

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

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

PROCEEDINGS: MOTION HEARING

BEFORE: COMMISSIONER SUSAN F. CLARK
Prehearing Officer

DATE: Friday, January 29, 1993

TIME: Commenced at 9:40 a.m.
Concluded at 11:10 a.m.

PLACE: FPSC Hearing Room 106
Fletcher Building
101 East Gaines Street
Tallahassee, Florida

REPORTED BY: PAMELA A. CANELL
Official Commission Reporter

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7 ALSO PRESENT:

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9 MR. JEROME HOFFMAN, Chief of the Anti-Trust
10 Section.

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P R O C E E D I N G S

(Hearing convened at 9:40 a.m.)

COMMISSIONER CLARK: We're ready to begin.

Angela, will you read the Notice.

MS. GREEN: Pursuant to pronouncement of the Bench at January 15th Prehearing Conference, this matter was continued to this time and place for Dockets No. 920260, 900960, 910163 and 910727.

COMMISSIONER CLARK: Let's take appearances.

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

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

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

MR. MELSON: Rick Melson of Hopping Boyd Green & Sams on behalf of MCI Telecommunications Corporation.

MR. WIGGINS: Patrick Wiggins, Wiggins & Villacorta, on behalf the Intermedia Communications of Florida, Inc. and CLX Newspapers

MR. TWOMEY: Michael Twomey on behalf of the

1 Attorney General, State of Florida.

2 MR. BECK: Charlie Beck, Office of the Public
3 Counsel appearing on behalf of the Florida Citizens.

4 MR. TYE: Michael W. Tye on behalf of AT&T
5 Communication of the Southern States, Inc.

6 MS. WILSON: Laura Wilson on behalf of the
7 Florida Pay Telephone Association.

8 MS. GREEN: Angela Green, Tracy Hatch and
9 Jean Wilson on behalf of the Commission Staff.

10 COMMISSIONER CLARK: Okay. Thank you very
11 much. I want to take stock of where we are and what
12 issues we have to take care of today.

13 Angela, what is the first thing we need to
14 discuss this morning?

15 MS. GREEN: It's your preference as to an
16 order to follow, but there are some items that are
17 pending resolution that you had partially addressed at
18 the last conference. So maybe you would like to go
19 through those before you start.

20 COMMISSIONER CLARK: Let's do that. Give me
21 the first one.

22 MS. GREEN: Regarding the Public Counsel's
23 motions to compel. I think maybe it would help if we
24 just did a kind of status check of where we're at with
25 those. There were four motions to compel along with

1 the supplement that were filed primarily in Docket
2 920260. And those have been addressed through two
3 different orders. One that was issued January 15th,
4 and one that was issued yesterday.

5 Now, what's left out of those motions to
6 compel was a question regarding discovery of inside
7 wire information. At the last conference, I believed
8 that you granted that request insofar as it related to
9 cost allocations but left pending the balance of that
10 request insofar as the issue regarding whether the
11 inside wire should be brought above the line, and you
12 were waiting for the Commission's vote on
13 reconsideration as to whether we would have that issue
14 in these proceedings. The Commission voted on the 19th
15 to deny reconsideration; therefore, that issue is not
16 going to be before the Commission at this time. So it
17 appears that that request for discovery would need to
18 be denied.

19 COMMISSIONER CLARK: All right. Do you have
20 any comments?

21 MR. HENRY: No, just to support what Ms.
22 Green said.

23 COMMISSIONER CLARK: Okay. The motion, as it
24 was granted, stands with respect to the cost allocation
25 aspects of inside wire. It is denied with respect to

1 the issue of bringing the revenues and expenses above
2 the line.

3 MS. GREEN: The next item that we have is at
4 the last conference you entertained the Public
5 Counsel's motion to require sworn testimony regarding
6 the Schedule 11. That's the September 11th, '92 motion
7 filed by Public Counsel, and at that time, you directed
8 the Company to provide the name of someone -- of person
9 or persons that would be available during the hearing
10 process to respond to questions about Schedule 11. You
11 gave the Company two weeks to do that. That date would
12 be as of today.

13 MR. ANTHONY: We have a name to provide it.
14 The witness will be Wayne Tubaugh who has verified his
15 information with each of the individuals who compiled
16 the data, so he can testify as to that.

17 COMMISSIONER CLARK: Good. Thank you. The
18 next thing?

19 Do we need to take up the motion to strike?

20 MS. GREEN: Yes, ma'am.

21 COMMISSIONER CLARK: Go ahead.

22 MS. GREEN: There was a November -- well,
23 yes, that was the next item that you had begun
24 discussing at the last conference, and that's a
25 November 25th motion to strike testimony filed by the

1 Office of Public Counsel. And that motion regards four
2 pieces of testimony, and I believe the pleading has
3 several alternatives. The first one is to strike all
4 four pieces of testimony, and we're speaking of
5 testimony filed for Mr. Muloy, Mr. Poucher, Public
6 Counsel's Mark Cooper and Mr. Cresse.

7 COMMISSIONER CLARK: All right. My
8 understanding is now that --

9 MS. GREEN: I'm sorry. I stated that was
10 Bell's motion and that is Public Counsel's motion to
11 strike the testimony -- I mean, Bell's motion to strike
12 the testimony.

13 MS. CLARK: And all these witnesses are not
14 necessarily Public Counsel's witnesses?

15 MS. GREEN: Right. Mr. Muloy is the Attorney
16 General's witness, Mr. Poucher and Mr. Cooper are
17 Public Counsel's witness and Mr. Cresse is the Cable
18 Association's witness.

19 COMMISSIONER CLARK: All right. It's my
20 understanding that now that these have been combined,
21 we will deny the motions to strike the testimony.
22 However, with respect to Mr. Cresse's testimony, there
23 is testimony on inside wire moving it above the line.
24 And my notes say that starting on Page 2, Line 16 to
25 Page 11, Line 16 should be stricken.

1 MS. GREEN: All right. And some additional
2 investigation was done. You should have another set of
3 notes, typed notes?

4 COMMISSIONER CLARK: Is that correct on
5 striking that testimony?

6 MS. GREEN: No. That's what was stated in
7 the pleading. I don't believe that's correct.

8 COMMISSIONER CLARK: Whose witness is Mr.
9 Cresse?

10 MS. GREEN: He is the Cable Association's
11 witness.

12 COMMISSIONER CLARK: Is that Mr. Dunbar?

13 MS. GREEN: Yes. But, I believe, the
14 pleading that asked to strike that part of the
15 testimony was too broad. There are parts within there
16 that relates solely to an interpretation regarding the
17 statutory definition of competitive service. You
18 should have a sheet of paper like this that lines out
19 the parts.

20 There seems to be two questions left
21 regarding that particular motion and that is if you
22 deny striking the testimony in its entirety, you have a
23 question of when some of the individuals should be
24 heard, as well as whether any parts of the testimony
25 are inappropriate.

