

BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

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

Show Cause Proceeding Against :  
SOUTHERN BELL TELEPHONE AND :  
TELEGRAPH COMPANY for : DOCKET NO. 900960-TL  
Misbilling Customers. :

Petition on behalf of Citizens :  
of the State of Florida to :  
Initiate Investigation into : DOCKET NO. 910163-TL  
Integrity of SOUTHERN BELL :  
TELEPHONE AND TELEGRAPH :  
COMPANY's Repair Service :  
Activities and Reports. :

Investigation into SOUTHERN :  
BELL TELEPHONE AND TELEGRAPH :  
COMPANY's Compliance with : DOCKET NO. 910727-TL  
Rule 25-4.110(2), F.A.C, :  
Rebates. :

PROCEEDINGS: MOTION HEARING

BEFORE: COMMISSIONER SUSAN F. CLARK  
Prehearing Officer

DOCUMENT NUMBER - DATE  
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1 DATE: Friday, February 12, 1993  
2  
3 TIME: Commenced at 9:30 a.m.  
4 Concluded at 10:15 a.m.  
5  
6 PLACE: FPSC Hearing Room 106  
7 Fletcher Building  
8 101 East Gaines Street  
9 Tallahassee, Florida  
10  
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12 REPORTED BY: JOY KELLY, CSR, RPR  
13 Official Commission Reporter  
14  
15  
16 APPEARANCES:  
17  
18 HARRIS R. ANTHONY, c/o Marshall M. Criser, III,  
19 150 South Monroe Street, Suite 400, Tallahassee, Florida  
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21 and NANCY WHITE, 675 Peachtree Street, Northwest, Suite  
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4 222-6100, on behalf of American Association of Retired  
5 Persons.

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7 Department of Legal Affairs, The Capitol, Room 1603,  
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9 488-8253, on behalf of the Attorney General of the State  
10 of Florida.

11 MICHAEL W. TYE, 106 East College Avenue, Suite  
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13 425-6360, on behalf of AT&T Communications of the Southern  
14 States, Inc.

15 PETER M. DUNBAR, Haben, Culpepper, Dunbar &  
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22 222-2525, on behalf of Florida Interexchange Carriers  
23 Association.

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## 1 APPEARANCES CONTINUED:

2 LAURA L. WILSON, Messer, Vickers, Caparello,  
3 Madsen, Lewis, Goldman & Metz, P.A., Post Office Box 1876,  
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8 1876, Tallahassee, Florida 32302-1876, Telephone No.  
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10 Communications of Florida, Inc.

11 RICHARD D. MELSON, Hopping Boyd Green & Sams,  
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16 Telecommunications Corporation.

17 CHARLES J. BECK, Office of Public Counsel, c/o  
18 The Florida Legislature, 111 West Madison Street, Room  
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20 488-9330, on behalf of the Citizens of the State of  
21 Florida.

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1 APPEARANCES CONTINUED:

2 ANGELA B. GREEN, TRACY HATCH and PATRICK LEE  
3 THOMAS, FPSC Division of Legal Services, 101 East  
4 Gaines Street, Tallahassee, Florida 32399-0863,  
5 Telephone No. (904) 487-2740, appearing on behalf of  
6 the Commission Staff.

7 ALSO PRESENT:

8 ROBIN NORTON, FPSC Division of Communications  
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P R O C E E D I N G S

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

COMMISSIONER CLARK: Let's convene the prehearing. Is there a notice to be read?

MS. GREEN: Yes, ma'am.

Pursuant to notice, this time and place was set for Motion Hearing before Commissioner Susan F. Clark as Prehearing Officer in Dockets No. 920260, 900960, 910163 and 910727.

COMMISSIONER CLARK: Let's take appearances.

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

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

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

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

MR. TWOMEY: Mike Twomey on behalf of the Attorney General of the State of Florida.

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

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

3 MS. WILSON: Laura Wilson, for the Messer,  
4 Vickers law firm, on behalf of the Florida Pay  
5 Telephone Association.

6 MR. TYE: Michael W. Tye, on behalf of AT&T  
7 Communications of the Southern States, Inc.

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

10 COMMISSIONER CLARK: Okay. I understand  
11 there's some ministerial things Staff would like to  
12 take care of first.

13 MS. GREEN: I don't believe we'll be able to  
14 do that at this moment. But thank you.

15 COMMISSIONER CLARK: Okay. I have a list of  
16 things that I know that I want to take up. And I guess  
17 I'll just start working through them, and you can let  
18 me know when you all are ready to go over that.

19 At the last meeting I indicated that I would  
20 get an order of witnesses out. I have. We're getting  
21 close. I have not had time to review all of the  
22 testimony. I will endeavor to get that out next week,  
23 but it will certainly be out before the final  
24 Prehearing Conference.

25 I also did an in camera inspection of some

1 documents that were produced on February 3rd; I expect  
2 that order out today. It has been drafted. I just  
3 need to look at it again.

4 I have a question for Southern Bell with  
5 respect to the Supreme Court's decision on discovery.  
6 Do you anticipate asking for a rehearing, and is  
7 rehearing available to you?

