I would certainly prefer  
3 to have one held rather than not held at all. But I  
4 think it should be -- you're going to be considering,  
5 and I think -- here again, it's going to be disjointed.  
6 I think it's best to have it before the hearing is  
7 held.

8 COMMISSIONER CLARK: Well, we'll look for  
9 something.

10 All right. Angela, should we take up the  
11 stipulated --

12 MS. GREEN: Yes. Do we have a list of those  
13 or are we going to read them? The issues that we  
14 talked about stipulating in the pre-pre. I'm going to  
15 let Ms. Norton go over those. There were a few only --  
16 if we could go through them. There were a couple where  
17 people were going to get back with us today. We'd be  
18 able to accomplish that right now.

19 MS. NORTON: By way of review, I'll just go  
20 over the issues that we had proposed to stipulate.

21 COMMISSIONER CLARK: What page are you on?

22 MS. NORTON: The first issue is Issue No. 1.  
23 Page 18 and based on my notes from the informal  
24 prehearing, all parties have agreed to stipulate that,  
25 and I need from those parties that were not there to

1 state any problems that they might have with  
2 stipulating those issues now.

3 MR. BECK: I've got a comment. We're going  
4 to stipulate. But I think any stipulations we do on  
5 that are subject to the receipt and review of documents  
6 that have been withheld from us.

7 COMMISSIONER CLARK: I think that's fine.

8 MR. BECK: Other than that, yes, we'll  
9 stipulate to the test year.

10 COMMISSIONER CLARK: Do you understand that  
11 caveat?

12 MR. HATCH: Yes, ma'am.

13 COMMISSIONER CLARK: Okay. What's the next  
14 issue?

15 MS. NORTON: The next issue is Issue No. 5,  
16 Page 25.

17 MR. BECK: We'll stipulate with that.

18 MS. NORTON: Public Counsel, you were to  
19 check on that.

20 MR. BECK: Yes. That's okay with us.

21 MS. NORTON: It's okay. Other parties?  
22 The next issue is Issue No 6, Page 26. Public Counsel?

23 MR. BECK: That's all right with us too.

24 MS. NORTON: Pardon me.

25 MR. BECK: Yes, we'll stipulate to that.

1 MS. NORTON: The other parties?

2 COMMISSIONER CLARK: To shorten this up,  
3 we'll get to an issue if you will don't stipulate to  
4 it, you better speak up. Go ahead.

5 MS. NORTON: Next issue is 15d as in dog.

6 MS. GREEN: I think that one all that were  
7 present had agreed that day to delete it.

8 MS. NORTON: Going once, going twice.

9 COMMISSIONER CLARK: Well, wait a minute.  
10 Let me get clarification, deleted or stipulated?

11 MS. NORTON: This one was delete.

12 COMMISSIONER CLARK: Okay. No objection to  
13 the deletion. Okay, go ahead.

14 MS. NORTON: 15g, the proposal was to delete.

15 COMMISSIONER CLARK: No objection.

16 MS. GREEN: Yes. We couldn't present these  
17 to you as being fully agreed upon because we were --

18 COMMISSIONER CLARK: That's fine.

19 MS. GREEN: -- missing three or four parties  
20 that day.

21 COMMISSIONER CLARK: That's all right. This  
22 is a good time to get it clarified.

23 MS. GREEN: Yes, ma'am.

24 COMMISSIONER CLARK: Next issue. That one is  
25 deleted.

1 MS. NORTON: The next issue is 15m, as in  
2 Mary. The proposal was to stipulate and we were  
3 waiting on Public Counsel.

4 MR. BECK: Sorry, I'm still not ready.

5 COMMISSIONER CLARK: Okay. That's all right.

6 MR. BECK: I will try to have one by the next  
7 prehearing conference.

8 MS. NORTON: The next issue is 17g. The  
9 proposal was to stipulate. Public Counsel.

10 MR. BECK: I'm sorry, also, there. I'm just  
11 not ready yet, but I'll try and have it by next time.

12 MS. NORTON: The last issue of those which we  
13 went over in the informal prehearing was 39d, as in  
14 dog. And parties had stipulated and Ad Hoc -- we were  
15 waiting for Ad Hoc and they informed me this morning  
16 that they had no problem with --

17 COMMISSIONER CLARK: 39d?

18 MS. NORTON: "d."

19 COMMISSIONER CLARK: You know, to the extent  
20 you're on that page, let us know.

21 MS. NORTON: Commissioner, that proposal was  
22 to delete that issue because it was duplicative.

23 COMMISSIONER CLARK: Okay. So 39d is  
24 deleted.

25 MS. NORTON: That's correct.

1 MS. GREEN: That's Page 148.

2 COMMISSIONER CLARK: Thank you. Go ahead.

3 MS. NORTON: And we have a few more new ones  
4 to throw out that we did not discuss in the informal  
5 prehearing. Those issues are 15o and 15p. And Staff  
6 proposes to merge those issues. That's Page 57.

7 COMMISSIONER CLARK: You want to merge those  
8 issues?

9 MS. NORTON: That's correct.

10 COMMISSIONER CLARK: How would the new issue  
11 read?

12 MS. NORTON: It could all be handled in 15o.

13 COMMISSIONER CLARK: That's the same thing as  
14 an overfunded pension amount? I assume if you're  
15 saying that they are amounts not funded, not into a  
16 fund or paid into, they are not amounts credited to an  
17 unfunded account and not amounts paid to a pension  
18 plan, then they represent overcollections. And the  
19 question is what to do with them. All right. So the  
20 we can leave 15o. Does anyone have an objection to  
21 that?

22 MR. BECK: I thought we were deleting 15p?

23 COMMISSIONER CLARK: I'm sorry. I had heard  
24 the other way. Which one are we deleting?

25 MS. NORTON: Did you say "leave" or "delete"?

1 COMMISSIONER CLARK: We would delete "p."

2 MR. BECK: Yes. I'm sorry. It's my fault.  
3 We agreed to delete "p."

4 MS. NORTON: 17e and f. The proposal is to  
5 merge them. And that begins on Page 67, I believe.  
6 And the proposal is to leave 17e as the issue.

7 COMMISSIONER CLARK: Any objections? Okay.

8 MS. NORTON: Issue 22, Page 78, our proposal is  
9 to stipulate that. The stipulation is -- correction.  
10 Staff proposes to delete that issue.

11 COMMISSIONER CLARK: Any objection?

12 MR. BECK: I'd like a chance to review that  
13 first.

14 MR. BELL: Could you clarify the issue  
15 number?

16 MS. NORTON: Issue 22 on Page 78. That's all.

17 COMMISSIONER CLARK: All right. What do you  
18 want to do next?

19 MS. GREEN: I think I would like to also just  
20 since we do have another prehearing conference and  
21 there will be a chance to distribute things in the  
22 interim, I would like to just put the parties on notice  
23 that legal Staff is considering the addition of several  
24 legal issues to this proceeding. One regarding Life  
25 Line, legality of, particularly insofar as whether or



1 not there is a question of discrimination. I have no  
2 wording to put out today, but I would like everyone to  
3 know our thoughts about that so they can think about it  
4 too. And I will have some wording before the next  
5 prehearing conference. Also a legal issue regarding  
6 the proposed discount on local services in the  
7 Enterprise Zone. I don't believe we have a issue on  
8 that at this point.

9 COMMISSIONER CLARK: The legality of it.

10 MS. GREEN: Yes, ma'am.

11 COMMISSIONER CLARK: Is that it?

12 MS. GREEN: Yes. So far. There may be  
13 another one regarding the tariffs, but I need to do  
14 some further research before I say that.

15 COMMISSIONER CLARK: We'll anxiously await  
16 your research.

17 All right. What is the next thing you want  
18 to take up; is that the order of witnesses?

19 MS. GREEN: Yes. We need to talk about that.  
20 Different parties had some different thoughts on a way  
21 to order this proceeding. And I would venture to say  
22 that almost every party to this proceeding could be  
23 fairly quoted as having stated at one point or another  
24 that this is the most complex proceeding that they have  
25 had the pleasure to be involved with before this

1 Commission. So we need to be, I think, somewhat  
2 creative and flexible in determining an orderly way of  
3 proceeding.

4 COMMISSIONER CLARK: Have you all had a  
5 chance to look at this? All right. Maybe it would be  
6 a good thing to pass this out and reconvene after  
7 lunch. And I would like you to do two things: If you  
8 would highlight for me those people that will also be  
9 presenting testimony on incentive regulation, that I  
10 guess I'd like to know who those people are so that I  
11 can get a better picture of the suggestion that it's so  
12 interwoven in the testimony that it's difficult to  
13 separate them out. I really want to know more  
14 precisely what we are talking about.

15 MS. GREEN: And there may be some other  
16 parties who have prepared a written proposal. I asked  
17 that anyone who wanted to do so to do so, so if anyone  
18 else has one to distribute?

19 COMMISSIONER CLARK: I want to leave adequate  
20 time for you all to look at this list before we  
21 reconvene. So I'd like to know how long you need.  
22 Also if -- Mr. Wiggins, if you would like, and anyone  
23 else, would like, to take up matters now so you don't  
24 have to return after lunch, let me know.

25 MR. WIGGINS: We have nothing to take up. If

1 I could just be excused.

2 COMMISSIONER CLARK: That's fine.

3 MR. MELSON: Commissioner Clark, my only  
4 comment on the order of witnesses is that Dr. Cornell  
5 has to appear if at all -- well, has to appear, really,  
6 the first week, 25th to the 29th. She's got  
7 commitments in other states beyond that. The draft  
8 schedule shows her appearing on the 29th, which is  
9 fine. We'd just like to make sure that that timing is  
10 honored in any event.

11 MS. NORTON: Commissioner, we have asked the  
12 parties to give us the limitations on the scheduling of  
13 their witnesses. We do have Dr. Cornell's and we have  
14 several others, and if others would give them to us we  
15 can incorporate them in there.

16 COMMISSIONER CLARK: Okay. Does anyone have  
17 anything they want to take up before lunch?

18 MR. BECK: Briefly, in case other counsels  
19 start leaving. I have two telephone depositions that I  
20 think are going to go forward next week.

21 One of a person Baker, who is an officer of  
22 BellSouth, going to discuss incentive regulation. The  
23 second person is Payne. We're going to discuss  
24 Touch-Tone service.

25 MS. GREEN: Who is the second person?

1 MR. BECK: Lynn Payne.

2 MS. GREEN: Oh, Payne. Okay.

3 MR. BECK: It's concerning Touch-Tone. We're  
4 still working with Southern Bell to try to get an  
5 agreeable time. As soon as I have it, it will be  
6 available. I will get "meet me lines." If anyone need  
7 the number, just call me and we'll give you the meet-me  
8 line for them. I intend to -- at least at this point,  
9 intend to offer those depositions into the record as  
10 evidence because both of these witness are more than  
11 hundred miles away.

12 MS. GREEN: I'm sorry. I don't understand  
13 the purpose of your bringing that up. We all have our  
14 notices. Is it not going to be conducted according to  
15 the notice? Is that way you're bringing it up?