1 COMMISSIONER CLARK: All right. Let's just
2 deal with the first issue, which is parts of testimony
3 that remain inappropriate for this proceeding, and that
4 would be the inside -- bringing the inside wire
5 revenues and expenses above the line.

6 MS. GREEN: Yes, ma'am.

7 COMMISSIONER CLARK: The list I have here
8 from you, with respect to the particular testimony that
9 needs to be stricken, have you checked that testimony?

10 MS. GREEN: Yes. That is according to my
11 belief.

12 COMMISSIONER CLARK: That is your
13 recommendation?

14 MS. GREEN: Yes, ma'am.

15 COMMISSIONER CLARK: So for Cresse would be
16 Page 2, Line 16 through Page 6, Line 1, and then from
17 Page 10, Line 19 through Page 10, Line 22.

18 MS. GREEN: Yes, ma'am.

19 COMMISSIONER CLARK: And for Mr. Poucher it
20 would be Page 39, Line 9 through Page 46, Line 5.

21 MR. ANTHONY: I'm sorry, Commissioner Clark,
22 could you repeat those pages and line numbers?

23 COMMISSIONER CLARK: I'll be happy to. Mr.
24 Cresse, it's Page 2, Line 16 through Page 6, Line 1;
25 from Page 10, Line 19 through Page 10, Line 22. For

1 Mr. Poucher, Page 39, Line 9 through Page 46, Line 5.
2 And those will be stricken from the testimony. Now, I
3 understand that as to when these witnesses should
4 appear remains to be answered.

5 MS. GREEN: I suppose we could take that up
6 when you determine the general ordering of witnesses
7 for the proceedings. Parts of it appear to be related
8 primarily to what was previously investigation dockets
9 and part is related to what was previously just the
10 rate case, and some parts seem to overlap, so perhaps
11 you'd want to take that up when you do general ordering
12 of witnesses.

13 COMMISSIONER CLARK: I think I would like to
14 wait until I do that. Okay.

15 MS. GREEN: There was a motion filed on
16 December the 14th by Southern Bell that you had also
17 begun to discuss at the last meeting, and that was a
18 motion to quash subpoenas. And I believe you had
19 stated that you were not feeling inclined to quash
20 subpoenas, but I don't believe you actually ruled on
21 that.

22 COMMISSIONER CLARK: What was the motion to
23 quash the subpoenas based on? Was it the fact that
24 their testimony was more relevant to the investigation
25 dockets?

1 MS. GREEN: That's the primary rational and
2 the second form of relief that was requested by the
3 Company was that if you were going to require these
4 witnesses to testify that you would give them some kind
5 of set time in the proceedings so that they were not
6 just brought here the first day and left.

7 COMMISSIONER CLARK: The motion to quash is
8 denied, and at a later time we will set a time certain
9 for them to appear so they don't have to be here.

10 MS. GREEN: You'll just include them when you
11 do the general ordering of witnesses?

12 COMMISSIONER CLARK: That's right. What's
13 the next motion?

14 MS. GREEN: There's a motion from October the
15 12th filed by Public Counsel regarding moving the
16 filing date of intervenor testimony. I believe Mr.
17 Hatch has something for that.

18 MR. HATCH: That motion asking is filed
19 directly in the 910163 docket. It seeks three separate
20 things actually.

21 One is that you delay filing of testimony
22 until after all of their motions to compel have been
23 finally ruled on. The second thing is that a request
24 that Bell be directed to file its testimony first. The
25 third thing is that it request that the incentives

1 testimony be combined with the investigation. With
2 respect to No. 3, I believe that's now become generally
3 moot with consolidation of the dockets no longer in
4 issue. With respect to Bell being directed to file
5 first, that's still a live contention.

6 COMMISSIONER CLARK: All right.

7 MR. HATCH: In polling the parties this
8 morning, there was no agreement on this issue.

9 COMMISSIONER CLARK: So there are two
10 remaining points?

11 MR. HATCH: Yes, ma'am. One is whether Bell
12 should file first and everybody else later, or that all
13 the parties should be directed to file at the same
14 time.

15 COMMISSIONER CLARK: What's the next thing?

16 MR. HATCH: The other thing is delaying the
17 testimony filing date until after all the documents
18 have been ruled on.

19 MR. BECK: Tracy, can I clarify that? That
20 second part of the relief we've asked for is to file
21 testimony 30 days after the documents have been
22 produced, not the rulings. We've asked that the actual
23 information and documents be produced.

24 MR. HATCH: There's multiple motions floating
25 around. This specific one said until they are finally

1 ruled on, but, yes, the other one that was filed in the
2 rate case did say 30 days after the documents were
3 produced. They're all tied to the same thing and
4 they'll all get ruled on the same way.

5 COMMISSIONER CLARK: All right. Let me hear
6 arguments from Public Counsel because it's your motion;
7 is that correct?

8 MR. BECK: Commissioner, the motion in 910163
9 was directed towards the entire Commission. It was
10 asking them to reconsider Commissioner Beard's order on
11 prehearing procedure.

12 COMMISSIONER CLARK: I see.

13 MR. BECK: I don't see how we can take that
14 up here.

15 MS. GREEN: But we do have one that was filed
16 solely in 920 --

17 MR. BECK: Yes. I would be glad to address
18 that, and that was the one to not -- testimony being --
19 not being required to file testimony until 30 days
20 after the documents are produced.

21 MS. GREEN: Yes.

22 MR. BECK: I will stand by the motion,
23 Commissioner, that the point behind it is how can we
24 file testimony if don't have the information from
25 Southern Bell, and the 30 days is a reasonable time to

1 try to assimilate and analyze and actually prepare the
2 testimony once we've gotten the information from
3 Southern Bell.

4 MR. HATCH: That is limited solely to the 163
5 docket. Is that correct, Charlie?

6 MR. BECK: No. We filed one motion in this
7 docket, and then in the rate case docket, we filed
8 another one in 910163. My recollection is right, and I
9 know it starts getting to be a bit much to try to keep
10 all this sorted, but the 910163 was we asked for
11 reconsideration of Commissioner Beard's order on
12 prehearing procedure.

13 MR. HATCH: That's correct.

14 MR. BECK: At set filing dates, and it set a
15 filing date of this coming Monday for testimony. In
16 this docket, I believe there was a motion -- Tracy, I'm
17 having trouble remembering. I thought that was one of
18 things we took to the full Commission.

19 MR. HATCH: This motion is directed to the
20 full Commission, but to the extent that Commissioner
21 Clark, as Prehearing Officer, can solve your concerns
22 it makes it moot. That's what I'm trying to establish
23 here; whether we can solve your problem or have to go
24 to agenda.

25 MR. BECK: Then I've addressed it. We want

1 to get the information and in 30 days to assimilate it
2 and prepare testimony after we've actually received the
3 documents, and that would also go for the
4 Cuthbertson/Sander's deposition responses too.

