

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

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
Misbiling 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, :
Rebate. :

PROCEEDINGS: PREHEARING CONFERENCE NO. 3

BEFORE: COMMISSIONER SUSAN F. CLARK
Prehearing Officer

DATE: Tuesday, February 23, 1993

TIME: Commenced at 9:45 a.m.
Concluded at 12:00 noon

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

REPORTED BY: SYDNEY C. SILVA, CSR, RPR
Official Commission Reporter

FLORIDA PUBLIC SERVICE COMMISSION

DOCUMENT NUMBER-DATE
02272 MAR-1993
FPSC-RECORDS/REPORTING

SOBPHCO3.TRN

1 APPEARANCES:

2 HARRIS R. ANTHONY, c/o Marshall M. Criser, III,
3 150 South Monroe Street, Suite 400, Tallahassee, Florida
4 32301, Telephone No. (904) 222-1201, and R. DOUGLAS LACKEY
5 and NANCY WHITE, 675 Peachtree Street, Northwest, Suite
6 4300, Atlanta, Georgia 30375, Telephone No. (404)
7 529-6361, on behalf of BellSouth Telecommunications, Inc.,
8 d/b/a Southern Bell Telephone and Telegraph Company.

9 DONALD L. BELL, Foley & Lardner, Post Office Box
10 508, Tallahassee, Florida 32302, Telephone No. (904)
11 222-6100, on behalf of American Association of Retired
12 Persons.

13 MICHAEL B. TWOMEY, Assistant Attorney General,
14 Department of Legal Affairs, The Capitol, Room 1603,
15 Tallahassee, Florida 32399-1050, Telephone No. (904)
16 488-8253, on behalf of the Attorney General of the State
17 of Florida.

18 MICHAEL W. TYE, 106 East College Avenue, Suite
19 1410, Tallahassee, Florida 32301, Telephone No. (904)
20 425-6360, on behalf of AT&T Communications of the Southern
21 States, Inc.

22

23

24

25

26

1 APPEARANCES CONTINUED:

2 CECIL O. SIMPSON, Jr., Regulatory Law Office,
3 Office of The Judge Advocate General, Department of The
4 Army, US Litigation Center, 901 N. Stuart Street,
5 Arlington, Virginia 22203-1837, Telephone No. (703)
6 696-1660, on behalf of The Department of Defense and
7 All Other Federal Executive Agencies.

8 VICKI GORDON KAUFMAN, McWhirter, Grandoff &
9 Reeves, 315 South Calhoun Street, Suite 716,
10 Tallahassee, Florida 32301, Telephone No. (904)
11 222-2525, on behalf of the Florida Interexchange
12 Carriers Association and the Florida Ad Hoc
13 Telecommunications Users Committee.

14 FLOYD R. SELF and LAURA L. WILSON, Messer,
15 Vickers, Caparello, Madsen, Lewis, Goldman & Metz, P.A.,
16 Post Office Box 1876, Tallahassee, Florida 32302-1876,
17 Telephone No. (904) 224-4359, on behalf of Florida Pay
18 Telephone Association, Inc.

19 RICHARD D. MELSON, Hopping Boyd Green & Sams,
20 Post Office Box 6526, Tallahassee, Florida 32314,
21 Telephone No. (904) 222-7500, on behalf of MCI
22 Telecommunications Corporation.

23

24

25

26

1 APPEARANCES CONTINUED:

2 C. EVERETT BOYD, JR., Ervin, Varn, Jacobs,
3 Odom & Ervin, Post Office Box 1170, Tallahassee,
4 Florida 32302, Telephone No. (904) 224-9135, on behalf
5 of Sprint Communications Company Limited Partnership.

6 MONTE BELOTE, Florida Consumer Action
7 Network, 4100 West Kennedy Boulevard, Room 128, Tampa,
8 Florida 33609, on behalf of the Florida Consumer Action
9 Network.

10 JACK SHREVE, Public Counsel, CHARLES J. BECK and
11 SUE RICHARDSON, Office of Public Counsel, c/o The Florida
12 Legislature, 111 West Madison Street, Room 812,
13 Tallahassee, Florida 32399-1400, Telephone No. (904)
14 488-9330, on behalf of the Citizens of the State of
15 Florida.

16 ANGELA B. GREEN, TRACY HATCH and JEAN WILSON,
17 FPSC Division of Legal Services, 101 East Gaines
18 Street, Tallahassee, Florida 32399-0863, Telephone No.
19 (904) 487-2740, appearing on behalf of the Commission
20 Staff.