16 MR. BECK: Right. The time will likely  
17 change. That's my point.

18 MS. GREEN: Okay. Thank you.

19 MR. NYCE: Commissioner Clark?

20 COMMISSIONER CLARK: Yes.

21 MR. NYCE: I note on this list that Mr. Charlie  
22 King for the Department of Defense is not shown on there.  
23 His testimony relates to incentive regulation and I assume  
24 that he can be added in there somewhere. I don't have  
25 his schedule current.

1 MS. GREEN: Okay. That apparently is an  
2 oversight on our part because he's on another list I  
3 have as being a witness on the incentive plan. Yes.

4 MS. NORTON: If there are others, bring them  
5 to our attention.

6 MS. GREEN: I think what the Commissioner is  
7 trying to do see in anyone needs her for anything.  
8 Otherwise, they won't have to come back unless they  
9 want to do order of witnesses.

10 COMMISSIONER CLARK: I'm flexible on how long  
11 we break for lunch. Public Counsel, do you have any  
12 requirement?

13 MR. BECK: No. Whatever you decide.

14 MR. ANTHONY: My preference would be a relatively  
15 short break. We have a number of depositions scheduled  
16 for after this hearing.

17 COMMISSIONER CLARK: Oh, all right.

18 MS. GREEN: It's only six of them.

19 COMMISSIONER CLARK: Well, it's raining you  
20 don't have anywhere to go, right? (Laughter)

21 All right. Why don't we reconvene as 12:30,  
22 okay?

23 (Lunch recess.)

24 - - - - -

25 COMMISSIONER CLARK: Let's go back on the

1 record.

2 Let's take up the order of witnesses. Has  
3 everyone had a chance to look at the order proposed?

4 (Pause) Which list do you want me to start with?

5 MS. NORTON: Commissioner, the list with the  
6 boxes, the box around it, would be an approximation of  
7 an order of witnesses if we merged the dockets, and it  
8 is also an attempt to have witnesses appear only once.  
9 I wasn't 100% successful with that but, for the most  
10 part, it would provide a format so that witnesses who  
11 testified on multiple issues could come up and testify  
12 just once.

13 What it does, do by virtue of that, however,  
14 is mix in rate design issues with incentive regulation  
15 and competition and cross-subsidy issues. The other  
16 list would be more the direction -- I believe, we would  
17 go if we kept the docket separate or decided to move  
18 all of the incentive regulation and quality of service  
19 issues into the April hearings. That would be the list  
20 that is not surrounded by boxes. That way you'd go  
21 through more of what I believe would be a standard  
22 plain vanilla rate case and the second page of that one  
23 has the quality of service and competition incentive  
24 regulation witnesses thereafter.

25 What that would require is that the same

1 witness would have to appear two or more times, or  
2 multiple times at any rate, and also depending on when  
3 we scheduled that for the January-February time frame  
4 or April time frame.

5           The dates out at the right, both lists show  
6 what the dates may possibly be if we held them all in  
7 the January-February time frame. I did that more or  
8 less just to give me a rough idea of how long it would  
9 take to get through this, but the decision would need  
10 to be made as to which set of hearings all of these  
11 went into.

12           MS. KAUFMAN: Commissioner Clark?

13           COMMISSIONER CLARK: Yes.

14           MS. KAUFMAN: I'm just confused about which  
15 list we're looking at. I'm sorry. Robin, the one that  
16 does not have the box around it is the one the quality  
17 of service issues are put off until next hearing?

18           MS. NORTON: Well, either one of them, the  
19 quality of service issues could get split out. You  
20 see, the one without the boxes separates out the rate  
21 design pricing policy from the incentive regulation  
22 issues.

23           The reason you've got that distinction there,  
24 some witnesses testified on all of that, okay. So if  
25 you try to keep all of the testimony on rates separate

1 from all the testimony on incentive regulation, you're  
2 going to bring witnesses back twice. The one with the  
3 boxes precludes that; the one without the boxes  
4 requires them to come back twice.

5 MR. BECK: Commissioner Clark, on top of  
6 that, we've subpoenaed four witnesses not listed here,  
7 Southern Bell employees, and there's motions to quash  
8 those subpoenas and so forth.

9 COMMISSIONER CLARK: Okay. (Pause)

10 With respect to the witness list that appears  
11 in the box, nobody has to come back. They just get on  
12 the stand and they give all of their testimony; is that  
13 right?

14 MS. NORTON: That's the theory, yes.

15 COMMISSIONER CLARK: And as it relates to  
16 different issues.

17 MS. NORTON: Yes. It primarily became  
18 important in the section that's titled "Incentive Rates  
19 and Cross-sub."

20 COMMISSIONER CLARK: Well, it seems to me  
21 there's some -- at least with respect to some of the first  
22 witnesses. Let me ask you with respect to Mr. Cicchetti's  
23 testimony for AARP. Does he testify only on the cost of  
24 capital?

25 MR. BELL: Excuse me, Commissioner.



1 Mr. Cicchetti is not with AARP.

2 MS. NORTON: He's with FCTA and he is the one  
3 that I had to split out.

4 COMMISSIONER CLARK: Well, you have him  
5 listed as AARP.

6 MS. NORTON: Do I? What else have I done?

7 MR. BECK: On the unboxed one.

8 COMMISSIONER CLARK: Okay.

9 MR. LACKEY: I suppose it's time for me to  
10 weigh in here.

11 COMMISSIONER CLARK: Okay. Great.

12 MR. LACKEY: I'm a trifle confused. When we  
13 did the depreciation case, I thought the Commission  
14 told us that they now had a preference for putting  
15 witnesses up on their direct and then, at the  
16 appropriate time, taking their rebuttal. This doesn't  
17 accommodate that. I believe that the Southern Bell  
18 witnesses are the only one with rebuttal, at least with  
19 this juncture.

20 COMMISSIONER CLARK: Uh-huh.

21 MR. LACKEY: And since I think everybody  
22 asserts that we have the burden of proof, something  
23 which we don't dispute, that we have the right to go  
24 first and to close, go last, and this schedule doesn't  
25 seem to accommodate that either.

1                   COMMISSIONER CLARK: It's your preference to  
2 have rebuttal go afterwards.

3                   MR. LACKEY: It would be my preference to  
4 have our first witness put up, run through our  
5 witnesses until we close our direct case, let the other  
6 sides put their case up and let us put up our rebuttal  
7 to close the case.

8                   COMMISSIONER CLARK: Well, let me ask you  
9 this: I know that we have had cases where we separate  
10 the witness in terms of the areas they are testifying  
11 on, so that all of the cost of capital goes together,  
12 but within that issue area we follow that order. Is  
13 that okay?

14                   MR. LACKEY: This one is so scrambled. There  
15 are so many different issues that I don't know what the  
16 benefit of that is. You're talking about --

17                   COMMISSIONER CLARK: I think there is a  
18 benefit to compartmentalize as much as we can, and I  
19 think we could to it on cost of capital.

20                   MR. LACKEY: I think probably with regard to  
21 cost of capital, but once you move into rate design,  
22 pricing policy and incentive regulation, I don't know  
23 that that's a sufficiently discreet unit, that there  
24 would be anything gained by it. We wouldn't object if  
25 you wanted to pull out the cost of capital and put the

1 four witnesses on. I think there's four. How many of  
2 them are there?

3 COMMISSIONER CLARK: I have four.

4 MR. LACKEY: There's four listed. Putting  
5 the four of them in a group would be fine, but I think  
6 the rest of it is not a sufficiently discreet unit that  
7 it should disrupt the orderly presentation of our case.

8 COMMISSIONER CLARK: What about revenue  
9 requirements and affiliate transactions and attrition?  
10 Those are --

11 MR. LACKEY: They don't particularly fit  
12 together any better than they fit with anything else in  
13 the case is the problem.

14 MR. BECK: Commissioner, I don't agree. I  
15 think revenue requirements in the typical, traditional  
16 accounting issues are very separate from -- I agree  
17 that the pricing and the incentive regulation are  
18 intertwined but certainly not your traditional rate --  
19 case type items.

20 MR. LACKEY: And when you do that, you end up  
21 putting up the same witness twice, two or three times.  
22 You won't have to worry about are you talking to him, for  
23 instance, Mr. Reid is not in here for incentive  
24 regulation, but he has the productivity factor and that  
25 sort of thing that fits into incentive regulation. Well,

1 do I put him up once under the incentive regulation thing;  
2 once under the accounting. It just --

3 MS. NORTON: Mr. Lackey, we did put him in  
4 for rebuttal of Kahn down there. He is another one  
5 that would have to come up twice.

6 MR. LACKEY: Well, I mean, under my scheme he  
7 would have to come up twice anyway.

8 COMMISSIONER CLARK: You have submitted an  
9 order of witnesses, but they're only your witnesses; is  
10 that right?

11 MR. LACKEY: That's correct.

12 COMMISSIONER CLARK: Okay.

13 MR. LACKEY: I'm relatively indifferent as to  
14 the order of witnesses in between our opening and our  
15 closing.

16 MR. BELL: Commissioner, if I could add just a  
17 comment here. A number of parties, I think, including  
18 AARP, are intervenors proceeding on relatively modest  
19 budgets. Under this proposal, the non-boxed proposal, we  
20 would have witnesses, Mr. Chessler would be traveling down  
21 from Washington D.C. to appear twice, and as was just  
22 said, I don't think that that's that much distinction  
23 between the areas that he would be testifying on.

24 COMMISSIONER CLARK: I'm sorry. Go ahead.

25 MR. BELL: Also, it may just be an oversight

1 if this was just recently prepared, but we had  
2 indicated to Staff earlier that Mr. Cooper has a  
3 conflict on the 3rd. And just for the record, we like  
4 this schedule. (Laughter)

5 MS. NORTON: You're looking at the one not in  
6 the box.

7 MR. BELL: The box schedule.

8 MS. NORTON: In the box. And we've got --  
9 I've got it in my notes, but you said he's got a  
10 conflict on which day?

11 MR. BELL: Mr. Cooper has a conflict on the 3rd.  
12 The bigger problem even than that, though, is --

13 MS. NORTON: I think we have him for the 5th.  
14 Does he have a -- is that right?

15 MR. BELL: On the nonboxed.

16 COMMISSIONER CLARK: Let me ask --

17 MS. NORTON: Right. Right.

18 COMMISSIONER CLARK: Let me ask a question.  
19 Is Mr. Dunbar around? Maybe I can find a different  
20 example.

21 MR. TYE: Ms. Guedel with AT&T is up twice on  
22 that other list, Commissioner.

23 COMMISSIONER CLARK: And she's filed -- but  
24 she's only filed a single document for testimony,  
25 right?

1           MR. TYE: Mike Guedel is one piece of  
2 testimony, but it goes to incentive regulation and also  
3 rate design issues, so I would opt, on behalf of AT&T,  
4 for the schedule that requires me to put my witness on  
5 one time and send him back to Atlanta.

6           MS. KAUFMAN: Commissioner Clark, Mr. Gillan  
7 for FIXCA would be in the same boat, even though on the  
8 nonboxed he's appeared only once, I believe. He also  
9 offers testimony on the competition incentive  
10 regulation issues. And I would suggest to you that as  
11 much as we can break the items down the way it is done  
12 in the boxed schedule, accommodating witnesses that  
13 might have overlap between the two areas, I think that  
14 that would make for a more orderly presentation.