5 COMMISSIONER CLARK: Do you want to respond?

6 MR. ANTHONY: Yes, ma'am. It's a little hard
7 to respond because I'm a little confused about where --
8 what the posture of the whole case is, and maybe I
9 ought to ask a preliminary question on what the
10 Commission did last Tuesday. Was it to consolidate the
11 hearings or to consolidate the dockets?

12 COMMISSIONER CLARK: I believe it was to
13 consolidate the dockets.

14 MS. GREEN: The dockets.

15 MR. ANTHONY: So all these matters really --
16 the docket numbers, at this point, really don't matter,
17 I guess. As far as testimony in 260, the time has come
18 and gone for the filing of testimony, rebuttal
19 testimony, so really, I guess, we're talking about the
20 investigative issues.

21 I don't have any objection to testimony being
22 pushed off until all these issues are resolved. I
23 think the same problems that Public Counsel faces are
24 the ones that we face. If certain documents are
25 privileged, then nobody discusses them in their

1 testimony. If certain documents are not privileged,
2 then we may have to address them as well. And until we
3 have that resolved, it's difficult for us to know what
4 testimony is appropriate.

5 I think it's -- I'm confused about whether or
6 not I ought to be arguing about who files testimony
7 first. I don't know if you want to hear arguments
8 about that, but my position would be on the
9 investigative matters, we don't have burden of proof.
10 Public Counsel filed a petition, the Commission
11 initiated a docket, Southern Bell can't prove a
12 negative. It's the other parties that have to prove
13 something, if anything, was done improperly; and we
14 don't have the burden of proof, and that means we don't
15 file testimony first. If anything, the other parties
16 should file testimony first. I don't have an
17 objection, though, to filing testimony at the same
18 time. I think that covers everything.

19 COMMISSIONER CLARK: Do you want to respond
20 to the order of testimony -- filing testimony?

21 MR. BECK: Yes. With respect to the rate
22 case, we did file testimony on November 16th, but that
23 essentially was under protest because we were forced to
24 file testimony without having the documentation from
25 Bell.

1 I think the documents we're seeking are both
2 those which you've ordered but have not -- you know,
3 the time frame for them to produce hasn't come yet. I
4 think we'll be looking at them a week after next, as
5 well as the documents they haven't produced and will
6 probably refuse to produce on privilege. We've asked
7 that all of these documents be obtained before we file
8 testimony, and they would be needed also to cross
9 examine witnesses at the hearing.

10 COMMISSIONER CLARK: What about your response
11 to the filing of testimony? They have said that they
12 have no objection to filing at the same time.

13 MR. BECK: The allegations in the
14 investigative docket deal with whether Southern Bell
15 has falsified its reports to the Commission. We feel
16 they're under a duty regardless of that to file correct
17 reports. It would seem to me they have the duty of
18 showing that they have been truthful in the reports
19 that they've filed with the Commission. On top of
20 that, there's the practical problem. We don't have the
21 documentation yet from them, so how can we file
22 testimony without the information in a practical sense?

23 COMMISSIONER CLARK: Let me ask you
24 something. I have not looked at this particular
25 motion. I don't think -- I mean, I have looked at

1 several, but I don't think I've looked at this one. Do
2 you go into the burden of proof issue and do any
3 research -- can I look to that for more extensive
4 argument on that issue? How about --

5 MR. ANTHONY: I have to admit there's been so
6 many motions that have been filed, I don't recall -- I
7 believe, though, we did address that issue, but I
8 wouldn't guarantee it.

9 COMMISSIONER CLARK: Okay. What I would like
10 to do with respect to -- I need to look at the motion
11 in 910163 and the motion requesting a 30-day extension
12 for filing a testimony, and I'll get an order out on
13 before we meet again. When are we due to meet again?
14 A week? I'll get a ruling out on them at that time.

15 MR. ANTHONY: Commissioner, I don't want to
16 be the squeaky wheel here, but testimony is due Monday.

17 COMMISSIONER CLARK: Well, we'll be setting a
18 new date for testimony.

19 MS. GREEN: You could cancel that at this
20 point.

21 COMMISSIONER CLARK: The testimony will not
22 be due Monday.

23 MR. HATCH: We went past the order of
24 witnesses before we got to the testimony filing, which
25 I intended to try to take up last before I got too

1 confused.

2 My recommendation has been to bump everything
3 two weeks essentially, and so you can use that just as
4 a ballpark figure for your consideration.

5 It's not just as a matter of these motions as
6 well because we have some logistical problems in
7 consolidating and ordering all of the issues since we
8 now have a consolidated proceeding. In doing all of
9 these issues, we're going to have to do some
10 renumbering and that is being done now, so that we can
11 notify the parties as to what the new numbers, if any,
12 are going to be, and so we have a continuous
13 proceeding.

14 COMMISSIONER CLARK: It's going to depend on
15 the order of witnesses -- will depend on the time
16 available.

17 MR. HATCH: There's order-of-witness
18 problems; just logistical problems with timing, plus
19 renumbering of issues since we have a single hearing
20 now. We have three sets of issues and would have
21 duplicate numbers, if we went as we have now. We would
22 have to renumber some of the investigation issues, so I
23 don't get confused number-wise.

24 COMMISSIONER CLARK: The testimony will not
25 be due Monday, and we will get an order out. In the

1 meantime, I also intend to look at the testimony that
2 has been filed in this docket to decide on the order of
3 witness. I have already heard your arguments in terms
4 of burden of proof and who's -- Bell's argument with
5 respect to being allowed to put on their case and
6 having the parties follow. But I'll get that ruling
7 out before next Friday.

8 MR. LACKEY: Can I be the squeaky wheel for a
9 moment, please?

10 COMMISSIONER CLARK: Please, anyone speak up
11 if they have a comment that they feel is relevant to a
12 decision, but recognize that I will give an opposing
13 party the opportunity to respond.

14 MR. LACKEY: The comments we made regarding
15 the order of witnesses was made before all these
16 dockets were consolidated, and so, consequently, that
17 question Hank asked a minute ago about whether the
18 hearings were consolidated or the dockets were
19 consolidated is important. We may want to change the
20 order of our witnesses based on the consolidation,
21 although we still think we ought to be allowed to go
22 first. That's the only comment I wanted to make.

23 COMMISSIONER CLARK: Let me tell you what I
24 have as sort of as a tentative plan. I thought there
25 are cost of capital and accounting-type issues that we

1 could separate and deal with. And then I understand
2 from you all that, with respect to the testimony on
3 incentives, there may be some that are more relative to
4 economic incentives and really don't deal with quality
5 -- the impact on quality of service. My intention is
6 to look at that testimony and see if I can come up with
7 some logical way to order it so that the Commissioners
8 feel like they are getting an orderly presentation.