8 MR. ANTHONY: I can learn my lesson  
9 eventually. I plan to not ask for reconsideration. In  
10 fact, we're working on preparing responses. Mr. Beck  
11 and I have discussed that and hope to have those to him  
12 next week.

13 COMMISSIONER CLARK: Good. Do I need to set  
14 a date or do you think you can mutually agree to a time  
15 that those things will be produced?

16 MR. BECK: I think we can work it out with  
17 Southern Bell.

18 COMMISSIONER CLARK: Good.

19 I have reviewed the Cuthbertson and Sanders'  
20 motions and issues, and I need some clarification.  
21 Specifically, who is Mr. Cuthbertson and Mr. Sanders?

22 MR. ANTHONY: Mr. Cuthbertson is the Company's  
23 General Manager for Personnel in the state of Florida.  
24 Mr. Sanders is the Vice President Network for the south  
25 sector, which includes Alabama and Florida.

1           COMMISSIONER CLARK: All right. Now, what I  
2 gathered from this is they -- they went and did some  
3 investigation. And there was some discipline that  
4 resulted from their investigation; is that correct?

5           MR. ANTHONY: What happened -- that's close.  
6 The Company did its privileged investigation that  
7 you've reviewed in camera.

8           COMMISSIONER CLARK: Okay.

9           MR. ANTHONY: They were provided with the  
10 statements from that investigation so that they could  
11 review it and decide what disciplinary steps, if any,  
12 they would recommend and then take. And it was from  
13 the investigation that the Company had performed that  
14 you've reviewed in camera.

15           COMMISSIONER CLARK: All right. So they  
16 reviewed what -- they reviewed the same documents I  
17 did.

18           MR. ANTHONY: Yes, ma'am.

19           COMMISSIONER CLARK: And from those they  
20 concluded that some disciplinary action was  
21 appropriate.

22           MR. ANTHONY: Yes.

23           COMMISSIONER CLARK: And that was carried out  
24 by these two gentlemen.

25           MR. ANTHONY: Yes. Either by them directly

1 or under their direction.

2 COMMISSIONER CLARK: And their information  
3 that was sought in that deposition comes from the same  
4 witness statements that I reviewed. They have no  
5 independent knowledge of it?

6 MR. ANTHONY: That's correct.

7 COMMISSIONER CLARK: Now, let me ask you one  
8 other thing.

9 Mr. Beck, if you need to clarify anything or  
10 feel the need to respond to the questions I'm asking,  
11 just let me know.

12 Some of the -- I looked at only the redacted  
13 transcript at this point. Is it correct that things,  
14 some of those things were redacted because they were  
15 questions based on privileged material that had been  
16 inadvertently given to the Public Counsel.

17 MR. ANTHONY: I think there were two reasons  
18 for the redactions: One was the inadvertent documents  
19 that had been inadvertently provided to Public Counsel  
20 that Southern Bell maintains are privileged. The  
21 second are names of people who had been disciplined.

22 COMMISSIONER CLARK: And the basis for the  
23 names is that they were --

24 MR. ANTHONY: That those are not related; that  
25 under the 364.183, exemption for personnel information,

1 that it's not related to duties, qualifications,  
2 responsibilities or compensation, and, therefore,  
3 should be maintained on a confidential basis.

4 The information has been provided to Public  
5 Counsel. We just asked for confidential status.

6 COMMISSIONER CLARK: I've got you. All  
7 right. (Pause)

8 I should be able to look at -- if I look at  
9 the transcript that the Clerk has, the unredacted  
10 transcripts, I should be able to tell -- how will I  
11 know what information you have given to the Public  
12 Counsel?

13 I guess I'm trying to get clear in my mind  
14 how I'm going to identify that which you don't claim  
15 are privileged for but you want to maintain are  
16 confidential and that for which you claim a privilege  
17 and that you don't have to produce it at all.

18 MR. ANTHONY: I believe that the index that we  
19 provided would set forth which is which.

20 COMMISSIONER CLARK: All right. I'll look  
21 for that.

22 Mr. Beck, did you want to add anything?

23 MR. BECK: No.

24 COMMISSIONER CLARK: Okay. I needed to get  
25 clear in my mind a few questions in order to rule on those

1 issues.

2 Okay. Are you ready to do the ministerial  
3 issues or matters?

4 MS. GREEN: Certainly. I'm going to give the  
5 forum to Ms. Norton.

6 MS. NORTON: Staff has a few more issues  
7 which it would like to propose to delete. And the  
8 first one is 35D. It has to do with any other changes  
9 to miscellaneous service arrangements. We're proposing  
10 to delete that. Anything that may come up can be  
11 handled in another issue, which is a broader catch-all  
12 issue, any other changes that need to be made. If  
13 anybody has any objections, let me know now, please.

14 The next one is 39A. That is also a rate  
15 design issue having to do with adding an additional  
16 rate group. Staff is proposing to delete that.