15           MR. DICKENS: Commissioner, this is Ben  
16 Dickens. I think we share a similar view. I just  
17 noticed that Mr. Metcalf is coming up twice is in the  
18 other schedule, too.

19           MR. LACKEY: I hate to relay on Mr. Shreve  
20 but it seems like the comment he made this morning  
21 about us being able to try our case the way we want to  
22 seems appropriate here.

23           Again, I have no objection to taking the cost  
24 of capital people and lumping them together. I think  
25 that's clearly a freestanding --

1 COMMISSIONER CLARK: Okay.

2 MR. LACKEY: -- group, but other than that, I  
3 would prefer to open and to have the right to close.

4 COMMISSIONER CLARK: Okay. Well, clearly  
5 Mr. Lacher goes first, there's no debate on that,  
6 right?

7 MR. LACKEY: Commissioner, if he has to go all.

8 MR. BECK: There is a question. We have four  
9 witnesses subpoenaed. Bell's objected on one ground --  
10 one of their grounds is that it's burdensome and  
11 oppressive to keep them here for an entire two weeks.  
12 So we suggested that they go up first and then they can  
13 send him home and release them from the subpoenas.

14 MR. ANTHONY: I think that can be resolved.  
15 First of all, we don't think they ought to testify at  
16 all in this time period, but putting that aside, I  
17 think it would be more appropriate to determine the  
18 appropriate date when they would fit in and not just  
19 put them up first.

20 COMMISSIONER CLARK: That doesn't have to  
21 deal with the order of witnesses; it's when you would  
22 need them here, right? I mean, you don't want us to  
23 keep them here for two weeks, but you want --

24 MR. BECK: No, no, no. They are subpoenaed  
25 for the first day, though.

1           COMMISSIONER CLARK: Oh. I see your point  
2 and they do have to show up on the first day. We could  
3 subpoena them for a particular date. Can't you do  
4 that? I mean we could set them for a particular day.

5           MR. BECK: If Southern Bell will guarantee  
6 their appearance there, that would be fine.

7           MR. LACKEY: I can make this one easy. I'm  
8 trying to cooperate now. I'm changing my image.

9           If we lose our motions to quash and they have  
10 to come at all, we can certainly work out the time that  
11 they would be there.

12           COMMISSIONER CLARK: All right. So --

13           MR. LACKEY: Even though they'll be hostile  
14 witnesses and I'll get to cross examine them, we can  
15 still probably compel their attendance. I'm looking  
16 forward to that, by the way. We can do that.

17           COMMISSIONER CLARK: So Mr. Lacher goes  
18 first. What about Mr. Lombardo going next?

19           MS. KAUFMAN: Mr. Lombardo -- oh, go ahead.  
20 I'm sorry.

21           MR. LACKEY: That would be our preference.

22           MS. KAUFMAN: FIXCA, if we're still looking  
23 at the box schedule, we believe that Mr. Lombardo's  
24 testimony falls more in the incentive regulation rates  
25 area. I guess that's the third big group. Because,



1 basically, his testimony describes the plan that  
2 Southern Bell has been under to this point, and it also  
3 describes what they're proposing for the future. And,  
4 therefore, I don't believe he is an overview witness,  
5 but he gives specific testimony on the incentive  
6 regulation. And I would suggest that maybe he should  
7 be the first witness before Ms. Obuchowski.

8 COMMISSIONER CLARK: Well, I am inclined to  
9 agree. I would like to group them, if we can. But by  
10 the same token, I think that Southern Bell does have a  
11 right to put on their case the way that they want to.

12 We have previously been able to accommodate  
13 people's desires in going out of schedule and things  
14 like that, which we will try to do here.

15 I'll note your belief that it should be  
16 placed after -- is it after Obuchowski?

17 MS. KAUFMAN: I really don't care  
18 particularly where in that group he goes, but I think  
19 that, in the subject matter grouping, is where his  
20 testimony belongs.

21 COMMISSIONER CLARK: All right. Let me ask  
22 you a question. After Mr. Lacher, couldn't we do cost  
23 of capital?

24 MR. LACKEY: Yes, ma'am.

25 COMMISSIONER CLARK: And we could have the

1 witnesses as they appear in that order? But with the  
2 understanding that the rebuttal goes after, unless -- I  
3 still prefer the rebuttal go --

4 MR. LACKEY: If I were going to do it, I  
5 don't mind, but what I'd like to do is put Billingsley  
6 up first; then put Rothschild; then put Cicchetti and  
7 close with Keck. Keck is discussing capital structure  
8 specifically. Billingsley's got cost of capital.  
9 Rothschild and Cicchetti have both capital structure  
10 and cost of capital. So I'd rather have Keck come last  
11 in that group, but I don't mind that the four of them  
12 follow Lacher.

13 COMMISSIONER CLARK: Well, wait a minute.  
14 Billingsley would go first to provide his direct.

15 MR. LACKEY: I really -- it would be fine  
16 with me, in this case, if you all don't mind, I'll put  
17 Billingsley up one time; let him put his direct and  
18 rebuttal in.

19 COMMISSIONER CLARK: I don't have any  
20 objection to that, and I don't think the other  
21 Commissioners will.

22 MR. LACKEY: Put Rothschild up. He doesn't  
23 have rebuttal, but he goes next. Cicchetti goes next.

24 COMMISSIONER CLARK: Wait a minute. OPC, is  
25 Rothschild your witness?

1 MR. LACKEY: Oh, no. No. No.

2 COMMISSIONER CLARK: Okay. Then it would be Keck?

3 MR. LACKEY: I'd put Keck last. I'd go

4 Billingsley, Rothschild, Cicchetti, Keck.

5 COMMISSIONER CLARK: Well, then you are not

6 putting on your direct testimony before they put on

7 their rebuttal.

8 MR. LACKEY: I'm sorry?

9 COMMISSIONER CLARK: It says here that Keck

10 has direct testimony. He should go first.

11 MR. LACKEY: I don't mind splitting him. He

12 has rebuttal too. I just want the last word.

13 (Laughter)

14 COMMISSIONER CLARK: I see your point. If

15 you're going to do -- all right. Mr. Beck.

16 MR. BECK: Again, I can't speak for the cable TV

17 folks because Mr. Cicchetti is their witness, but it seems

18 like the initial order Mr. Lackey said is a good one.

19 COMMISSIONER CLARK: Okay. So it will be

20 Billingsley, Rothschild, Cicchetti and Keck.

21 MR. LACKEY: And they will follow Lacher.

22 MS. NORTON: Commissioner, how did you rule

23 on putting in the order of Lombardo. Did you yet?

24 COMMISSIONER CLARK: I haven't.

25 MS. NORTON: Okay. (Pause)

1 MR. LACKEY: After that, I would prefer to go  
2 back to the schedule we handed out which puts  
3 Sappington up -- well, actually it would be Lombardo  
4 and then Sappington and then Obuchowski.

5 COMMISSIONER CLARK: And then Billingsley.  
6 No, he's --

7 MR. LACKEY: He's gone.

8 COMMISSIONER CLARK: Keck. Reid would go  
9 after that?

10 MR. LACKEY: That's what I would do.  
11 Lombardo, Sappington, Obuchowski, Reid, McClellan Sims  
12 and we're done with our direct case.

13 COMMISSIONER CLARK: Okay.

14 MR. BECK: Commissioner, what that would do  
15 is put their proposal for incentive -- price proposal  
16 all up first.

17 This case was generated by an order of the  
18 Commission to have a full rate case review of Southern  
19 Bell. It seems to me more logical that you would take  
20 the traditional issues of the test year, the revenue  
21 requirement before you go into their wish list of what  
22 they want to do.

23 MR. LACKEY: I think I may tend to disagree  
24 with that. I think that this case was initiated by the  
25 -- because of the expiration of our incentive case, but

1 I don't think it makes any difference.

2 COMMISSIONER CLARK: Let me ask you this:

3 What does Mr. Reid present testimony on?

4 MR. LACKEY: On? Basically, he's the  
5 accountant. He puts in -- the 1991 test year basically  
6 either sets out or incorporates the pro formas for the  
7 test year. He discusses the productivity piece of the  
8 new plan, and that's all in his direct testimony.

9 COMMISSIONER CLARK: Does he deal with  
10 quality of service or incentive regulation?

11 MR. LACKEY: He deals with incentive  
12 regulation only -- I believe I can state this  
13 correctly, to the extent he deals with the productivity  
14 pieces of the case.

15 COMMISSIONER CLARK: Would you call that the  
16 economic side of it?

17 MR. LACKEY: Accounting and economic, maybe.

18 COMMISSIONER CLARK: Okay.

19 MR. LACKEY: Certainly the accounting and  
20 economic would be fine.

21 COMMISSIONER CLARK: All right. What about  
22 McClellan?

23 MR. LACKEY: McClellan has the attrition  
24 analysis that moves the --

25 COMMISSIONER CLARK: Some things never

1 change, right?

2 MR. LACKEY: -- actually, though, let me make  
3 it clear, since I'm sure I'll be reading about it. He  
4 has the accretion piece. There is no attrition. It is  
5 accretion in this case.

6 COMMISSIONER CLARK: Okay. All right.

7 MR. LACKEY: And that, of course, goes with  
8 Mr. Reid's testimony. That represents a pro forma  
9 adjustment or an adjustment to the accounting  
10 testimony. So that Reid and McClellan need to go in  
11 lock step.

12 COMMISSIONER CLARK: All right. What does he  
13 do on incentive quality or quality of service?

14 MR. LACKEY: To my recollection, nothing.

15 COMMISSIONER CLARK: Okay. How about Young?

16 MR. LACKEY: I'm sorry?

17 COMMISSIONER CLARK: Whose witness --

18 MS. NORTON: Young and Welch are the Staff  
19 witnesses.

20 COMMISSIONER CLARK: Is it Ruth and Kathy?  
21 All right. Is there any disagreement that their  
22 testimony relates to the testimony of Mr. Reid and  
23 McClellan?

24 MS. NORTON: They are the Staff audit. They  
25 would logically go in that group. They go with Reid.

1 MR. LACKEY: Well, I agree.

2 COMMISSIONER CLARK: Okay. What about Allen?

3 MR. BECK: Allen is our accounting witness.

4 What I'd like I think more logically to have Brosch  
5 precede Allen because he does affiliate transactions on  
6 part of accounting and his testimony feeds into  
7 Mr. Allen's.

8 COMMISSIONER CLARK: Okay. And then Mr. Wilson,  
9 does he rebut anyone?

10 MR. LACKEY: Wilson is rebuttal testimony.

11 COMMISSIONER CLARK: Yeah.

12 MR. LACKEY: And he addresses, basically,  
13 Brosch and the issue of affiliated transactions.

14 COMMISSIONER CLARK: Okay. (Pause)

15 What about -- I still have a preference for  
16 the rebuttal testimony coming last. And the rebuttal  
17 testimony of Mr. Reid and McClellan addresses which  
18 other witnesses?