9 MR. LACKEY: I think our position is that if
10 you want to bundle cost of capital and accounting
11 testimony, we'll be okay with that. What I had in mind
12 specifically, just by way of illustration, let's
13 suppose Mr. Lacker were going to file testimony in the
14 investigations docket. Well, I had originally said
15 that he would go first to start the rate case. Well,
16 it may well be that I'll want him to go last in the
17 rate case and kick off the incentive -- I mean, go last
18 in the rate case and kick off the investigation case.
19 I may want to change the order and let him wrap one
20 case and begin the next one in the order of witnesses
21 and start the main case with Lombardo.

22 COMMISSIONER CLARK: Well, it had been my
23 thought that some witnesses may have to appear twice.

24 MR. LACKEY: And I think you're right about
25 that, but in terms of the way we want to order the case

1 to present the facts to the Commission, we may want to
2 do it that way rather than have Mr. Lacker start off,
3 you know, on March 17th and then some time in April
4 appear again to do the investigation piece. We may
5 need them both together at that juncture.

6 But like I said, we didn't know until a few
7 minutes ago whether the Commission actually intended
8 just to consolidate hearings or to consolidate the
9 dockets, so I didn't want you to just make a ruling on
10 the order of witnesses based on what we said last time
11 before this all occurred. And know that we've talked
12 about it, I would like to think about it a little bit
13 more before you did such a thing. Particularly since
14 we don't have all the testimony filed yet.

15 COMMISSIONER CLARK: Mr. Beck?

16 MR. BECK: I have no response.

17 COMMISSIONER CLARK: Anyone?

18 MS. KAUFMAN: Commissioner Clark, I have
19 another problem that I would like to bring to your
20 attention.

21 COMMISSIONER CLARK: Is it on this issue?

22 MS. KAUFMAN: It's on the scheduling of
23 witnesses. Something that we like you to consider as
24 you sit down and look at the testimony. And it's
25 simply a scheduling matter, and that is that FIXCA is

1 one witness in this proceeding. Mr. Gillan is
2 basically going to be out of the country during the two
3 weeks of hearing that are scheduled in March; and,
4 therefore, we would ask you to consider allowing him to
5 go at the beginning of the April hearing. The first
6 witness, or however it turns out. But he had made
7 these plans prior to January 25th hearing being moved
8 to March. Thank you.

9 COMMISSIONER CLARK: What is the next motion?

10 MS. GREEN: Public Counsel has filed a motion
11 January 15th to allow continuation of discovery. And
12 the motion really was very sparse, and it just
13 basically states that since the hearings have been
14 moved, he would like you to readdress your discovery
15 cut-off date that was originally established in Docket
16 920260. I don't believe there was any discovery
17 cut-off date established in the other dockets.

18 COMMISSIONER CLARK: And Southern Bell
19 responded to that motion?

20 MS. GREEN: Southern Bell filed a response.

21 COMMISSIONER CLARK: I understand they don't
22 object to more discovery as long as it is not on
23 discovery where they have -- where there were previous
24 opportunities available to conduct that discovery.

25 MS. GREEN: Basically, yes. They basically

1 state that the discovery should only be for new things,
2 not old things.

3 COMMISSIONER CLARK: Mr. Beck?

4 MR. BECK: Yes, briefly. There's a number of
5 things that happened toward the end. Southern Bell
6 filed their rebuttal testimony, I believe it was
7 December 18th, so under the rules we couldn't have
8 finished discovery with interrogatories and document
9 requests by the January 15th cut off originally.

10 The rebuttal testimony raised a number of
11 items, and, in fact, it wasn't solely rebuttal. They
12 also filed some new testimony as part of their
13 rebuttal. Then we had the Staff audits that we got
14 access to -- first obtained access to in early January.
15 And that raised a number of items as we went through
16 the work papers, and we sent Southern Bell some items
17 on that.

18 Commissioner, typically in a rate case, we
19 will also serve discovery on a company to update
20 certain matters. And, for example, in the Centel case
21 that we had in early December, I think you'll recall
22 that we had a number of questions in that one day of
23 hearings on access line growth, and how we obtained a
24 number of documents about how their access line growth
25 had incurred right before the hearing.

1 We served some discovery on Southern Bell
2 seeking updates on their financial information for '92
3 when access line growth and a number of things that are
4 essentially update items that you would need to have
5 the most recent actual information when we go to the
6 hearing. So we would also like to be able to conduct
7 discovery on that.

8 COMMISSIONER CLARK: Okay. Would you like to
9 respond?

10 MS. WHITE: Yes, ma'am. We don't object to
11 Mr. Beck's discovery with regard to strictly update
12 information or questions or document request concerning
13 Southern Bell's testimony to the rebuttal testimony to
14 the Staff's testimony, or even to the recent audit and
15 work papers that came out. I guess what we do object
16 to is to discovery that could easily have been asked
17 before the cut-off date of January 15th, and there's
18 several questions in Mr. Beck's interrogatories and
19 PODs that go to that. In fact, there were several
20 questions concerning a November Wall Street Journal
21 article that, as I've said, could have easily have been
22 asked prior to January 15th.

23 The other thing we would oppose is any
24 open-ended extension of discovery. With the hearing
25 set for, I guess around the middle of March, we would

1 ask for a new discovery cut-off date of March 1st. But
2 we would ask that all discovery be completed by March
3 1st, not that that would be the last day that they
4 could file a production of document request or an
5 interrogatory, because if we got our 30 days, that
6 would take us into while the hearings were already on.
7 So we would ask that the new cut-off date be March 1st
8 with the stipulation that all discovery be completed by
9 March 1st.

10 COMMISSIONER CLARK: Would you like to
11 respond?

12 MS. GREEN: I would like to respond too. If
13 you would like to hear from Mr. Beck and I'll wait.

14 MR. BECK: Briefly, to complete everything by
15 March 1st, discovery would have to be filed today.
16 There's a 30 day -- with hand service, I think the 30
17 days would expire on March 1st. There also may, you
18 know, there may be items as we look at documents in two
19 weeks that they produce for the first time. That may
20 raise new items.

21 I can't commit we won't seek to try to do
22 additional discovery on that, but I certainly wouldn't
23 mind being limited in scope by matters that we find at
24 that point. Generally, I have no problem with Southern
25 Bell. I don't see any -- and there were a few

1 questions that we sent them that probably could have
2 been done the earlier. The bulk of them are not in
3 that category.

4 COMMISSIONER CLARK: Are you offering to
5 withdraw those that were?

6 MR. BECK: No.

7 COMMISSIONER CLARK: Well, in the spirit of
8 compromise, do I need to move to Mr. Twomey now?

9 MR. TWOMEY: Commissioner, I would say
10 briefly that we would encourage you to allow discovery
11 for as long as possible. There's no reason to limit
12 discovery to March 1st at all. It should at least go
13 to the opening of the hearing, if not later.

14 COMMISSIONER CLARK: Okay. Angela?

15 MS. GREEN: I would just offer the comment
16 that a discovery cut-off date was, in my view, of why
17 it was established. It was established by the
18 Commissioners primarily for the convenience and
19 expeditiousness of processing by Prehearing Officer;
20 benefits to the parties, if any, I think are secondary
21 consideration.