17 COMMISSIONER CLARK: First of all, is there  
18 any objection to deleting 35D? All right. We'll  
19 delete 35D.

20 MS. NORTON: 39A.

21 COMMISSIONER CLARK: What about 39A? Any  
22 objections to that? That issue is deleted.

23 MS. NORTON: The next issue is 42A. That  
24 issue goes to a rule governing the format for billing  
25 itemization.

1 Staff is satisfied when Southern Bell  
2 itemizes their bills, they are doing so in accordance  
3 with our rules, and we're recommending deletion of that  
4 issue.

5 COMMISSIONER CLARK: 42 what?

6 MS. NORTON: A.

7 COMMISSIONER CLARK: Okay. Any objections?

8 That issue is deleted.

9 MS. NORTON: The next issue is 14D, and we're  
10 recommending that be deleted.

11 MR. ANTHONY: What was that number?

12 MS. NORTON: I've got to look that one up.

13 MS. NORTON: Okay. That one is how often PIU  
14 audits should be performed.

15 COMMISSIONER CLARK: That issue is deleted.

16 MR. MELSON: Commissioner Clark, can I ask  
17 Southern Bell a question?

18 COMMISSIONER CLARK: Yes.

19 (Side bar conference.)

20 MR. MELSON: No problem.

21 MS. NORTON: Did I hear "no problem"?

22 COMMISSIONER CLARK: No objection.

23 MS. NORTON: Okay. The next one is Issue  
24 16A. And I'm getting to it. (Pause)

25 "Does the level of employee relocation

1 expenses represent a reasonable and necessary ongoing  
2 level?" And we're proposing to delete that issue.

3 COMMISSIONER CLARK: Any objections? That  
4 issue is deleted.

5 MR. TYE: Could I have that number again?

6 COMMISSIONER CLARK: 16A.

7 MS. NORTON: Is that all right?

8 COMMISSIONER CLARK: Yes.

9 MS. NORTON: Okay. The last issue we are  
10 proposing to merge. And that issue is 17B. And it  
11 reads, "How should the Commission treat the expenses  
12 incurred by BellSouth for supplemental executive  
13 retirement, stock appreciation rights and incentive  
14 compensation?"

15 We're proposing to merge that issue with 15L.  
16 The effect would be to delete this and move the  
17 substance into 15L.

18 COMMISSIONER CLARK: Is there any objection  
19 to that?

20 MS. NORTON: Just a second.

21 15L is, "How should the Commission treat the  
22 company's incentive compensation and bonus plan  
23 payment?"

24 COMMISSIONER CLARK: Okay. We'll merge those  
25 two.

1 Anything else?

2 MS. NORTON: That's it.

3 COMMISSIONER CLARK: Good.

4 MS. NORTON: For today.

5 COMMISSIONER CLARK: I think that everyone  
6 has been given a copy of a matrix that looks like this  
7 (Indicating) having to do with discovery motions.

8 Does everyone have a copy? (Pause)

9 Let me ask something for clarification from  
10 the Staff. We believe we've handled all the discovery  
11 motions in the 260 docket.

12 MS. GREEN: That is my understanding and  
13 that's based on discussions with parties who had filed  
14 motions in that docket.

15 COMMISSIONER CLARK: Okay. So this is a  
16 listing, as I understand it, of the motions that have  
17 been filed in the other three dockets. Specifically  
18 910163, 900960 and 910727. This is simply a list of  
19 motions having to do with discovery.

20 What we'd like for the parties to do is first  
21 of all check and make sure the list is complete. We  
22 believe it's complete. And then let us know which ones  
23 are no longer at issue. We think some of them have  
24 also been -- the parties have gotten together and  
25 reached agreement on what would be produced. But some

1 of them we understand remain, for instance, the witness  
2 statements and summaries, we know that remains  
3 outstanding.

4           What I'd like for you to do is this: Get  
5 with Staff within the next week and make sure that any  
6 corrections you have and any information you have on  
7 those items that have been dealt with or -- excuse me,  
8 have been settled between the parties, that they know  
9 about them.

10           Okay. The next thing you should have been  
11 handed is renumbered issues.

12           MR. HATCH: Those are the issues from the  
13 investigation dockets that have been previously  
14 identified. After the consolidation of the rate case  
15 and the investigation dockets, we had to come up with  
16 some way to put everything together so that it would  
17 avoid confusion and duplication of numbers.

18           What we did was the issues in the 163 docket,  
19 727 docket have been numbered as a 200 series. The 960  
20 sales docket have been renumbered as the 300 series.  
21 There are some issues in common with all the dockets,  
22 and they have been put into the 400 series. Those are  
23 mostly the penalty issues. Since they are common to  
24 all three, perhaps all four dockets, they have been put  
25 at the end.

1           COMMISSIONER CLARK: Let me ask you a  
2 question, Tracy. On the top you of renumbered issues  
3 from Dockets 910163 and 900960. You don't also list  
4 727?

5           MR. HATCH: 727 is subsumed in 163.

6           COMMISSIONER CLARK: Okay.

7           Tracy has also noted some of those issues  
8 will be merged in the final -- this is sort of a road  
9 map to what the final prehearing order will look like.  
10 For instance, Issue 208 will go away, but it will be in  
11 Issue 401. Okay?