19 MR. LACKEY: Principally Allen.

20 COMMISSIONER CLARK: Both of them address  
21 Allen?

22 MS. NORTON: I believe that both address  
23 Brosch and Mr. Reid addresses Allen.

24 MR. LACKEY: I'll have to defer to you on  
25 that one.

1 COMMISSIONER CLARK: That's enough.

2 MR. LACKEY: There's a fellow who addresses  
3 the attrition, and I can't remember which witness it is.

4 MS. NORTON: Commissioner, I'm sorry. Just  
5 to clarify, Reid also rebuts Kahn, but according to the  
6 one schedule I have put him to rebut Kahn later in the  
7 incentive reg part, just to note that.

8 COMMISSIONER CLARK: I think we're going to  
9 have to put witnesses on at one time. I mean, they  
10 have filed their single set of testimony. And I would  
11 like to accomplish that.

12 MS. NORTON: You see, you've got the direct  
13 testimony of Reid, and then you want rebuttal to come  
14 last? Is that correct?

15 COMMISSIONER CLARK: That's my preference  
16 within the particular areas, and it seems to me that  
17 the overview of the return on equity and cost of  
18 capital and the revenue requirements and affiliate  
19 transactions can be pretty well isolated. I realize  
20 you would -- that there is a productivity element to  
21 Mr. Reid's testimony.

22 MS. NORTON: Rebuttal.

23 COMMISSIONER CLARK: Rebuttal. And then  
24 there is a -- you had mentioned somebody else has  
25 testimony on incentive. Who is that?



1 MS. NORTON: I'm sorry, what was that last part?

2 COMMISSIONER CLARK: Is there someone else  
3 whose testimony relates to incentive regulation?

4 MS. NORTON: Of what -- those under the  
5 revenue requirement section under the boxed list.

6 COMMISSIONER CLARK: Yes.

7 MS. NORTON: No, I think that's the only one  
8 is Reid. A portion of Reid's with the productivity  
9 offsets.

10 COMMISSIONER CLARK: All right. Do all of these  
11 cross-subsidy -- I'm not looking at the boxed one, I'm  
12 looking at the unboxed. The cross-subsidy issues.  
13 Mr. Cresse testifies on more than that, does he not?

14 MR. LACKEY: Inside wire.

15 COMMISSIONER CLARK: Okay.

16 MS. GREEN: And I believe Mr. Cresse  
17 testifies on the OELS plan as well. He has a number of  
18 subjects.

19 MS. NORTON: Mr. Cresse testifies on the  
20 incentive regulation plan, on cross-subsidization, on the  
21 optional expanded local service plan and on inside wire.

22 COMMISSIONER CLARK: Okay.

23 MS. NORTON: Fiber deployment.

24 COMMISSIONER CLARK: What about Mr. Gillan?

25 MS. KAUFMAN: Mr. Gillan testifies, as it

1 says here, about the interLATA network. He testifies  
2 about the incentive regulation, both current and  
3 proposed. He testifies about the proposed ELS plan,  
4 and about 1+ presubscription.

5 COMMISSIONER CLARK: Okay. I'm sorry. Did  
6 you say he does testify on incentives?

7 MS. KAUFMAN: Yes, ma'am.

8 COMMISSIONER CLARK: Mr. Lombardo's testimony  
9 covers what issues?

10 MR. LACKEY: He covers a raft of issues. He  
11 obviously has where we have been, where he thinks we  
12 ought to be going, the state of competition in Florida;  
13 let me get some help here.

14 COMMISSIONER CLARK: Well, let me ask you  
15 this: Is he similar to Mr. Lacher in the sense that  
16 he's an overview of the whole case and the various  
17 issues?

18 MR. LACKEY: In our view, Mr. Lacher and  
19 Mr. Lombardo need to go one and two.

20 COMMISSIONER CLARK: Okay.

21 MR. LACKEY: It can fall apart if we have to  
22 after that, but they ought to be one and two because  
23 they are introducing the case and laying the foundation  
24 for our presentation in our case.

25 MR. BECK: I disagree, Commissioner.

1 Mr. Lombardo's thrust is incentive regulation, both a  
2 review of what's happened, incentives that have  
3 occurred and what he proposes in the future.

4 MS. KAUFMAN: FIXCA agrees with Public  
5 Counsel's position in that.

6 COMMISSIONER CLARK: Okay. Let me look just  
7 to the list of remaining witnesses for Southern Bell.  
8 After we get -- after we conclude return on equity and  
9 revenue requirements, who remains to be heard from?  
10 Sappington?

11 MR. LACKEY: Sappington and Obuchowski.

12 MS. NORTON: Sims.

13 MR. LACKEY: And then Sims.

14 COMMISSIONER CLARK: Okay.

15 MS. NORTON: And then your rebuttal.

16 COMMISSIONER CLARK: And that's on direct.

17 MR. LACKEY: Yes.

18 COMMISSIONER CLARK: How about rebuttal?

19 MR. LACKEY: Well, we've got three or four  
20 witnesses on rebuttal that did not testify on direct.  
21 Lombardo has got rebuttal, Billingsley's got rebuttal.  
22 Keck has got rebuttal. We've already talked about  
23 that. Reid's got rebuttal. McClellan's got rebuttal.  
24 Sims has got rebuttal.

25 Then we've added Bill Taylor. We've added

1 Jerry Wilson. We've added Bob Gray. And I guess it's  
2 no secret now, even though it won't be filed until  
3 Monday, but we're going to put Tubaugh up. If we can  
4 find a lawyer to sponsor him. (Laughter)

5 And we may have one or two more witnesses.  
6 The testimony is not due until Monday so we're still  
7 making up our minds.

8 COMMISSIONER CLARK: I think what I'd like to  
9 do, I think the witness order with Lacher, Lombardo,  
10 Billingsley -- is it Rothschild, Cicchetti, Keck?

11 MR. LACKEY: That's correct.

12 COMMISSIONER CLARK: Reid, McClellan, Young,  
13 Welsh, Brosch, Allen and Wilson is the appropriate way  
14 to go for those issues. I'm a little less comfortable  
15 with the way it is set out for the remaining witnesses.

16 What I would like to do is realizing that you  
17 all have to -- you need to get to your depositions. I  
18 would like the parties to get together and see if they  
19 can come up with a logical witness order.

20 MR. LACKEY: After you stopped? So we don't  
21 have to fight about what you just said you mean? A  
22 logical witness order following --

23 COMMISSIONER CLARK: Yes. Yes. After that  
24 point.

25 MR. LACKEY: That shouldn't be a problem.

1           COMMISSIONER CLARK: Is there any need to  
2 deal with that witness order before next Friday?

3           You know, there are two things going on here  
4 and that is trying to come up with a witness order  
5 that's consistent with the proceeding the way it sits  
6 now, and the possibility of the way it may change.

7           It's my view that I can't -- that that  
8 proceeding has to go before the full Commission. That as  
9 I understand it, there's a recommendation to consolidate  
10 these proceedings. As Prehearing Officer, I can't do  
11 that. It has to go to either the Chairman or the full  
12 Commission. But what I'd like to do is have you work on  
13 the order of witnesses with the thought in mind that we  
14 may move quality of service, and whatever else the  
15 Commission decides to the later date.

16           I will be looking at it myself, and forming  
17 my own opinions as to how we should proceed, but I  
18 realize you all have depositions and I think we would  
19 be struggling today to come up with any lists.

20           MS. GREEN: Well, one of the pending motions  
21 that you might want to the hear from the parties and  
22 take under advisement, due to the lack of time, has to  
23 do with the pending motion filed by Southern Bell to  
24 strike testimony of Muloy, Poucher, Cooper and Cresse.  
25 And the reason being, even under the proceeding as you

1 have envisioned it, some of those rather than being  
2 stricken, could be moved to the small April proceeding.  
3 And I think we do need some guidance in that way or you  
4 might want some input if you want to decide in the  
5 interim.

6 COMMISSIONER CLARK: Well, my recollection is  
7 that Southern Bell's response, since they're not  
8 appropriate for here, they need leave to refile them in  
9 that proceeding. Is that true for all of them?

10 MR. ANTHONY: Yes. There's a Motion to  
11 Strike Muloy and Poucher and Cooper on the basis that  
12 all three of those are related to the April hearing.  
13 We don't have an objection to their submitting  
14 appropriate testimony in the April proceedings. There  
15 is a Motion to Strike a portion of Mr. Cresse's  
16 testimony on the basis it relates to inside wire given  
17 that fact that you've deleted that from the issues  
18 list. There are also --

19 COMMISSIONER CLARK: Let me ask a question.  
20 The inside wire, is that part of your Motion for  
21 Reconsideration?

22 MR. BECK: Yes.

23 COMMISSIONER CLARK: It thought it was.

24 MR. ANTHONY: Then there is a Motion to Quash  
25 these subpoenas for Mr. Sanders and Mr. Cuthbertson on

1 the basis that their testimony would relate to the  
2 issues in the April hearings as well.

3 As I understand it, Mr. Larry Mixon has also  
4 been subpoenaed and Mr. Wayne Tubaugh. And I'm fairly  
5 confident I would file a Motion to Strike.

6 COMMISSIONER CLARK: For this proceeding?

7 MR. ANTHONY: Motion to Quash, rather, for  
8 this proceeding, Mr. Mixon's, and I'm not sure about  
9 Mr. Tubaugh because I'm not sure what it relates to,  
10 but if you're going to move the service issues to the  
11 other hearing, then clearly that should also be taken  
12 up in April rather than this proceeding. There's  
13 nothing new or special in the arguments based on your  
14 previous rulings.

15 MR. BECK: Commissioner, in our response  
16 where we refer also that it is relative to the other  
17 proceedings, but we also submit to you that it's  
18 relevant to this proceeding as it stands.

19 COMMISSIONER CLARK: It's consistent with your  
20 opinion all along that they needed to be heard there.

21 MR. BECK: You've left in quality of service  
22 and all of that evidence relates to quality of service.  
23 So regardless of whether, you know, -- even if you're  
24 Prehearing Order stands as written, it's unchanged by  
25 the full Commission, we submit that it's still relevant

1 and should be still in this case because it's relevant  
2 to the issues as they stand right now for January.

3 COMMISSIONER CLARK: I see.

4 MS. GREEN: Well, I think that's the question  
5 in the nutshell, is it January or is it April, and I  
6 think both sides just said it's part of the case, and  
7 it's just a question of where.

8 COMMISSIONER CLARK: And to that extent, I'm  
9 not going to quash the subpoenas or strike the  
10 testimony because they are going to be heard somewhere.

11 MR. ANTHONY: That's fine, but I just want to  
12 -- I need to know whether or not the witnesses in  
13 question are going to testify in the January time frame  
14 or the April time frame because that dictates how  
15 Southern Bell responds to the case. And if you have  
16 them appear in the January time frame, then I think  
17 we're prejudiced because we've relied on your orders  
18 that those matters would not be taken up at this time.

19 I don't have any objection to proper  
20 testimony being filed in April on these issues. We've  
21 stated that all along. But I do have an objection to  
22 their being heard in January and February because we're  
23 just not prepared to deal with those issues based on  
24 the magnitude of this case and your previous ruling.  
25 We've relied on that.



1 reach some common ground with respect to the request  
2 for reconsideration. Because it seems to me that you  
3 have, at least prior to lunch, agreed that you have no  
4 objection to moving quality of service to the April  
5 hearings.