22 In my recollection of how this whole thing
23 started, it was mainly to make sure that motions to
24 compel would be ripe for resolution before the hearing
25 started. So it is strictly within your discretion

1 whether to have any type of cut-off date at all.

2 COMMISSIONER CLARK: Well, my inclination is
3 to impose a date for certain. But it will not be March
4 1st, it will be March 10th. And with the caveat that
5 it is discovery that could not have been had prior to
6 the previous discovery date, and it has to deal with
7 subsequent items, such as the rebuttal testimony, the
8 Staff audits and updates.

9 MS. GREEN: So you are going to limit it to
10 items that could not have been discovered previously?

11 COMMISSIONER CLARK: That's correct.

12 MS. GREEN: Okay. Do you need to then
13 entertain Public Counsel's specific discovery requests
14 today item by item?

15 COMMISSIONER CLARK: No. I don't think I'll
16 do that. Charlie, I will rely on you to cull out the
17 ones, and then if we have a dispute --

18 MR. BECK: I will try to work it out with
19 Bell. I think we'll probably succeed.

20 Commissioner, I would ask you to clarify.
21 There had been no cut-off in the investigation dockets,
22 so I would ask you not to limit the scope in the
23 investigation dockets.

24 COMMISSIONER CLARK: I'm not gong to limit --
25 it's going to be to -- the way I thought we could limit

1 it is as it relates to the testimony that was filed in
2 my docket. (Laughter)

3 All right. What's next?

4 MS. GREEN: And then that would be, I take it
5 then, that is a general discovery provision so that any
6 party in the proceeding could serve discovery subject
7 to the limitations you just stated?

8 COMMISSIONER CLARK: That's correct. And I
9 want to make it clear March 10th is the completion
10 date.

11 MR. BECK: Commissioner, if, for example,
12 the testimony dates are delayed two weeks in the
13 investigation dockets, we couldn't serve
14 interrogatories or document requests and have them
15 returned by March 10th. If based on what they filed --
16 or I'm talking about the investigation dockets?

17 COMMISSIONER CLARK: No. I want to be clear
18 that it's discovery as it relates to testimony that was
19 filed in 920260.

20 MR. BECK: Would the March 10th cut-off also
21 apply to --

22 COMMISSIONER CLARK: The investigation? No.

23 MR. BECK: Right. Okay.

24 MR. ANTHONY: Commissioner, I'm sorry. There
25 was the testimony filed by Mr. Poucher, Mr. Muloy, Dr.

1 Cooper extensively in the 260 docket. I assume that we
2 would still be free to discover beyond that March 10th
3 deadline as it relates to investigation issues.

4 COMMISSIONER CLARK: Do you want a second?
5 Why don't you talk with your counsel.

6 (Discussion off the record.)

7 MS. GREEN: A way to possibly clarify it
8 could be by utilizing the issues that have been
9 identified thus far as part of Docket 920260 rather
10 than --

11 COMMISSIONER CLARK: If that adds
12 clarification.

13 MS. GREEN: I don't know if it does or
14 doesn't. I'm very concerned that when we leave here
15 today we're going to get 15 more motions filed.

16 COMMISSIONER CLARK: Let me request that the
17 parties work it out and get it down to something that
18 there is truly a dispute on that you can't negotiate
19 between yourselves.

20 All right. What is the next item I need to
21 deal with?

22 MS. GREEN: I think I need to ask a
23 clarification because I have some motions that I don't
24 have any response to and they may have been worked out.
25 And that is Public Counsel had a motion is require

1 production of documents by January the 8th, and another
2 one to require them by January the 14th.

3 MR. BECK: Those are both settled.

4 MS. WHITE: Yes, Southern Bell provided that
5 information directly.

6 MS. GREEN: The parties worked that out.

7 MR. BECK: Angela, there is one old motion
8 that hadn't been ruled on and that is the
9 Cuthbertson/Sander's deposition.

10 MS. GREEN: Okay. I believe that
11 Commissioner Clark is entertaining that along with the
12 continual events what will have to occur as a result of
13 the order that was issued yesterday.

14 COMMISSIONER CLARK: Okay. Is that this
15 list?

16 MR. HATCH: That's part of it, yes, ma'am.

17 COMMISSIONER CLARK: Refresh my memory as to
18 what --

19 MR. HATCH: The list that you have, I've
20 given a copy to Public Counsel as well as one for
21 Southern Bell. It has a caption at the top, 910163.
22 As far as we can tell at this point, and there's a
23 couple of questions we're trying to track down, this is
24 the universe of documents that is subject to a claim of
25 privilege that have not been produced.

1 COMMISSIONER CLARK: And --

2 MR. HATCH: To the extent that you wish to
3 view these as an in camera to proceed to rule on them,
4 then Southern Bell would be required to produce them
5 down here for your review.

6 COMMISSIONER CLARK: Okay. Let me just make
7 it clear. The first one with the 21st request for
8 production with respect to MOOSA, is that the same
9 audit?

10 MR. HATCH: The audit report itself I assume
11 would be the same audit, but the work papers, for
12 example, were not produced as part of those audit
13 reports that they actually have reviewed.

14 COMMISSIONER CLARK: I believe that order
15 says that the work papers will also be produced except
16 to the extent you make a particularized claim again to
17 withhold them.

18 MR. ANTHONY: I understand the order. This
19 is probably as good as time as any to raise the
20 question.

21 Southern Bell plans to appeal your order. I
22 don't think it's any surprise to the full Commission.
23 And then we'll have to decide what other steps we have
24 to take, if any. I don't know if it's necessary, but
25 if it is, I would like for a stay of the order pending

1 the final resolution, because, obviously, once -- if it
2 were ultimately to be determined that they were
3 privileged and we had to produce them, then the
4 privilege is of no import whatsoever.

5 COMMISSIONER CLARK: Let me be clear. If you
6 appealed it directly to the courts that there would be
7 an automatic stay, wouldn't there?

8 MR. HATCH: I'm not sure. I raise it just to
9 be on the safe side. It's an important enough issue
10 that I think --

11 COMMISSIONER CLARK: I understand the notion.
12 If you produce it -- if you have to produce it, then,
13 in effect, you have been harmed and it can't be
14 remedied.

15 MR. ANTHONY: That's correct.

16 COMMISSIONER CLARK: And you're representing
17 today that you're going to appeal that to the full
18 Commission and then to the courts.

19 MR. ANTHONY: Well, I'm concerned about a
20 court saying that I haven't exhausted administrative
21 remedies. Otherwise, I would go directly to the courts
22 because I think alternatively that's where the issue is
23 going to be resolved. But I can't run the risk of a
24 court saying I haven't exhausted my remedies
25 administratively. I'm in a box. I don't want to

1 postpone the process, but neither do I want to waive
2 any rights that I have.

3 COMMISSIONER CLARK: What are the deadlines
4 given in the rules for appealing to the full
5 Commission? What are the time lines?