12           They need to get in touch with Tracy if they  
13 have any comments or changes that need to be made to  
14 this, otherwise, we'll use this issue -- this list for  
15 continuing issues in the second phase of the hearings.

16           MR. HATCH: One addendum to the investigation  
17 dockets. The order reestablishing the filing of  
18 testimony has been issued. That was issued, I believe,  
19 a February 8th. Apparently there was some confusion.  
20 Some of the parties didn't get it, I guess, until  
21 yesterday. But those dates have been bumped basically  
22 just two weeks from the original list.

23           There is also one minor error. You'll get an  
24 amendatory order. The hearing dates for the  
25 investigations in April, I omitted the second week from

1 the date list, but I will include those.

2 MR. BECK: Could I ask a question about that  
3 order?

4 It has a date for briefs of May 28th. Is  
5 there going to be one brief filed as a result of all of  
6 the hearings, or do you contemplate bifurcated briefs?

7 MR. HATCH: Our discussions would prefer one  
8 brief.

9 MR. BECK: Okay. The May 28th date is the  
10 date for briefs on the entire case?

11 MR. HATCH: For the whole case. I believe  
12 there is a CASR out there that has consolidated these  
13 and it would say the same thing.

14 MR. BECK: Can we discuss that a little bit?

15 I'd like to share with you some of the  
16 problems I see coming up and just get it out on the  
17 table at least.

18 Back in June of 1991, we sent interrogatories  
19 to Southern Bell which, among other things, asked them  
20 to name the names of the people they knew of that had  
21 knowledge.

22 COMMISSIONER CLARK: Those are the things  
23 that went to the Supreme Court, right?

24 MR. BECK: Right. And then at orders of the  
25 Commission last week, the Supreme Court turned down

1 Bell's appeal. So I expect we're going to be getting  
2 that either the next week or the week afterwards. I  
3 expect that once we get the names of those persons,  
4 we're probably going to have about 100 depositions at  
5 least to take.

6 We did something similar to that last year  
7 where I think we took about 80 to 100 depositions of  
8 managers.

9 So we have that coming up for us to do. At  
10 least I see that as something we're going to be doing.

11 The other item is your orders compelling Bell  
12 to produce certain items. It's my understanding that's  
13 on its way to the Court eventually by somebody, and  
14 that it's going to be an emergency item on the Agenda  
15 Conference next Tuesday.

16 We have an awful lot to do, you know, getting  
17 ready for this. I told Staff counsel that I would  
18 expect that we will ask the full Commission to  
19 reconsider the procedural schedule because we can't  
20 file testimony in the 910163 case.

21 As I see it, you know, we're basically back  
22 where we were 20 months ago, where we were asking --  
23 what I see is very fundamental discovery, asking them  
24 to tell us the names of the witnesses. So when I see a  
25 brief date and hearing date and, you know, a brief date

1 of May 28th, I don't see how we can possibly do that.  
2 You know, we're going to be taking the order to the  
3 full Commission. I just see a lot of problems, and I  
4 wanted to let you know why, you know. Because in many  
5 respects --

6 COMMISSIONER CLARK: I can tell you that we  
7 haven't been totally unaware of the difficulties in the  
8 logistics. But I do feel that we need to continue on  
9 on the present course, and we are, ourselves, thinking  
10 about it.

11 MR. BECK: How would you foresee handling --  
12 you know, given that if I'm right and we're going to  
13 have to take 100 depositions and then there's still the  
14 other items beyond that that may have to wind their way  
15 to court; how do we handle this, is really my question.  
16 Because I don't see how we can possibly meet this  
17 schedule.

18 COMMISSIONER CLARK: Let me be clear.  
19 Do you believe you're going to experience  
20 difficulties with the hearing dates as well?

21 MR. BECK: Oh, yeah.

22 COMMISSIONER CLARK: Okay. But particularly  
23 with respect, it is with respect to those things that  
24 are more related to the investigation.

25 MR. BECK: Well, okay. I see the things that

1 we're proceeding on and have to go forward with  
2 discovery on relate to quality of service; they relate  
3 to incentive regulation.

4 My thought is that the entire idea of  
5 consolidating these dockets is that they are so  
6 interrelated that they should be done as one. But the  
7 items we're going on are the items that were in Docket  
8 910163. But we see them interrelated to issues in the  
9 rate case, and believe that's what the Commission did  
10 when the cases were consolidated.

11 COMMISSIONER CLARK: Well, Charlie, what I'm  
12 looking at is understanding the need to be able to  
13 schedule hearings before the Commission. And I  
14 understand your desire to have these things heard as  
15 closely together as possible.

16 MR. BECK: I'm not asking necessarily for  
17 resolution today. I just wanted to share with you the  
18 problems.

19 COMMISSIONER CLARK: We are aware of those  
20 problems. And certainly if you do -- the other  
21 Commissioners will become even more aware of it if you  
22 appeal that order. But we don't have a resolution  
23 right now.

24 MR. BECK: All right.

25 COMMISSIONER CLARK: Do you want to make any

1 comment?