6 MR. ANTHONY: That's correct.

7 MR. BECK: Commissioner Clark, both Mr. Poucher's  
8 and Dr. Cooper's testimony also addresses incentive  
9 regulation as well. It's not just quality of service.

10 MR. ANTHONY: Now I've got to disagree with  
11 that. In the sense that that they say that certain  
12 events have occurred and it's linked to incentive  
13 regulation, certainly, you can argue it's related to  
14 incentive regulation. But the substance of the  
15 testimony or allegations of impropriety on the part of  
16 Southern Bell and that's quality of service issues.

17 COMMISSIONER CLARK: But I think the point has  
18 always been that the quality of service has a bearing on  
19 whether incentive regulation has been a good idea.

20 MR. ANTHONY: But you specifically ruled  
21 that, for example, hard sell would not be -- and by Mr.  
22 Beck's own admission, that is Mr. Cooper's testimony, for  
23 example, would not be heard in January and February, and  
24 we've relied on that.

25 COMMISSIONER CLARK: Yea, and -- okay. All

1 COMMISSIONER CLARK: Yea, and -- okay. All  
2 right.

3 MR. BECK: No. It's not just hard sell. It  
4 deals with quality of service as well and it deals with  
5 incentive regulation and explicitly goes into it.

6 COMMISSIONER CLARK: I understand your  
7 diverging viewpoints.

8 You have no objection to hearing quality of  
9 service in April?

10 MR. ANTHONY: No, ma'am. No objection.

11 COMMISSIONER CLARK: Does that satisfy part  
12 of your motion on reconsideration?

13 MR. BECK: In the Motion for Reconsideration  
14 we've asked that quality of service and incentive  
15 regulation all be addressed together with --

16 COMMISSIONER CLARK: Right.

17 MR. BECK: Yeah, as one. In part, it  
18 addresses part of our --

19 COMMISSIONER CLARK: And you think it should  
20 be done in April.

21 MR. BECK: Yes.

22 COMMISSIONER CLARK: Okay.

23 MR. BECK: There's a lot more to it, but I  
24 agree with that portion of it.

25 COMMISSIONER CLARK: What part of incentive

1 regulation couldn't be moved to April?

2 MR. ANTHONY: Well, I think if you just look  
3 at the list of witnesses, I counted up 14 --

4 COMMISSIONER CLARK: All right.

5 MR. ANTHONY: 15 witnesses, maybe more,  
6 whose testimony deals with incentive regulation in one  
7 sense or the other.

8 As I said earlier, I think there's a distinction  
9 between how quality of service affects incentive  
10 regulation, whether it should be or shouldn't be approved  
11 and whether or not Southern Bell, in particular, should or  
12 shouldn't have incentive regulation.

13 I think there's another portion which would  
14 apply to any company, whether or not the proposal  
15 Southern Bell has set forth as a general theoretical  
16 framework for regulation plan, is appropriate or not.  
17 And I think that can clearly be heard in the January  
18 and February time frames and that's what most of this  
19 testimony goes to.

20 MR. BECK: We very strongly disagree with  
21 that. That's essentially having the Commission  
22 entertain fiction. Putting in the one portion they  
23 want to do that relates to incentive regulation. We  
24 have other things that we feel relate to incentive  
25 regulation. We think it all ought to be together.

1 They are inseparable.

2 COMMISSIONER CLARK: Let's go back to the  
3 particular motions. With respect to the witness list,  
4 I still want the parties to look through the witness  
5 list suggesting the remaining order of witnesses.

6 With respect to the motions that remain, a  
7 Motion to Quash and the motions to strike.

8 All right, the motions with respect to Muloy,  
9 Poucher, Cooper and Cresse are that it's inappropriate  
10 in this docket consistent with my ruling.

11 MR. ANTHONY: Yes, ma'am.

12 COMMISSIONER CLARK: Okay. I will reserve  
13 ruling on those motions. The testimony will remain  
14 until after the Commission has made their decision with  
15 respect to the reconsideration. I will also not quash  
16 the subpoenas for the same reason.

17 MR. ANTHONY: Reserving the ruling until  
18 after the Commission rules?

19 COMMISSIONER CLARK: Yes. That's right. Now  
20 let me ask you a question: Are those a subpoena to  
21 appear at the hearing?

22 MR. BECK: Yes.

23 COMMISSIONER CLARK: They're not subpoenas  
24 for deposition?

25 MR. BECK: No. They're subpoenas to attend

1 the hearing starting at 9:30 on January 25th.

2 COMMISSIONER CLARK: Okay. If they have to  
3 appear in the January hearings, will there be any  
4 difficulty getting them?

5 MR. ANTHONY: No. There won't be any --

6 COMMISSIONER CLARK: Okay.

7 MR. ANTHONY: I prefer, obviously, that it  
8 not be on the first day, but we can make arrangements  
9 for a mutually agreeable time among all the parties.

10 COMMISSIONER CLARK: All right. What else?

11 MR. LACKEY: I've got something about what  
12 you just said, if I could.

13 COMMISSIONER CLARK: Okay. Let me ask: do  
14 you have anything else?

15 MS. GREEN: Nothing comes to mind right now,  
16 but if you would like to check with the rest of the  
17 parties, and I'll keep checking and make sure I'm not  
18 missing something.

19 COMMISSIONER CLARK: Okay.

20 MR. LACKEY: Let me just express a concern.  
21 As a result of the rulings that have been made earlier  
22 in this docket, we did not notice Muloy, Cooper,  
23 Poucher for depositions. We've conducted no discovery  
24 with regard to their testimony believing that there was  
25 no basis for doing so.

1 COMMISSIONER CLARK: Okay.

2 MR. LACKEY: If the Commission isn't going to  
3 take up this motion until the 19th, discovery closes on  
4 the 15th.

5 COMMISSIONER CLARK: You will be allowed  
6 further discovery if they are going to be heard in  
7 January.

8 MR. LACKEY: Thank you.

9 MR. ANTHONY: There's just a follow-up issue  
10 to that and that is the filing of testimony rebutting  
11 their testimony by Southern Bell.

12 COMMISSIONER CLARK: If you can show good  
13 cause that the need to file the rebuttal testimony is  
14 the result of the late notice, that this testimony will  
15 be included in January, it will be granted.

16 MR. ANTHONY: Thank you.

17 MS. GREEN: Are you going ahead then and  
18 authorizing the conducting of the depositions  
19 contingent on that ruling, or are you saying --

20 COMMISSIONER CLARK: It would be my view --  
21 yes, that you would -- once a final decision has been  
22 made basically as to whether they will be heard in  
23 January or April, if you need to conduct depositions  
24 before the January time frame, you will be given  
25 dispensation from the discovery deadline.

1 MR. LACKEY: Then to facilitate that, let me  
2 put all the parties on notice that if the Commission  
3 decides to hear that testimony during the 25th time  
4 period, then I will want to depose each of those  
5 witnesses at some juncture before they testify.

6 MR. BECK: Commissioner Clark, likewise, if  
7 you allow them to file rebuttal testimony even though  
8 they chose not to the first time, we will need to do  
9 discovery on that as well.

10 COMMISSIONER CLARK: Okay. Anything else?

11 (Pause)

12 MS. GREEN: I hear nothing from any of the  
13 other parties either.

14 MR. LACKEY: Are we getting ready to be  
15 through?

16 COMMISSIONER CLARK: No.

17 MR. LACKEY: Okay.

18 COMMISSIONER CLARK: I mean, I have some  
19 things I want to cover. What is it you want to say?

20 MR. LACKEY: We have on small problem left  
21 over from this morning.

22 COMMISSIONER CLARK: Okay.

23 MR. LACKEY: You recall that you directed  
24 Public Counsel and Southern Bell to get together to  
25 discuss the documents.

1 COMMISSIONER CLARK: That's right.

2 MR. LACKEY: We did. We discussed them  
3 briefly. We have a problem.

4 COMMISSIONER CLARK: Okay.

5 MR. LACKEY: I have to be careful how I  
6 approach this. Because I cannot be positive that what  
7 I'm getting ready to tell you is exactly accurate.  
8 Charlie will have to help me with some of it, and I may  
9 have to correct some of it.

10 We have produced, I think, something in  
11 excess of 800,000 or 900,000 documents in this docket.  
12 I believe that the documents that Mr. Beck and his  
13 folks saw in Atlanta, with one exception, were  
14 unredacted at the time he saw them. And the exception  
15 is, sometimes when we send out notices, people from  
16 other states send us the documents in response to the  
17 POD, and they redacted them before we got them in  
18 Atlanta. But I was told over lunch that the ones  
19 generally that he saw in Atlanta were already clean.  
20 There was no redacting.

21 COMMISSIONER CLARK: Okay.

22 MR. LACKEY: The documents that were sent  
23 down here, because they were not overly voluminous at  
24 the time we sent them, were redacted before he saw  
25 them. We think we can separate out those documents,



1 but -- and I may be wrong about the number but there  
2 could be 100,000 documents because they have been  
3 accumulated over, you know, however long it's been,  
4 months and months and months.

5           What I'm going to have to do to get -- to be  
6 reasonably sure, I think what I'm going to have to do  
7 is I'm going to have to re-send the notices to the  
8 people in other states to get unredacted documents.  
9 Okay? But with regard to the rest of them, they are  
10 sitting in Atlanta, they are unredacted, and, you know,  
11 he can go up there and thumb through them just as well  
12 as, you know, I can. And so I don't know how we're  
13 going to do it in the time we've got other than to do  
14 it that way with regard to those documents.

15           COMMISSIONER CLARK: Do you have a  
16 suggestion?

17           MR. BECK: Well, I don't know what they have  
18 redacted or not. We have been through that. There  
19 have been times when nobody has known until a period  
20 long after the fact that things have been taken out of  
21 the documents.

22           I have no knowledge about whether the  
23 documents we've looked at in Atlanta were redacted or  
24 not when we looked at them. And another problem is on  
25 occasion what Southern Bell will do is let us see the

1 documents, and then when we ask them to copy some, the  
2 copies come back different than when we saw them  
3 because all of a sudden there's things missing from  
4 when we saw them.

5           The volume of documents, I can't tell you  
6 what has been taken out or not. I suggested to Mr.  
7 Lackey that they give us a list of what has been  
8 redacted or what's been excluded from their production.  
9 He seems to think that would be very difficult to do.  
10 But they are the only ones in the position to do that.

11           The only other alternative seems to be to  
12 have Southern Bell produce everything all over again  
13 completely unredacted and we'd have to go through them  
14 all, and we're talking about weeks to do that.

15           COMMISSIONER CLARK: It's your proposition  
16 that what is in Atlanta is unredacted.

17           MR. LACKEY: It's my understanding -- and,  
18 like I said, I want to be very careful about this  
19 because all I was able to do is call Atlanta at lunch  
20 and ask them.

21           It was my understanding that when Mr. Beck  
22 went to Atlanta or went wherever went to see the  
23 documents; that the documents he saw were unredacted  
24 and were complete. And that, as he just said, when he  
25 said, "Okay. I want this document copied or that

1 document copied," if it had other states or unregulated  
2 information in it, we whited it out and sent it to him,  
3 okay?