6 MR. ANTHONY: I have ten days to file for
7 review to the full Commission, and we plan to have that
8 filed next week.

9 COMMISSIONER CLARK: And how long does Public
10 Counsel get to respond?

11 MR. BECK: I think seven days if it's
12 hand-served on us, but we would endeavor to respond
13 more quickly than that.

14 COMMISSIONER CLARK: You will not have to
15 produce it until the reconsideration by the full
16 Commission is ruled upon, and then, at that point, it
17 would be up to the full Commission to rule upon it.
18 But I acknowledge that in order to preserve your rights
19 that I don't think it can be produced until the matter
20 is finally resolved.

21 MR. ANTHONY: Thank you.

22 COMMISSIONER CLARK: But let's go through
23 this list to make sure that I have issued a ruling on
24 those things which are right for me to rule on, and I
25 understand that the MOOSA report, the -- how do you

1 pronounce the K-S-R-I?

2 MR. ANTHONY: K-S-R-I. (Laughter)

3 COMMISSIONER CLARK: I thought maybe you had
4 it another way. And the LMOS, isn't that the next one?

5 MR. ANTHONY: Yes, ma'am.

6 COMMISSIONER CLARK: Those are all subject to
7 that order?

8 MR. ANTHONY: Yes.

9 COMMISSIONER CLARK: And the audit report
10 entitled "PSC Schedule 11"?

11 MR. ANTHONY: Yes, subject to the order.

12 COMMISSIONER CLARK: All right. And in that
13 we -- I made the requirement that if you -- that that
14 includes the audit work papers except to the extent you
15 request specific confidential treatment of them.

16 MR. ANTHONY: Yes. I guess that raises the
17 question, we would assert that the privilege applies to
18 the work papers at all as well, and so --

19 COMMISSIONER CLARK: Are you going to assert
20 that if the audit is not privileged that some of the
21 work papers are?

22 MR. ANTHONY: The work papers are voluminous
23 so I can't tell you exactly what's in them, but if
24 there is anything that we find to be privileged
25 separate from the audit, our belief that the audits

1 themselves are privileged, then we would assert that
2 portion of the work papers were also privileged, yes.
3 I don't know if there's anything specifically in there.

4 COMMISSIONER CLARK: Well, currently they're
5 covered, and under the order you will have to produce
6 them; to the extent that it's stayed, it's stayed.

7 What about the statistical analysis?

8 MR. ANTHONY: That's also covered by your
9 order, as I understand it.

10 COMMISSIONER CLARK: Public Counsel, is it
11 correct that, with respect to your request, the 24th
12 Request, Item No. 11, there are no documents but that
13 remains to be ruled on?

14 MR. BECK: I will check. As I read the
15 Staff's analysis it said privilege isn't the problem
16 there, but I would have to review the motion and the
17 document request.

18 COMMISSIONER CLARK: But there is an item
19 that needs to be ruled on in terms of production of
20 documents?

21 MR. HATCH: Yes, ma'am, as far as we can
22 tell. This is simply the privilege problem. All of
23 these -- all the documents listed here come from
24 Southern Bell's responses to Staff's interrogatories.
25 That's where we compiled this information where we

1 asked for --

2 COMMISSIONER CLARK: The purpose of this list
3 is to tell me what I yet have to rule on.

4 MR. HATCH: That's correct.

5 COMMISSIONER CLARK: All right. Have the
6 parties looked at it?

7 MR. BECK: We'll have to spend some time
8 reviewing it this morning.

9 COMMISSIONER CLARK: Why don't you review it
10 and get back to Staff and confirm that this is what is
11 left to be ruled on.

12 MR. BECK: My understanding is that this is
13 solely privileged matters yet to be ruled on.

14 MR. HATCH: That's correct.

15 MR. BECK: And the other thing is this is
16 just the documents, because we have the claim of
17 privilege in the Cuthbertson/Sander's to 58 questions
18 that they claim privilege.

19 MR. HATCH: That's correct.

20 COMMISSIONER CLARK: I would like to have
21 those questions and all the documents that are
22 privileged. I guess I can get the questions from you
23 all. With respect to the privileged documents, I need
24 to get them down here and review them in camera.

25 MR. HATCH: That's correct.

1 COMMISSIONER CLARK: All right. When can the
2 documents be produced to be reviewed in camera?

3 MR. ANTHONY: These are all the documents
4 that are listed on this sheet that Staff prepared?

5 COMMISSIONER CLARK: Right. That I have not
6 yet seen.

7 MR. ANTHONY: We can try to get them here as
8 quickly as possible. It will take a few days,
9 obviously, for packing and transport. These are -- I
10 will have to let you know that some of this, for
11 example, the statements and so on, are voluminous. And
12 I don't know if you -- something that I thought about,
13 because of the volume and all the other issues that are
14 pending, is whether or not a special master could be
15 appointed to resolve some of these issues, and that way
16 -- because it's going to be a time-consuming process.
17 And if the parties could agree to an appropriate
18 special master to review it, then that might be a way
19 to expedite some of the process.

20 COMMISSIONER CLARK: Well, I have next week.
21 And I'm the Prehearing Officer who has to rule on them.
22 Where are these documents located?

23 MR. ANTHONY: Most of these documents are in
24 Atlanta, if not all of them.

25 COMMISSIONER CLARK: Would you have an

1 objection to me going up there and looking at them? I
2 mean, you can send someone up there and --

3 MR. BECK: No. I would not have an
4 objection.

5 COMMISSIONER CLARK: -- make sure no
6 conversation takes place, and that I'm in the room and
7 looking at them. I think that may be the most cost
8 effective way to deal it.

9 MR. BECK: I have no objection to that.
10 Coincidentally, we'll probably be in Atlanta anyhow
11 looking at their documents.

12 MR. ANTHONY: I don't have any objection to
13 that either. I think the documents are probably in
14 different locations. Some may be in the custody of one
15 of our outside law firms.

16 COMMISSIONER CLARK: Okay.

17 MR. ANTHONY: And some may be in other
18 places. So we'll have to consolidate it -- a location,
19 but I don't have an objection to your reviewing them up
20 there versus down here.

21 COMMISSIONER CLARK: Let's take a break, and
22 why don't you discuss as to when they might be
23 available and under what circumstances, and we'll come
24 back in about five minutes.

25 (Brief recess)

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COMMISSIONER CLARK: I have looked at my calendar, and it doesn't look I have any time except possibly the afternoon of the 3rd and the 4th. And I would like to have the documents down here, so I can look at them then and also be working on the order.

MR. ANTHONY: I'm sorry. What dates were those?

COMMISSIONER CLARK: I would like them down here on February 3rd.

MR. ANTHONY: We'll do our best to have them here. They truly are voluminous. I just want to warn of you that, so I'll throw my --

COMMISSIONER CLARK: If you would, let me know the extent of the number of boxes, or whatever it is, that I'll be looking at.