2 I don't mean to pass over anyone else who  
3 wants to comment, but I also understand a lot of these  
4 issues are primarily between the Public Counsel and  
5 Southern Bell.

6 MR. ANTHONY: If I understand Public  
7 Counsel's concern, it's the discovery in the  
8 investigation dockets. I also understand his position  
9 that he believes those are intertwined with the rate  
10 case issues. But I really do believe that we can have  
11 the hearings on the rate case issues and then have the  
12 hearings on the investigation issues. And if we have  
13 to, leave the issues open, or the appropriate issues  
14 open, and then have the resolution at the end of that  
15 process.

16 As I stated at one of the other full  
17 Commission agendas, I'm concerned about pushing all of  
18 those issues off forever because we would like to get  
19 this resolved, but we're not trying to prevent anybody  
20 from having their day in court either. So I think that  
21 would be the best resolution, in Southern Bell's  
22 opinion, is to keep the two combined, or the four  
23 combined, but to have the hearings on the rate case  
24 issues as scheduled and then have the other hearings at  
25 the appropriate time, after discovery can be concluded,

1 in a relatively expeditious fashion.

2 COMMISSIONER CLARK: Charlie, do you  
3 anticipate having to conduct those depositions by  
4 yourself?

5 MR. BECK: We did last time. Sue Richardson  
6 and I split up and, you know, I did half of them and  
7 she did half of them. That's probably what we'll do  
8 again.

9 COMMISSIONER CLARK: Okay. All right. Let  
10 me see.

11 I can only say we are not unaware of the  
12 logistical problems, and we're continuing to look at it  
13 and determine what impact certain procedural issues  
14 will have on the timing of the due dates and the  
15 hearing dates.

16 All right. Is there anything else that I  
17 need to take up that we identified?

18 MR. HATCH: I don't believe there is. I  
19 think you covered all the things that we identified,  
20 the issues list, motions matrix, the order of  
21 witnesses.

22 COMMISSIONER CLARK: All right. Does  
23 Southern Bell have anything I need to take up and deal  
24 with?

25 MR. ANTHONY: I'm not sure how to handle

1 this, but I think this is the right time to raise it,  
2 Commissioner Clark.

3 It has to do with the matters that will be  
4 presented to the full Commission for reconsideration on  
5 Tuesday in the emergency basis. It's our request for  
6 review of your order.

7 COMMISSIONER CLARK: Uh-huh.

8 MR. ANTHONY: It's my understanding -- I have  
9 provided five copies of the materials that are the  
10 subject of your order to Mr. Hatch because he's told me  
11 that various other Commissioners may want to conduct  
12 their own in camera inspection of those documents prior  
13 to the hearing or the agenda on Tuesday.

14 I'm concerned that that's really not  
15 necessary, and can prejudice the case one way or the  
16 other. I believe that your order goes off more on --  
17 doesn't dispute Southern Bell's representation of the  
18 documents. We said they were audits. Your audit says  
19 they are --

20 COMMISSIONER CLARK: No, it doesn't.

21 MR. ANTHONY: And as I understand your order,  
22 it relates to whether or not the audits and the  
23 circumstances under which they were prepared are  
24 sufficient to provide them with the privileged status.  
25 And I don't believe that a review of those audits would

1 in any way enhance the full Commission's ability to  
2 render a decision on that, assuming that they can  
3 adequately rely on your representations that the audits  
4 are what we have said they are. And I'm concerned and  
5 I --

6 COMMISSIONER CLARK: I understand that. The  
7 thought crossed my mind, too, when I was looking at it.

8 Charlie, do you have an objection to -- I  
9 believe that the representation, based on what I have  
10 seen and the representation of what they have described  
11 it as is correct.

12 MR. BECK: I think the case law requires the  
13 in camera inspection.

14 COMMISSIONER CLARK: Well, but I have done  
15 the in camera inspection to verify that the information  
16 is, in fact, as it is presented.

17 MR. BECK: I think it would be our position  
18 that the full Commission would have to conduct an in  
19 camera inspection itself if they -- see, the problem is  
20 Southern Bell is asking the full Commission to overturn  
21 your ruling. And I don't think they can do that unless  
22 the full Commission conducts the same in camera  
23 inspection that you did. So I would have an objection  
24 if the Commission did not review it.

25 MR. ANTHONY: Commissioner, I would agree with

1 Mr. Beck. If your order turned on the contents of the  
2 documents themselves, but as I understand the order, it  
3 turns on whether or not a document of that type can be  
4 privileged given the circumstances under which it was  
5 prepared. Under those circumstances, having any  
6 further in camera inspection, I just don't see what  
7 purpose it serves. I don't think it serves any at all.  
8 And that's why I'm asking -- I'm not sure what I'm  
9 asking for other than perhaps information being  
10 provided to the Commissioners.

11 COMMISSIONER CLARK: Well, I think to the  
12 extent you might have gotten an agreement from Public  
13 Counsel that that wasn't necessary. But I don't  
14 believe that I can tell the other Commissioners that  
15 they shouldn't look at it.