4           Now, there's an exception to that, I think.  
5 And the exception is that if we sent to Birmingham and  
6 said send us these documents in response to this POD to  
7 try to avoid some work ourselves, we'd say, "and when  
8 you send them over, if you've got other states'  
9 information, white them out." So when those documents  
10 got to Atlanta, they were already redacted.

11           The only way I can recover those is by  
12 sending the notices back out again and say "Here's the  
13 POD. Reproduce the documents you produced the first  
14 time in response to them and don't white anything out."  
15 But I hope that's a small group of them.

16           The other issue, the other thing I said is  
17 the ones that we sent down here they didn't go, they  
18 have been redacted. All of the documents, I guess, are  
19 sitting in Atlanta.

20           He talked about a list. I can't go through  
21 and make a list. It would take the rest of my life.  
22 You know, if he has to have them, if he has to see it,  
23 he can go up there and sit down and he can turn the  
24 pages of the 900,000, or however many it is, until he  
25 finds what he wants.

1 MR. BECK: Let me add to it, because I do  
2 have some specific recollections.

3 First of all, I reviewed probably about ten  
4 boxes of materials in Birmingham earlier on in this  
5 case. They were redacted, as I recall, before I ever  
6 saw them.

7 MR. LACKEY: And I don't know about the ones  
8 in Birmingham.

9 MR. BECK: I don't know about the ones in  
10 Atlanta. We viewed -- Ms. Richardson and I viewed  
11 numerous documents in the firm of Holland and Knight in  
12 Miami. We saw them unredacted and when they came to us  
13 -- we have two boxes we asked for -- they came to us  
14 redacted, after having viewed them unredacted. I guess  
15 I don't know what to say to Atlanta.

16 It seems to me clearly the burden is on  
17 Southern Bell to produce the information that has been  
18 deleted from what we have been able to obtain.

19 COMMISSIONER CLARK: Let me see if I  
20 understand it. You have -- it's your representation  
21 that what was in Atlanta was not redacted, none of it.

22 MR. LACKEY: Wait a minute. Got to be  
23 careful.

24 It's my representation that what they saw in  
25 Atlanta, I have been told, was not redacted when they

1 saw it, with the possible exception of documents that  
2 would have been solicited from other states in response  
3 to the POD.

4           What I said was the only way I can recover  
5 those is by re-sending the POD. I could have somebody  
6 sit down and look through them, too, but they have the  
7 same problem that Mr. Beck has. When you look through  
8 them, you may miss something that has been redacted.  
9 So I'm going to have to reissue the POD and have those  
10 people in the other states try to replicate what they  
11 sent us the first time in order to get unredacted  
12 copies. And I don't mind doing that. It's just going  
13 to take a real long time.

14           And I don't know about the documents in  
15 Birmingham, but they'd sort of fit the definition I  
16 told you of the documents we got from other states;  
17 we'd have to redo those.

18           The ones at Holland and Knight, I thought  
19 that was on the 163 and the 760 docket, but in any  
20 event, they were unredacted when he saw them. Now, he  
21 has redacted copies of them, but he's seen the  
22 unredacted ones.

23           MR. BECK: Right. But then when we get it --  
24 you know, I obviously reviewed large volumes. When I  
25 get, you know -- we tag things that we want to go

1 through when we get them back. When we get them back,  
2 then things may be missing. So we need to have the  
3 full copies of the documents that we selected as we saw  
4 them, not --

5 COMMISSIONER CLARK: How much information did  
6 up get from Holland and Knight?

7 MR. BECK: They produced probably -- I think  
8 they said about 500,000 pages of documents?

9 MR. LACKEY: Several young forests have died  
10 over this docket.

11 MR. BECK: Out of what we saw, we selected  
12 two boxes worth that we have. And with respect to the  
13 Holland and Knight documents, it seems to me the remedy  
14 would be to produce clean versions of those things we  
15 selected in Miami. In other words, produce them the  
16 same as we saw them, because what we have are copies  
17 that have been with things removed from them, as we saw  
18 them. Atlanta --

19 MR. LACKEY: We may be able to do that,  
20 because those documents -- how many boxes was it,  
21 Charlie?

22 MR. BECK: We have two boxes.

23 MR. LACKEY: Yes. We ought to be able to do  
24 that. Assuming those are still marked down at Holland  
25 and Knight and they can identify which ones they sent

1 you, we could probably do that without too much of a  
2 burden.

3 MR. BECK: Wouldn't your folks in Atlanta  
4 have copies of the raw documents and then the copies of  
5 what they sent us after they got through with them?

6 MR. LACKEY: That's exactly right. And  
7 that's the point I was making is that we do have the  
8 unredacted documents in Atlanta. And if it were just a  
9 box or two, that would be fine. You know, we've got a  
10 couple hundred boxes of documents, don't we? You know  
11 better than I probably, how many documents you've got.

12 COMMISSIONER CLARK: Let me ask you with  
13 respect to the Holland and Knight, produced the  
14 unredacted ones. Okay?

15 MR. LACKEY: We can take care of that.

16 COMMISSIONER CLARK: With respect to those in  
17 Atlanta, what I'd like you to do is, if you can, narrow  
18 it down to those -- those ones you know are at issue  
19 that you know you're going to need and give them to  
20 Southern Bell. And then you will have to solicit the  
21 unredacted information from your people.

22 MR. LACKEY: All of the documents, if I  
23 recall correctly, are Bate stamped. We've finally  
24 gotten on top of our game and we are numbering them.  
25 So if he has documents that he wants unredacted copies

1 of, we ought to be able to find them from the numbers,  
2 shouldn't we, Charlie?

3 COMMISSIONER CLARK: Do what you can --

4 MR. BECK: Commissioner Clark, you're asking  
5 me to look and see what's not there when I don't know  
6 what is not there.

7 COMMISSIONER CLARK: No. What I'm asking you  
8 to do is, at this point I would presume that you have  
9 narrowed down those things that remain at issue.  
10 That's what I want you to look at is those things  
11 relating to particular items that you know you need.

12 MR. BECK: But it may very well be that they  
13 would be at issue if the information was there. It may  
14 be that the information they took out is the very  
15 information we need. I can't look at the stuff without  
16 the information we need and say we need it when I don't  
17 know what it is. And the burden should be on Southern  
18 Bell to produce this. This has been going on for eight  
19 months like this.

20 MR. LACKEY: My response is, Commissioner  
21 Clark, we'll produce them. We'll produce them in  
22 Atlanta.

23 COMMISSIONER CLARK: Staff, do you have any  
24 recommendations?

25 MS. GREEN: No. I'm sorry, I don't.



1 MR. LACKEY: Good low profile.

2 COMMISSIONER CLARK: How long would it take  
3 you to get -- find out from -- let me ask you this:  
4 Don't you think your companies would -- let me make  
5 sure I understand.

6 What you have in Atlanta may be redacted.

7 MR. LACKEY: Let's separate it into separate  
8 pieces. There may be some portion of them in Atlanta  
9 that came from other states that may be redacted.

10 COMMISSIONER CLARK: Because you suggested to  
11 them that "Help us out here. We don't want to have to  
12 do the redacting. You do it for us."

13 MR. LACKEY: "You can tell whether it's a  
14 state name as well as I can, you take it out." Right.

15 COMMISSIONER CLARK: Right.

16 MR. LACKEY: Now, the other piece that's in  
17 Atlanta is, these things came in in bits and pieces,  
18 and we don't make them come to Atlanta to see  
19 everything. Things that are reasonable volume, you  
20 know, we put together and sent down. Those would have  
21 been redacted the very first time they saw them. So  
22 they've never seen an unredacted version of it.

23 COMMISSIONER CLARK: All right. So you're  
24 going to have to -- you're going to need to get ahold  
25 of those.

1           MR. LACKEY: And they are in Atlanta. And  
2 what I'm telling you is, when you're up to the 31st  
3 POD, or whatever it is, what might have started out as  
4 a small thing is now 100,000 pages because we have been  
5 shipping them down a box at a time.

6           And that's what I said to Charlie. He's  
7 probably got a better idea how many boxes they have  
8 sitting over there than we do.

9           If he wants to see those, they are in  
10 Atlanta. He can get on a plane and go to Atlanta and  
11 thumb through them until his heart's content. But, you  
12 know, ship them all back up, box them all back up, ship  
13 them down here, you know, that's not reasonable in my  
14 opinion.

15           MR. BECK: Well, Commissioner, at this point  
16 I think what Bell is suggesting is unreasonable. We  
17 have filed motions on these that have been pending for  
18 about eight months. You know, at this last second to  
19 say, "We have 500,000 pages. Come up and look at them  
20 in Atlanta." It's simply not reasonable.

21           I think the burden is on them to identify  
22 what it is they have taken out of the documents  
23 produced. You know, we're not in a position to go look  
24 at 500,000 or a million pages of documents now, at this  
25 point, and start redoing the case brand new.

1           COMMISSIONER CLARK: Okay. I will certainly  
2 rule on this today. But I'm going to let you all go on  
3 to your proceedings.

4           MR. SHREVE: Commissioner, if I may, along  
5 that same line and before we leave that --

6           COMMISSIONER CLARK: Just a second. Let me  
7 ask Staff something else.

8           Do you have anything else we need to cover?

9           MS. GREEN: No. I had made a note about a  
10 date certain for the production of documents. And I  
11 really am troubled by the idea of leaving without  
12 resolving that because I'm afraid we're going to be  
13 here again next Friday and still not going to --

14           COMMISSIONER CLARK: Which production of  
15 documents? This one?

16           MS. GREEN: This and others.

17           COMMISSIONER CLARK: The unredacted.

18           MS. GREEN: Right? They were BellSouth Corp  
19 documents.

20           MR. LACKEY: And the BellSouth.

21           COMMISSIONER CLARK: Oh, okay.

22           MR. LACKEY: That was the other point I  
23 wanted to talk to you about.

24           COMMISSIONER CLARK: All right.

25           MR. LACKEY: BellSouth documents.

1           COMMISSIONER CLARK: The BellSouth, the  
2 unredacted and the privileged information still remain.

3           MS. GREEN: All right. Now, one thing that  
4 had come to mind was that Mr. Beck had asked that this  
5 Commission be the one to take a look at the documents  
6 and see how they had been redacted. And I was curious  
7 if we had done that, how would we have gotten the  
8 documents? Is there a better way to identify them? Do  
9 you want Bell to reproduce all of them in toto and you  
10 set your old ones aside? We're really trying to help  
11 here.

12           MR. BECK: It would be exactly the same.  
13 Bell would have to show you what they have taken out of  
14 the documents and then try to justify their objections  
15 based upon that. I can't tell you what they didn't  
16 produce.

17           MS. GREEN: Your position would remain that  
18 because they made the redactions they have the burden  
19 to go back and find them. And I think I have some  
20 exceptions for that --

21           MR. BECK: It's not just the burden. It's  
22 the only possible thing. I can't tell you what they  
23 didn't provide me.

24           MS. GREEN: I understand.

25           COMMISSIONER CLARK: What you have in Atlanta

1 is unredacted unless the other companies redacted it.