MR. ANTHONY: Yes, ma'am.

COMMISSIONER CLARK: I need to -- there may be more items that I need to take up, and Angela had an emergency and Tracy is upstairs and he'll be down in a minute.

What I thought we could move to now is the motion by Public Counsel and the Attorney General with respect to the issues, and then I'll hear argument from Public Counsel and the Attorney General and then from

1 Southern Bell on that.

2 MR. TWOMEY: Commissioner, to present our
3 argument, Mr. Jerome Hoffman, Chief of the Anti-Trust
4 Section, is here.

5 COMMISSIONER CLARK: Welcome.

6 MR. HOFFMAN: Thank you, Commissioner. The
7 purpose of our motion was to try to clarify the scope
8 of the issues in the docket and to resolve any possible
9 conflicts that might arise between what the Public
10 Service Commission is doing in these dockets, and with
11 the case that is on file in the Southern District of
12 Florida, the Davis litigation.

13 As the Commissioner may know, the Attorney
14 General's motion to intervene in the Davis litigation
15 was granted in the middle of January, so we're now a
16 party to that litigation. And recently the court
17 decided -- lifted the stay on discovery and has now set
18 a discovery schedule in that case.

19 COMMISSIONER CLARK: When did they do that?

20 MR. HOFFMAN: The courts -- I have a copy of
21 the discovery order. It was filed January 25th. If
22 you would like to make that part of the record, I have
23 a copy.

24 COMMISSIONER CLARK: They lifted the stay on
25 discovery on December --

1 MR. HOFFMAN: No. On January 25th of 1993,
2 the court lifted her previous discovery.

3 COMMISSIONER CLARK: But at the time your
4 motion was filed, it was stayed?

5 MR. HOFFMAN: Right. At the time the motion
6 was filed, discovery had been stayed. And at the time
7 our motion was filed, we had not yet been granted leave
8 to intervene. Now both of those events have happened.

9 COMMISSIONER CLARK: Okay.

10 MR. HOFFMAN: And the discovery schedule that
11 has been set by the court is fairly strict. It
12 requires all the discovery, basically, to be completed
13 by May 14th and dispositive motions to be filed at that
14 time. So the parties in that case are going to be
15 aggressively moving towards completion of the
16 discovery, and it appears that the court there has set
17 a timetable that will allow for the early resolution of
18 a lot of issues.

19 Now, what our concern is with the overlap
20 here is the fact that basically the subject matter of
21 the Davis litigation, inside wire maintenance, is
22 something that pursuant to the FCC's preemption, and
23 then the subsequent deregulation of inside wire by the
24 Commission is really something that the Commission has
25 no jurisdiction over anymore. And the -- particularly

1 the problem that Southern Bell's issue has created is
2 -- and this is Issue No. 14 that they have identified
3 where they basically have asked the Commission to
4 consider whether the -- any of the refunds that have
5 already gone out to consumers as part of the Statewide
6 Prosecutor's settlement with Southern Bell should be
7 considered by this Commissioner as being sufficient
8 compensation. And I think that there's no question,
9 and I want to make sure that --

10 COMMISSIONER CLARK: Let me ask you a
11 question. What is the correct wording of the issue?
12 Is it the one that appears on Page 8 of Southern Bell's
13 response or is it the one on Page 6 of your document?

14 MR. HOFFMAN: Frankly, I'm not sure. The
15 only issue listing I had seen was the one that we had
16 on Page 6 of our paper. I have never seen this
17 rewording that they've put into their reply on Page 8.
18 But I don't think that there is a huge distinction
19 here, although I think the way that the issue was first
20 listed as their Issue No. 4 on their November 4th,
21 1992, statement, which is what we quoted on Page 6 of
22 our papers, is probably really the context in which the
23 Commission is going to consider this. And it probably
24 is more a detailed statement of how that issue would be
25 decided by the Commission.

1 But as a practical matter, the way that
2 inside wire is involved in the Davis litigation is
3 through the three different methods it was sold. The
4 one was through the written solicitations that Southern
5 Bell sent --

6 COMMISSIONER CLARK: I've read your motion.
7 I've read the motion and the response. If you want
8 just to get why I should grant the motion.

9 MR. HOFFMAN: What we want to make very clear
10 that nobody is suggesting this either the written
11 solicitations or the oral sales are part of this
12 docket. It's only to the extent that inside wire was
13 sold by network sales people that there's any overlap.
14 And what we want to make clear is because the
15 Commission does not have jurisdiction to award damages
16 in a case where -- particularly where the service in
17 question is not something that the Commission has
18 jurisdiction over, that it really ought not be
19 considering whether sufficient compensation has been
20 given pursuant to the Statewide Prosecutor's settlement
21 to individual consumers.

22 You know, sufficient compensation really
23 talks about damages. That's something that the
24 Commission is really without jurisdiction to consider
25 when it doesn't have jurisdiction over the underlying

1 service. And, you know, if the Commission wants to
2 assess a penalty against Southern Bell over and above
3 what they've already paid, I think clearly that's
4 something they have the authority to do, but they don't
5 have the ability to consider this damages issue. And
6 that is what we wish to clarify.

7 COMMISSIONER CLARK: You have two pages of
8 numbered paragraphs that you want us to clarify.

9 MR. HOFFMAN: Right.

10 COMMISSIONER CLARK: Give me specifically,
11 again, what it is you want us to do.

12 MR. HOFFMAN: The key points, I think, that
13 we want to cover are included in A, B and D. And I
14 don't think that there's any dispute, with respect to
15 A, that the written solicitations and the oral sales
16 really aren't part of this docket. So there is no
17 overlap here.

18 With respect to network sales, what we want
19 to make sure is this there is no attempt to basically
20 award damages or for the Commission to consider the
21 damages issue as part of this docket.

22 COMMISSIONER CLARK: Let me ask you: You
23 want to say "or actively supervise Southern Bell's
24 billing inserts." It struck me that that is factual
25 determination to be made by the anti-trust court, and

1 this Commission would really be without jurisdiction to
2 draw a conclusion. I mean, it seems to me that in your
3 anti-trust suit that parties will have to produce
4 orders by the Commission, witnesses to draw -- for the
5 anti-trust court to draw that conclusion that we have
6 not --

7 MR. HOFFMAN: She already has made a decision
8 that as of 1-1-87 that the Commission did not actively
9 supervise any of Southern Bell's activities with
10 respect to inside wire maintenance.

11 COMMISSIONER CLARK: So that issue is gone.

12 MR. HOFFMAN: That issue is gone.

13 COMMISSIONER CLARK: Okay. So we don't have
14 to make a ruling on A. A is already covered by the
15 partial -- the granting of the partial motion for
16 summary judgment.

17 MR. HOFFMAN: That's correct.

18 COMMISSIONER CLARK: Okay.

19 MR. HOFFMAN: It's really B and D that we
20 want to focus on to clarify the scope of the
21 proceedings and to make sure that there is no attempt
22 for Southern Bell to argue that the Commission has made
23 some kind of ruling that establishes that the
24 settlement agreement has already paid sufficient
25 damages to consumers.