16 My view of the Commission is that we function  
17 as one entity. And if a judge has to make an in camera  
18 inspection of documents that may or may not be admitted  
19 in his trial, he has to do that. And in the same sense  
20 that there are five people that make up the judge in  
21 this case, then I think Public Counsel has a right to  
22 require and demand that they make the in camera  
23 inspection. I don't think there's anything I can do.

24 MR. ANTHONY: An interesting point: It  
25 appears fairly likely that no matter how the Commission

1 rules one way or the other somebody is going to take up  
2 on appeal. And it's not a guarantee but it certainly  
3 appears that way at this point.

4           Wouldn't that -- if you're correct, that the  
5 Commission acts as a body, or if you're incorrect, that  
6 could be something that the court could consider. If  
7 I'm correct, if the court were to eventually decide  
8 that these documents are privileged, then I have no  
9 remedy. I know that a judge has a right to conduct an  
10 in camera inspection and that --

11           COMMISSIONER CLARK: Even when he's the trier  
12 of fact.

13           MR. ANTHONY: I haven't objected to your  
14 conducting the in camera inspection --

15           COMMISSIONER CLARK: What I'm saying is, in  
16 courts you don't necessarily have a jury who is the  
17 trier of fact, you can have a judge, and you have the  
18 same in camera inspection.

19           MR. ANTHONY: I understand. We've never  
20 objected to your conducting the in camera inspection of  
21 these documents on that very basis. We understand that  
22 you have the right to do it.

23           I'm just suggesting that an agent of the  
24 Commission, a member of the Commission acting as the  
25 full Commission's agent has conducted this inspection,

1 and that it's not necessary given the basis of your  
2 ruling, to determine whether or not your ruling is  
3 correct.

4           It turns on legal issues based on your  
5 finding what Southern Bell represented to be the  
6 underlying documents are what they are. And if the  
7 court were to find that my position is correct that the  
8 documents are privileged, then if each of the  
9 Commissioners has read them, I know everybody tries to  
10 maintain a Chinese wall in their own minds, but it's  
11 next to impossible to do that. And Southern Bell at  
12 that point -- I understand the law and all the rest.  
13 It's prejudice and in fairness --

14           COMMISSIONER CLARK: You're also assuming  
15 that we can remember everything we have read.

16           MR. ANTHONY: That's true. I'm giving you a  
17 lot of credit that's well deserved. But I have a  
18 concern about it.

19           COMMISSIONER CLARK: Well, if you have a  
20 concern, I suggest you file a motion to prevent that  
21 and we can rule on that. But I don't see -- that may  
22 be something, a procedural matter that we should take  
23 care of on a going-forward basis and get all the  
24 argument out pro and con as to that. But at this point  
25 I'm not going to take the position that the in camera

1 inspection shouldn't take place by the other  
2 Commissioners.

3 MR. TWOMEY: Commissioner Clark?

4 COMMISSIONER CLARK: Yes.

5 MR. TWOMEY: Pardon me. May I ask Southern  
6 Bell a question just so I can make sure I understand  
7 what their position is?

8 COMMISSIONER CLARK: Well, I guess you could  
9 do that otherwise. I mean -- is this your motion that  
10 we're dealing with?

11 MR. TWOMEY: No, I was just curious.

12 COMMISSIONER CLARK: Well, then you can ask  
13 him later.

14 MR. TWOMEY: I just want to know, is it your  
15 position that -- it's not your position that the  
16 Commissioners or their aides will leak this information  
17 but that you'll be prejudiced by the other four  
18 Commissioners.

19 COMMISSIONER CLARK: Mr. Twomey, I think you  
20 can carry on this conversation later on.

21 MR. TWOMEY: Oh, I'm sorry. I thought I  
22 could do it now. I understand. I'm sorry.

23 COMMISSIONER CLARK: I'd like to get through  
24 what I need to deal with.

25 Anything else?

1 MR. ANTHONY: No, ma'am.

2 MR. BECK: Yes. Commissioner, do you recall  
3 that we filed a motion that required sworn testimony by  
4 Southern Bell about its quality of service reports.

5 COMMISSIONER CLARK: Yes.

6 MR BECK: That you granted the motion and  
7 that at our last meeting Southern Bell designated Mr.  
8 Tubaugh as being the person who would sponsor the  
9 truthfulness of their quality of service reports.

10 This morning, before this conference, we took  
11 the deposition of Mr. Tubaugh. We found out that he  
12 has not reviewed the Schedule 11 audit. He has not  
13 reviewed any of the depositions that have been  
14 conducted related to items that would affect the  
15 truthfulness of the reports. We found out he's made no  
16 effort to --

17 COMMISSIONER CLARK: Go slower -- not  
18 reviewed the audit.

19 MR. BECK: Right.

20 COMMISSIONER CLARK: Not reviewed what?

21 MR. BECK: Reviewed the depositions that have  
22 been taken in Docket 910163. He's not investigated  
23 assertions by the Attorney General's witness  
24 challenging the truthfulness of the reports. Which  
25 puts us, I believe, in the same problem that I raised

1 earlier, and that is Southern Bell's putting up a  
2 witness who will say to his knowledge they are  
3 truthful, but the witness they are putting up is not  
4 competent to testify on behalf of the corporation that,  
5 in fact, to the corporation's ability and knowledge  
6 that those reports are truthful.