2 MR. LACKEY: That's correct.

3 COMMISSIONER CLARK: Okay. Now, when you  
4 sent things down from Atlanta to Mr. Beck, you did  
5 redact some of it.

6 MR. LACKEY: For instance, if he asked for  
7 something that was only all half a box of documents --  
8 and I'm just making this up, I don't know what size it  
9 was -- if it was just half a box, instead of saying  
10 "Get on a plane and come to Atlanta," we just redacted  
11 them and shipped them down here, and they came over and  
12 picked them up.

13 Okay. But when you do that 30 times, you  
14 know, now you've got 30 boxes or 30 half boxes, or  
15 whatever, sitting in Atlanta that have all been  
16 redacted. And again, I'm not representing these are  
17 the right numbers; I'm trying to make a point. And  
18 that is to go back now, when we have been doing it bits  
19 and pieces over the last eight or nine months and have  
20 to at one setting sit down and go through them all  
21 again is just unreasonable.

22 They can come look at them if they want.  
23 They can turn the pages, and they can say, "I want  
24 that." And we'll give it to them unredacted. And they  
25 can say, "Hey, we don't want this."

1           That's the easiest way to do it. There's no  
2 point in us going through it all, identifying them all,  
3 and sending them down here and then having them sit  
4 down and go through them all again. They can do it one  
5 time and we can save the energy. They have to go  
6 through them anyway.

7           COMMISSIONER CLARK: All right. Mr. Shreve,  
8 you wanted to say something.

9           MR. SHREVE: And even a little bit beyond  
10 this, I can understand what Mr. Lackey is saying about  
11 when he talked to the other states, or whoever talked  
12 to the states, and sent this in to Atlanta. Then we  
13 saw that and then it was redacted. Some of it may have  
14 already been redacted by the other states.

15           Then that raises a very real concern: Did  
16 the other states pull documents totally that did not go  
17 to Atlanta and we don't even know about that and can't  
18 even argue about it because it wasn't there? How do we  
19 know what these other states pulled and redacted? We  
20 can't even question it because we haven't been to  
21 Atlanta in the first place.

22           COMMISSIONER CLARK: Was that the point you  
23 wanted to make earlier?

24           MR. SHREVE: Yes, ma'am.

25           COMMISSIONER CLARK: Mr. Lackey, you wanted

1 to say something on the BellSouth documents?

2 MR. LACKEY: I was just going to say I was  
3 just choking over the last one.

4 The BellSouth documents. Again I'm remiss  
5 but I don't know what POD we're up to. It's got to be  
6 somewhere in the 20s or 30s, it's different sets of  
7 PODs, none of which have been sent, I guess, to  
8 BellSouth. So we're going to have to send an entire  
9 package over there, I don't know, 200 or 300 PODs,  
10 whatever it comes out to. I don't know how long it's  
11 going to take them to do it. That's the first point.

12 The second point is, we will need an order if  
13 we can get one on this because we may decide that we  
14 need to appeal this. So if I could prevail on you to  
15 give us an order, a written order on that, I'd  
16 appreciate that, too.

17 But there is two points: One is a practical  
18 and one is legal. The practical one is I don't know  
19 how long it's going to take BellSouth Corporation to go  
20 through 200 or 300 PODs or whatever the right number is  
21 and search their records and come up with documents.  
22 So we're going to need a definite time.

23 And I think that's what Ms. Green was asking  
24 you for was a definite time. And I'd like to request a  
25 written order as promptly as possible, too, so that we

1 can take appropriate action on that.

2 COMMISSIONER CLARK: Mr. Beck, what is the  
3 deadline for you? At what point do you want this  
4 information from BellSouth?

5 MR. BECK: Well, one of our motions is to  
6 give us 30 days to review the documents and then file  
7 testimony after we have had a chance to review all  
8 discovery. We think 30 days.

9 See, the Commission is in kind of a unique  
10 posture with its prefiling testimony requirement. In  
11 essence, the date for the prefiled testimony is the  
12 same as being in the trial and the witness taking the  
13 stand. So we want time to review the documents and  
14 then file testimony after we have had that. That would  
15 necessitate delaying the entire case, is an obvious  
16 problem.

17 But, Commissioner, we have been diligent in  
18 asking for resolution of these matters. We have been  
19 filing motions since May, and I don't think it should  
20 be held against us that it is at the last moment now.

21 COMMISSIONER CLARK: Do you have a  
22 recommendation as to a date? (Pause)

23 MS. GREEN: Well, I think one of the problems  
24 that we encounter with finding appropriate and fair  
25 resolution of it, Commissioner, is that the request for



1 the information from the parent corporation has been  
2 used in a blanket fashion as well and it has not been  
3 targeted.

4 And so if I understand what -- my  
5 recollection of how the discovery has all been postured  
6 is all been that way, and I'm not sure that every  
7 single request is relevant to BellSouth Corporation or  
8 is documents they would even have.

9 MR. LACKEY: That's right. But in each case  
10 the "you, your," or the title was defined as BellSouth.  
11 So if you ruled against us, I'm obligated to send every  
12 POD over to them and say, "Look and see if you've got  
13 it." The answer may be "We don't got it." But they  
14 are going to have to look anyway.

15 MS. GREEN: And normally, if we were starting  
16 from scratch, as you well know, it's the 35 days to  
17 return it. So obviously something shorter than that  
18 would still be reasonable, but now we're talking about  
19 a month's worth of discovery, so --

20 COMMISSIONER CLARK: I'm going to give you 15  
21 days to produce it or say that there isn't anything  
22 there. And then we will -- you will have the  
23 opportunity to look at it. And if you need more time  
24 or if you need to file rebuttal, file an appropriate  
25 motion.

1 MR. BECK: Commissioner Clark, 15 days is a  
2 Saturday, and that's the Saturday before the Monday  
3 that the hearings start.

4 COMMISSIONER CLARK: How could it be -- oh,  
5 days, you're right. Wednesday before the hearing.

6 MR. LACKEY: Let me push my luck a little  
7 bit. Will I be able to get a written order before  
8 then, do you think?

9 MS. GREEN: Yes.

10 MR. LACKEY: And the reason I ask, quite  
11 frankly, is I may be directed to take an appeal of that  
12 order.

13 COMMISSIONER CLARK: I understand.

14 MR. LACKEY: But once I produce the  
15 documents, it's too late to take the appeal.

16 COMMISSIONER CLARK: Yeah. I am aware of the  
17 fact that you have to appeal an order granting  
18 discovery at that point.

19 MS. GREEN: But keep in mind under the  
20 scenario you have for the hearing, we do have  
21 additional days in April, in any event, for the melding  
22 of the issues. Or if the Commission votes in favor of  
23 Public Counsel's proposal, everything will be getting  
24 moved in any event. So he should have adequate  
25 opportunity for presenting supplemental testimony, I

1 would think.

2 In addition, Mr. Hatch has been checking the  
3 calendar, and there may even be a couple other days in  
4 there that would become available.

5 MR. BECK: Commissioner, it's not just  
6 supplemental testimony. These go to the full  
7 preparation of the case. Filing testimony, cross  
8 examining witnesses, and so forth. We need the  
9 information before the people take the stand in order  
10 to decide whether to put people on the stand and how to  
11 have our own strategy in the case.

12 Certainly you need everything done well  
13 before the time when people start taking the stand at  
14 all.

15 COMMISSIONER CLARK: The request will be  
16 answered within the 15 days. Then you need to look at  
17 it and let me know what the status is for you. I mean,  
18 if you need more time and if you feel you need an extra  
19 -- the ability to file -- to conduct recross  
20 examination or to put on a witness. (Pause)

21 Let me ask you, on the privileged -- Mr.  
22 Beck, on the privileged information and the work  
23 product, if we make the assumption that the quality of  
24 service is reserved for a later hearing, do those  
25 audits relate to quality of service? I mean, is it

1 those issues and those witnesses that it relates to?

2 MR. BECK: Yes. And let me tell you the  
3 problem that exists there. You might as well get the  
4 picture.

5 In the other -- we have filed a motion for  
6 the reconsideration of the procedural order in Docket  
7 910163, which is the other docket.

8 COMMISSIONER CLARK: Okay.

9 MR. BECK: That order requires us to file  
10 testimony February 1st. To my knowledge there is not  
11 -- and we've asked the full Commission to review that  
12 like we did your procedural orders.

13 COMMISSIONER CLARK: Okay. Is that scheduled  
14 for any reconsideration?

15 MR. BECK: Well, that's my point. I don't  
16 believe there is a Staff recommendation. The last  
17 agenda conference that could consider that before  
18 February 1st is the one coming up. So it looks like it  
19 will not come to the Commission -- and I could be wrong  
20 -- but it appears to me that it won't come to the  
21 Commission before the February 1st time.

22 That's a scant three weeks from Monday that  
23 we're expected to file testimony in the other docket.  
24 There's no way it can happen. We've got those audits;  
25 we've got what, 15, 20 motions in the other docket that

1 have not been ruled on. Plus, we have a whole bunch of  
2 them we haven't ruled on yet here as well.

3 COMMISSIONER CLARK: Uh-huh.

4 MR. BECK: So there's problems in saying just  
5 that the other docket it's April, there's a whole bunch  
6 of problems besides that.

7 COMMISSIONER CLARK: Well, what I was asking  
8 you was, if that testimony is going to be taken up at  
9 that time, how soon -- does that give us more time for  
10 a ruling on the privileged and work product? Are you  
11 saying you need more time from the February date?

12 (Pause) I am concerned --

13 MR. BECK: Oh, absolutely. Absolutely.  
14 We've asked for that, and we have asked the full  
15 Commission to reconsider that. We've asked, just as we  
16 did here in the other docket, we've asked for 30 days  
17 after the information is produced in order before we  
18 file testimony. It appears that our date for filing  
19 testimony is from -- okay.

20 COMMISSIONER CLARK: Okay. But 30 days after  
21 that is produced is what you believe you need?

22 MR. BECK: Yes.

23 MR. HATCH: Commissioner Clark, with respect  
24 to that, the reason that that's not been scheduled for  
25 resolution by the full Commission is because it's tied

1 right to the privilege problem. We've already  
2 explained why that hasn't been fixed yet but it's going  
3 to be.

4 COMMISSIONER CLARK: When can you have a  
5 recommendation on the --

6 MR. HATCH: It depends on when we get the  
7 responses to the interrogatories, the quality of those  
8 responses, and whether we have to fight about them. I  
9 don't know yet because I haven't gotten them back.

10 COMMISSIONER CLARK: What interrogatories  
11 have to be answered?

12 MR. HATCH: Sent out a set of interrogatories  
13 prior to Christmas with respect to delving into the  
14 specific factual basis behind the assertion of the  
15 privilege. You have to have that in order to rule on  
16 the privilege --

17 COMMISSIONER CLARK: When are they due?

18 MR. HATCH: Specifically, I believe next  
19 week. I don't know the specific date offhand.

20 MR. LACKEY: I thought they were served on  
21 the 18th of December.

22 MR. HATCH: Could be.

23 MR. LACKEY: Make them due the 18th of  
24 January or somewhere in that time frame, 22nd of  
25 January.

1 MR. HATCH: That could be accurate, as far as  
2 I know at the moment.

3 When we have that information, then we can  
4 make a recommendation on privilege. But until we have  
5 the recommendation on privilege, then the answer on  
6 privilege is "Yes, it's privileged." And Mr. Beck  
7 needs no more time to file testimony because he's not  
8 going to get those documents. The answer is, it is not  
9 privileged and they should be produced, then we'll have  
10 to address that issue.