1 COMMISSIONER CLARK: Okay. Anything else?

2 MR. HOFFMAN: No, Commissioner.

3 COMMISSIONER CLARK: Would Southern Bell like
4 to respond?

5 MR. ANTHONY: Yes, ma'am. It strikes me that
6 this is something of a tempest in a teapot. First of
7 all, Southern Bell's issue that we quote in our brief
8 is the correct issue as shown on the list of issues for
9 Docket 900960. It's Issue 14 and it tracks ours.

10 What the Attorney General's office and Public
11 Counsel are asking this Commission to do is to clarify
12 the scope of something that hasn't been tried yet and
13 to try to impose before the fact the rules on what the
14 court in Miami can or can't do, based on whatever
15 findings this Commission may reach.

16 The intent of that issue that Southern Bell
17 proposed was not to, in any way, affect the Davis
18 litigation, and we've said so in our response at the
19 pleading. It's designed to ask the question has the
20 settlement that we have reached and the monies that
21 we've returned to customers adequately compensated
22 those customers for purposes of this Commission's
23 inquiry into those matters? It wasn't designed to, in
24 any way, affect the court's decision in the Davis case.

25 Even beyond that, though, there are some

1 things that this Commission may rule on that may have
2 some -- you may make factual findings. We think that
3 the two issues are totally separate. We think the
4 question about whether or not there has been
5 monopolization of inside wire and the issues that this
6 Commission are looking at are entirely separate. But
7 there is a possibility that you could make a finding of
8 fact that the court may or may not deem to be
9 collateral estoppel. And I don't see how this
10 Commission can preclude that court from doing so. So I
11 don't understand the purpose of the motion from a
12 number of perspectives. One, it's not the intent of
13 the issue. Second, as we've stated, we're not trying
14 to in any way affect the Davis litigation. We've gone
15 on record as saying that. But, third, if there are
16 issues that come up that are germane to these
17 proceedings, then this Commission can't decide ahead of
18 the fact that they will or will not have any sort of
19 effect on a court decision.

20 There are issues of primary jurisdiction,
21 there are issues of exhaustion of administrative
22 remedies, there's collateral estoppel. All those sorts
23 of things that the court would have to decide, and
24 could properly be litigated before that court by the
25 parties. They may swing either way. I don't know that

1 there will be things that I want to raise or that the
2 Attorney General's Office may want to raise.

3 My only point is that I don't see that this
4 motion has much bearing on these proceedings, and we've
5 gone on the record as saying that it's not our intent
6 that that issue be directed towards the Davis
7 litigation.

8 COMMISSIONER CLARK: Let me ask you, Mr.
9 Hoffman, a question on D. The jurisdiction to award
10 damages in general and anti-trust trouble damages,
11 that's a legal conclusion.

12 MR. HOFFMAN: That's correct, Commissioner.

13 COMMISSIONER CLARK: But really what you want
14 us to state, with respect to this item, is that we
15 don't intend for it in any way to impact the Davis or
16 the Davis case.

17 MR. HOFFMAN: That's correct, Commissioner.
18 I mean, I would just raise the question if they -- if
19 it was not their intent to have any impact on the Davis
20 litigation, with respect to this issue that has been
21 identified as No. 14 on Page 8 of their pleading, then
22 what is the purpose of that? I mean, I see nothing --
23 the way that it's stated there, it's stated so broadly
24 as to really have no other reason to be there other
25 than to have an impact on the Davis litigation.

1 COMMISSIONER CLARK: Well, I think that the
2 way the issue is worded is consistent with what the
3 Statewide Prosecutor has indicated, and I think what
4 your motion suggests is that to the extent this
5 activity is a regulated activity, it's a part of this
6 docket. And the fact that the issue may have been
7 drafted broadly, all the issues in here are limited in
8 the sense they are limited to matters within our
9 jurisdiction, though that is not specifically stated
10 within each issue.

11 MR. ANTHONY: Commissioner, if I could just
12 add to that because it seems to me that's an attack on
13 my integrity and what I've said here. That's not the
14 issue that Southern Bell originally proposed.

15 Mr. Hoffman may not be familiar with the
16 process at the Commission, but we proposed a particular
17 issue, the parties discussed it and the issue was
18 modified. That was a result of an agreement among all
19 the parties that that was the appropriate issue to be
20 discussed, including, I think, the Attorney General's
21 Office was a party to that process. So I stand on what
22 I stated, that it was not intended to affect the Davis
23 litigation.

24 COMMISSIONER CLARK: Anything else?

25 MR. HOFFMAN: No.

1 COMMISSIONER CLARK: Anything further?

2 MR. ANTHONY: No, ma'am.

3 COMMISSIONER CLARK: Tracy, do you have
4 anything else to take up?

5 MR. HATCH: No, ma'am. I do not believe so.
6 That was the last item.

7 COMMISSIONER CLARK: I don't know that we
8 have anything we will need to take up next Friday. I
9 think I have -- we sort of whittle down the items that
10 need to be taken care of, and I'll be do the in camera
11 inspection next week and issuing the order on when
12 testimony is due.

13 One of the things I did during the break was
14 look at my calendar, and I think it is essential to get
15 before the full Commission the issue of the privileged
16 information as quickly as possible. And to that end,
17 I'm going to order Southern Bell to fill for
18 reconsideration and have that filed with the Commission
19 and hand deliver it to Public Counsel on Friday, the
20 5th. Public Counsel will have the 12th to respond to
21 it, and it will be an emergency item on the 16th
22 agenda.

23 If there's nothing further, this hearing is
24 adjourned. I think you need to check back with Staff
25 on Thursday. And if we feel that there is nothing that

1 needs to be taken up, and likewise, if you don't tell
2 us of anything that needs to be taken up, we will
3 cancel next Friday's meeting. Thank you.

4 MR. HATCH: I assume that means you're
5 continuing until next Friday, subject to cancellation.

6 COMMISSIONER CLARK: Thank you, Tracy.

7 (Hearing concluded at 11:10 a.m.)

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1 F L O R I D A)
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3 COUNTY OF LEON)

CERTIFICATE OF REPORTER

4 I, PAMELA A. CANELL, Official Commission
5 Reporter,


6 DO HEREBY CERTIFY that the hearing in this
7 cause, Docket No. 920260-TL, was heard by the Florida
8 Public Service Commission at the time and place herein
9 stated; it is further

10 CERTIFIED that I reported in shorthand the
11 said proceedings; that the same has been transcribed
12 under my direct supervision, and that this transcript,
13 consisting of 55 pages, constitutes a true and accurate
14 transcription of my notes of said proceedings; it is
15 further

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

20 IN WITNESS WHEREOF, I have hereunto set my
21 hand at Tallahassee, Leon County, Florida, this 2nd day
22 of February, A. D., 1993

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