7 I think they have not complied with the order  
8 -- at least as I see it -- and would ask you to order  
9 them to file testimony by the corporation attesting to  
10 the truthfulness or lack thereof of their quality of  
11 service reports and that they file it in written form.

12 COMMISSIONER CLARK: Okay. Is that the only  
13 issue you have?

14 MR. BECK: Yes, that's it.

15 COMMISSIONER CLARK: Okay.

16 MR. ANTHONY: First of all, Commissioner  
17 Clark, the testimony is not due until Monday, so it  
18 strikes me as somewhat premature to have even taken Mr.  
19 Tubaugh's deposition at this point, but we didn't  
20 object to that. The audit the --

21 COMMISSIONER CLARK: Well, you did identify  
22 him as the person who would be doing it.

23 MR. ANTHONY: Yes. And what he has done and  
24 what he testified to this morning, under oath, is that  
25 he conducted a survey of each of the people who

1 provided input to these Schedule 11 reports.

2           You have to understand the process, and he  
3 explained this in his deposition, and I hope I get this  
4 right. But, briefly, what he described was the fact  
5 that information comes from the local area. Each  
6 installation and maintenance center has its own data  
7 that are input into Southern Bell's computer systems.  
8 These are compiled by the Southern Bell Staff and then  
9 provided to him to be filed with this Commission. What  
10 he testified to this morning is that he contacted each  
11 of the people responsible for each part of that  
12 process, and asked them to the best of their knowledge  
13 and belief whether the information they provided is  
14 true and correct. Whether they would provide any  
15 corrections if they found any mistakes that would  
16 affect the results of those, and if they ever have been  
17 required to do so. And he testified as to that. He  
18 will be filing testimony as to the information that he  
19 was provided. And he has provided the very information  
20 that you requested at the January 15th prehearing  
21 conference for him to provide.

22           If Mr. Beck thinks there's other information  
23 out there that contradicts Mr. Tubaugh's testimony,  
24 that certainly goes to the weight of his testimony. I  
25 don't think it disqualifies him, or says that Southern

1 Bell hasn't complied with your order.

2 COMMISSIONER CLARK: Let me ask you, Mr.  
3 Anthony, who can verify that the Schedule 11, in fact,  
4 is a correct and valid representation of the quality of  
5 service produced by Southern Bell?

6 MR. ANTHONY: It would take each person who  
7 has individually provided the information to say that  
8 each part of what they have done is correct. I mean,  
9 that's really a physical impossibility. That would  
10 require each maintenance administrator, each service  
11 technician, each person who is a part of that process,  
12 hundreds of people, if not thousands.

13 COMMISSIONER CLARK: Has Southern Bell taken  
14 the position that the Schedule 11 is or is not correct?

15 MR. ANTHONY: We have taken the position that  
16 to the best of the Company's knowledge, based on Mr.  
17 Tubaugh's survey, that with the exception of three  
18 different reports, that have already been brought to  
19 the Commission's attention, the North Dade report, I've  
20 forgotten, sometime in either late 1990 or early 1991,  
21 a report relating to Gainesville in that same general  
22 time period, and a third one from Miami that was  
23 subsequently corrected. That those reports are correct.

24 Now, if Mr. Muloy in his testimony thinks  
25 that he has information that shows it's not correct, or

1 if Mr. Beck thinks that through his depositions he's  
2 found information that shows it's not correct, then  
3 they can certainly present that evidence to this  
4 Commission; use it to cross-examine Mr. Tubaugh but,  
5 then the Commission will have to weigh the evidence and  
6 make its own conclusions. But I don't think that in  
7 any way disqualifies Mr. Tubaugh, or the process the  
8 Company has used, from presenting that evidence.

9 COMMISSIONER CLARK: What audit do you -- you  
10 say he has not reviewed the audit; what audit are you  
11 talking about?

12 MR. BECK: The one that you reviewed in  
13 camera that Southern Bell claims is privileged, that's  
14 the first thing he has not reviewed. The second thing  
15 he's not reviewed is depositions where there is  
16 obviously no claim of privilege. There's information  
17 in those depositions, that I'm willing to assert  
18 affects the truthfulness the reports submitted; he's  
19 made no effort to review that.

20 I'm not contesting that what Mr. Tubaugh has  
21 testified to is not truthful. I'm contesting he's not  
22 competent to testify to the Schedule 11s because he's  
23 not made an investigation of things that the Company  
24 has that would bear on the truthfulness of those  
25 reports.

1 MR. TWOMEY: Commissioner Clark, I'd like to  
2 support Public Counsel's request.

3 COMMISSIONER CLARK: Do you have anything to  
4 add to your arguments or points on this issue?

5 MR. ANTHONY: Well, as far as the audits  
6 themselves, the Schedule 11 audit, we have maintained,  
7 and continue to maintain, that the audit itself is  
8 privileged and there hasn't been a final determination  
9 by this Commission that they're not, let alone a court  
10 of competent jurisdiction.