11 MR. ANTHONY: Commissioner Clark, I hate to  
12 add this but if the Commission finds that those  
13 documents are not privileged, the odds are that I'm  
14 going to be directed to file an appeal to the Court as  
15 there already has been one, so I'm not sure when we  
16 will resolve this, just as a practical matter.

17 COMMISSIONER CLARK: I'm sorry, I didn't hear  
18 that last thing you said.

19 MR. ANTHONY: I said just as a practical  
20 matter, I don't know when that issue may be resolved.

21 COMMISSIONER CLARK: By the Court.

22 MR. ANTHONY: Yes, ma'am. It may be some  
23 time.

24 COMMISSIONER CLARK: You can ask for  
25 expedited treatment though.

1 MR. ANTHONY: We can. The last appeal we  
2 took was to the Supreme Court, which agreed that it had  
3 jurisdiction, and I don't know they're inclined to  
4 expedite very quickly.

5 COMMISSIONER CLARK: The Supreme Court, our  
6 Supreme Court?

7 MR. ANTHONY: Yes, ma'am.

8 COMMISSIONER CLARK: I think we can get them  
9 to do it quickly.

10 All right. I want to take a break until  
11 2:00. And as I understand it, we have the privileged  
12 information to rule on and the unredacted issue. Okay.

13 MR. BECK: Commissioner, we have many more  
14 motions than that. I mean, everything from a Motion to  
15 Require Sworn Testimony by Southern Bell on quality of  
16 service. They're set out at Page 196 of the draft  
17 prehearing.

18 We've got a motion to have a ruling on the  
19 public records status of the testimony of Mr. Poucher  
20 and Dr. Cooper since Southern Bell refuses to go  
21 forward and even make the specific request.

22 MS. GREEN: I'm sorry. I thought we had said  
23 that you can't rule on those because of the --

24 COMMISSIONER CLARK: Let's take a break. You  
25 all get together. I'll be back.



1 (Brief recess.)

2

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3 COMMISSIONER CLARK: As I understand it, we  
4 still have the redacted issue, the privileged  
5 information. What else do we have, Mr. Beck?

6 MR. BECK: If you could refer to the draft  
7 Prehearing Order, Page 196, we have other privileged  
8 matters with respect to Item No. 4, which is --

9 COMMISSIONER CLARK: What was the page number  
10 again?

11 MR. BECK: Page 196 where they are listed.

12 You have the Motion to Compel BellSouth Vice  
13 President Sanders and BellSouth General Manager of  
14 Human Resources Cuthbertson to answer deposition  
15 questions. There is in excess of 60 questions they  
16 refused to answer at a deposition we conducted in June.  
17 We have our fourth Motion to Compel which, I think, is  
18 substantially the same as the ones you've already  
19 heard. The Motion to Impose a Penalty; it would appear  
20 to me that would be a full Commission matter.

21 COMMISSIONER CLARK: Yeah, I thought that  
22 should be an issue in the case.

23 MR. BECK: Yeah. Citizens' Eighth Motion to  
24 Compel and Request for In Camera Inspection of  
25 Documents. That has to deal with another set of

1 Sworn Testimony by Southern Bell sponsoring its quality  
2 of service reports that's pending. I believe it would  
3 be appropriate for you to rule on that today. Our  
4 motion about setting intervenor testimony filing dates,  
5 that's still pending. And we have our -- we have our  
6 motion to ask you to rule on the public records status  
7 of the testimony of two witnesses that we filed.

8 COMMISSIONER CLARK: Okay.

9 MR. BECK: That's pending. You've already  
10 addressed the service hearings in Palm Beach. With  
11 respect to examine the Staff's rate case audit report  
12 work papers, we had access to them on Tuesday. I  
13 picked up copies of them on Thursday. The matter of  
14 their confidentiality, of course, still remains to be  
15 ruled on, because you have the Staff offering into  
16 evidence an audit, but the audit and the work papers  
17 are confidential. But we have access to it, and I have  
18 received copies of them. So, my petition at least is  
19 moot.

20 COMMISSIONER CLARK: Okay. Say that again.  
21 Petition to Inspect and Examine Rate Case Audit Work  
22 Papers is moot.

23 MR. BECK: It's moot. We have copies of it.  
24 It is still confidential, however.

25 COMMISSIONER CLARK: Right. So, we need to

1           COMMISSIONER CLARK: Right. So, we need to  
2 rule on that at some point.

3           Okay. I have just talked to the Chairman  
4 about the scheduling of this hearing. And what I have  
5 discussed with him is the notion that I have granted  
6 discovery for which an appeal appears to be imminent.  
7 I have discussed with him the fact that we have  
8 information that has not yet been provided to Public  
9 Counsel that I feel should be provided to Public  
10 Counsel, and what that does to your ability to get  
11 ready for the case, and our ability to be assured that  
12 we have full information on the issues in the case.

13           I have talked to him, and we have ascertained  
14 that we can use March 18th and March 19th, which were  
15 dates set aside for an agenda conference, and then we  
16 have the week of March 22nd through 26th that we had  
17 for water and sewer rules. He has okayed moving those  
18 to move this proceeding to those dates. I feel that we  
19 have to do it in order to assure that you can provide  
20 the further discovery that Public Counsel has  
21 requested, and he will have time to look at that.

22           To that end, I will not rule on the motion to  
23 with respect to privileged information and work  
24 product, but I will endeavor to have a motion -- we  
25 will meet again next Friday in further -- to the extent

1 we can resolve more motions at that point. With regard  
2 to the privileged information and work product, I'll  
3 endeavor to have a ruling at that time. It may be  
4 complicated somewhat by the fact that the full  
5 Commission will not have ruled on the Motion for  
6 Reconsideration.

7           With respect to the redacted information, I  
8 will require you to request from your other companies  
9 that they reproduce that information unredacted. And  
10 I'll give you the 20 days to provide that information.

11           MR. SHREVE: Commissioner, on that same  
12 thing, could you also request that the other states  
13 provide documents, if any were removed, other than just  
14 redacted? That we're not providing --

15           COMMISSIONER CLARK: I mean, I would assume  
16 that they provided all the information relevant in a  
17 redacted form. Okay.

18           MR. LACKEY: That would be my understanding.

19           COMMISSIONER CLARK: The Motion to Compel  
20 BellSouth's Mr. Sanders and Mr. Cuthbertson, I will  
21 answer that no later than -- I will rule on that no  
22 later than next Friday.

23           The issue of imposing a penalty, that will be  
24 moved to the case. As I understand it No. 7 is also an  
25 issue of privilege. And I will leave pending the

1 Motion to Require Sworn Testimony sponsoring the  
2 quality of service reports.

3 We will get an order out Monday or Tuesday on  
4 requiring the parent company to provide that  
5 information, so you can appeal that decision if you  
6 chose to.

7 MR. LACKEY: We may not. It may not be a big  
8 deal. I just want to be sure I have the option.

9 MS. GREEN: Will that be under the 20-day  
10 standard as well?

11 COMMISSIONER CLARK: Yes, it is.

12 MS. GREEN: Are you counting the 20 days  
13 beginning today or from the date the order goes out?

14 COMMISSIONER CLARK: We'll count it from the  
15 date the order goes out.

16 MR. ANTHONY: Commissioner, I may be asking  
17 the same question, does that mean that the  
18 January-February hearings are now rescheduled for March  
19 in their entirety?

20 COMMISSIONER CLARK: That's right.

21 MR. LACKEY: Let me follow up with my  
22 question. I understand I've got to produce the  
23 redacted documents. Can I produce them in Atlanta  
24 since we put the hearing off until March now?

25 COMMISSIONER CLARK: Yes.

1 MR. LACKEY: Thank you.

2 COMMISSIONER CLARK: Anything else?

3 MR. HATCH: Not that I'm aware of. Just so  
4 you understand on Sanderson and Cuthbertson, that is a  
5 privilege issue as well, even those answers were not  
6 given as the insertion.

7 COMMISSIONER CLARK: It is appropriate to  
8 reserve those. Is there anything else we have to deal  
9 with at this agenda -- I mean, at this proceeding?

10 MR. BECK: Well, Commissioner, there is still  
11 the issue of the public records status of our  
12 testimony. We filed testimony by two witnesses,  
13 mid-November.

14 COMMISSIONER CLARK: Okay.

15 MR. BECK: We have a dispute with Bell. Bell  
16 seems to think they don't have to make a request for  
17 specific confidential treatment. We're asking you to  
18 force it and rule on this. It's been confidential too  
19 long.

20 We filed the testimony, and we filed it here  
21 with the Commission.

22 COMMISSIONER CLARK: Mr. Beck, I want to do  
23 that no later than next Friday.

24 MR. BECK: Okay.

25 COMMISSIONER CLARK: Anything else?

1 MR. NYCE: Ma'am?

2 COMMISSIONER CLARK: Yes.

3 MR. NYCE: We have depositions or depositions  
4 in this case are set. Are they also delayed?

5 COMMISSIONER CLARK: No. It would be my view  
6 that it is not in your best interest to delay those  
7 depositions. I think you need to go ahead with  
8 discovery.

9 MR. NYCE: Thank you, ma'am.

10 MS. GREEN: Perhaps one thing you would like  
11 to do is go ahead and take one of the February hearing  
12 dates and reserve it now for a prehearing conference  
13 and put everyone on notice.

14 COMMISSIONER CLARK: I don't know what date  
15 we would use for that, but we will have another  
16 prehearing conference in that time frame.

17 MS. GREEN: We'll need at least one other.

18 MR. ANTHONY: Will we still have the  
19 prehearing conference next Friday?

20 COMMISSIONER CLARK: Yes. Well, I think,  
21 what I will do, by Monday or Tuesday I will put a  
22 notice out of what will be discussed on Friday so that  
23 those people that feel that they need to be here can be  
24 here, and those that don't feel they need to be here  
25 don't need to be here. But there are several motions

1 that we'll deal with at that time.

2 If there's nothing further, we're adjourned.

3 (Hearing concluded at 2:20 p.m.)

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

CERTIFICATE OF REPORTER


3 I, JOY KELLY, CSR, RPR, Commission Reporter,  
4 DO HEREBY CERTIFY that the hearing in this  
5 cause, Docket No. 920260-TL, was heard by the Florida  
6 Public Service Commission at the time and place herein  
7 stated; it is further

8 CERTIFIED that I reported in shorthand the  
9 said proceedings; that the same has been transcribed  
10 under my direct supervision, and that this transcript,  
11 consisting of 156 pages, constitutes a true and  
12 accurate transcription of my notes of said proceedings;  
13 it is further

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

18 IN WITNESS WHEREOF, I have hereunto set my  
19 hand at Tallahassee, Leon County, Florida, this 13th  
20 day of January, A. D., 1993.

21  
22  
23  
24  
25

  
JOY KELLY, CSR, RPR  
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