11 If I were to show Mr. Tubaugh, for example, that  
12 audit and then base his testimony on it, I would have  
13 waived that privilege. I think that it's simply not  
14 feasible for me to have done that.

15 The depositions, those are other people who  
16 claim they may or may not have knowledge about certain  
17 things it may or may not have affected Schedule 11s.  
18 That's their testimony. Mr. Tubaugh has talked to  
19 other people who say they are not aware of any  
20 improprieties or errors.

21 COMMISSIONER CLARK: Has Mr. Tubaugh  
22 disclosed the name of people who indicate there may be  
23 -- has Mr. Tubaugh talked to anyone who has indicated  
24 that there may be inaccuracies in the Schedule 11?

25 MR. ANTHONY: My understanding from his

1 deposition is that each of the people he spoke to told  
2 him that they were not aware of any such inaccuracies.

3 COMMISSIONER CLARK: And it's your view,  
4 basically, that he hasn't conducted the necessary  
5 research to be able to be competent to be the Company's  
6 witness on this point.

7 MR. BECK: Right. What he's done is, they've  
8 put up a person who says to his knowledge that they are  
9 truthful, but what we're looking for is somebody to say  
10 to the Corporation's knowledge they're truthful.

11 COMMISSIONER CLARK: But I think that's their  
12 position, that he is the Corporation's witness.

13 MR. BECK: Yeah.

14 COMMISSIONER CLARK: Okay. Mr. Twomey, what  
15 specifically do you want to add to this argument?

16 MR. TWOMEY: Just briefly, I, first of all,  
17 support what Mr. Beck said. I'd like to make  
18 observation, if I understood what Mr. Anthony said at  
19 the outset of this hearing is, if I understood it  
20 correctly at the outset, is that some employees of this  
21 Company were disciplined in part on the results of that  
22 audit. I'd say disciplined for what? And I would  
23 suggest to you that Mr. Tubaugh, while he may be  
24 truthful in everything he says, is not competent  
25 because in part he's been hamstrung by his own employer

1 by not having the results of that audit, among other  
2 things. And that this Company should be required by  
3 you and by this Commission to put up somebody that says  
4 on behalf of the Company that they have undertaken an  
5 investigation to find out whether their Schedule 11s  
6 are correct or not. And that they are speaking on  
7 behalf of the full Company, after making such an  
8 exhaustive investigation.

9 The Commission has the right to know that, as  
10 well as the customers and the general public.

11 COMMISSIONER CLARK: Okay. Thanks.

12 MR. ANTHONY: Commissioner Clark, can I just  
13 clarify one thing. I didn't state that anybody was  
14 disciplined on the basis of the audit.

15 COMMISSIONER CLARK: No, but they were  
16 disciplined on the basis of --

17 MR. ANTHONY: Of other materials.

18 COMMISSIONER CLARK: Okay. Anything else?

19 MR. BECK: No.

20 COMMISSIONER CLARK: I cannot rule on that  
21 today. I think there's -- there are common themes that  
22 run throughout these various orders and I want to make  
23 sure that I have -- that I address them consistently  
24 through the orders, but I would expect that they will be  
25 out shortly. Certainly, one of them is going to be out

1 today.

2 MR. BECK: Thank you.

3 COMMISSIONER CLARK: Anything else we need to  
4 take up today?

5 MS. GREEN: The only thing that I can think  
6 of is that I had told the parties that we contemplated  
7 discussing the ordering of witnesses today. It's  
8 obvious that's not going to happen, so I'm curious if you  
9 would like them to provide some sort of input to you?

10 COMMISSIONER CLARK: I think it would be up  
11 to you, but within the next week, if you want to  
12 provide a proposed witness list, by all means go ahead  
13 and do that. But I will be putting out a witness list  
14 myself, sometime prior to the final prehearing  
15 conference in this case. Anything else?

16 I would suggest you provide that list before  
17 Wednesday, next Wednesday.

18 MS. GREEN: Give that to the Staff and then --

19 COMMISSIONER CLARK: Yes, to you Angela.

20 MS. GREEN: -- we will organize it.

21 COMMISSIONER CLARK: Anything else? All  
22 right, this hearing is adjourned.

23 (Thereupon, the hearing concluded at 10:15 a.m.)

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25

1 F L O R I D A )

2 :

CERTIFICATE OF REPORTER

3 COUNTY OF LEON)

4 I, JOY KELLY, CSR, RPR, Commission Reporter,

5 DO HEREBY CERTIFY that the hearing in this

6 cause, Docket Nos. 920260-TL, 900960-TL, 910163-TL and

7 910727-TL, was heard by the Florida Public Service

8 Commission at the time and place herein stated; it is

9 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 38 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 16th

22 day of February, A. D., 1993

23

24

25

  
\_\_\_\_\_  
JOY KELLY, CSR, RPR  
Official Commission Reporter  
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(904) 488-5981

FLORIDA PUBLIC SERVICE COMMISSION