21

22 ALSO PRESENT:

23 ROBIN NORTON, FPSC, Division of Communications.

24

25

I N D E X

MOTIONS

PAGE NO.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

OPC's Johnson, Ward Motion

51

OPC's 14th Motion to Compel

53

CERTIFICATE OF REPORTER

73

P R O C E E D I N G S

(Hearing convened at 9:45 a.m.)

COMMISSIONER CLARK: I call this prehearing to order. Ms. Green, would you please read the notice?

MS. GREEN: Pursuant to notice, this time and place was set for final Prehearing Conference in Docket 920260-TL, which has been consolidated with the dockets 900960, 910163 and 910727.

COMMISSIONER CLARK: Appearances?

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

MR. SELF: Floyd R. Self, Messer, Vickers, Caparello, Madsen, Lewis, Goldman & Metz, P.A., Post Office Box 1876, Tallahassee, Florida, on behalf of the Florida Pay Phone Association.

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

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

MS. KAUFMAN: Vicki Gordon Kaufman, of the law firm of McWhirter, Grandoff & Reeves, 315 South Calhoun Street, Suite 716, Tallahassee, Florida,

1 appearing on behalf of the Florida Interexchange
2 Carriers Association and the Florida Ad Hoc
3 Telecommunications Users Committee.

4 MR. TWOMEY: Mike Twomey, on behalf of the
5 Attorney General's office.

6 MR. BECK: Jack Shreve, Charles Beck, Sue
7 Richardson, Office of Public Counsel, on behalf of the
8 Florida Citizens.

9 MR. TYE: Michael Tye, appearing on behalf of
10 AT&T Communications of the Southern States, Inc.

11 MR. SIMPSON: Cecil O. Simpson, Jr., on
12 behalf of the U.S. Department of Defense and all other
13 Federal Executive Agencies.

14 MR. BOYD: Everett Boyd, of the Ervin law
15 firm, Box 1170, Tallahassee, on behalf of Sprint
16 Communications Company Limited Partnership.

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

19 COMMISSIONER CLARK: Is Mr. Woods here? Is
20 anyone appearing on behalf of the Florida Hotel and
21 Motel Association?

22 MS. GREEN: They withdrew. They were
23 supposed to be deleted out of this order.

24 COMMISSIONER CLARK: Who is appearing on
25 behalf of Florida Cable Television Association? He's

1 not here?

2 MS. GREEN: Cable, Mr. Dunbar. He contacted
3 my office Friday while I was out sick, and he left a
4 message regarding the order of the witnesses, and he
5 may very well have left a message regarding appearing
6 today. I'll check with him. But I'm sure that he is
7 not missing this intentionally.

8 COMMISSIONER CLARK: I didn't get your name from
9 the Department of Defense. What is your last name?

10 MR. SIMPSON: Simpson, Cecil O. Simpson, Jr.

11 COMMISSIONER CLARK: Is there anyone else here
12 to make an appearance?

13 Okay, Angela, how do we proceed?

14 MS. GREEN: There are some ministerial
15 matters that Mr. Hatch would like to cover with you,
16 and then there are a few motions I think we need to
17 acknowledge and check the status of. And then we'll
18 have the order of witnesses.

19 MR. HATCH: There are two quick things, one
20 pending from the last Prehearing Conference. One was
21 the motions matrix to figure out where we were on
22 everything, I believe everybody has had a chance to
23 look at that. Southern Bell filed a written response
24 to that. I believe Charlie Beck has a copy and
25 probably haven't had a chance to go all the way through

1 that. I was just curious as to whether you had any
2 comments or changes or anything in regards as to the
3 original matrix that we handed out, if there's any
4 problems with that.

5 MR. BECK: No, we didn't have anything.

6 MR. HATCH: Okay. The other thing is we had
7 left the issues list, the restructured issues from the
8 investigation portion of this proceeding, pending.
9 People were going to review that to see if they had any
10 questions or comments. I haven't heard from anybody, so I
11 assumed there are none; I just wanted to confirm that.

12 COMMISSIONER CLARK: What was that again?

13 MR. HATCH: Restructured the issues from
14 investigations and renumbered them, and regrouped them
15 a little bit. I am assuming there aren't any problems
16 to that since I haven't heard?

17 COMMISSIONER CLARK: Is that it?

18 MR. HATCH: Yes, ma'am.

19 COMMISSIONER CLARK: Let me be clear. Mr.
20 Beck, the matrix that was given out at the last
21 meeting, you had no problem with that?

22 MR. BECK: That's correct.

23 COMMISSIONER CLARK: And have you had a
24 chance to look at Southern Bell's response?

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

1 COMMISSIONER CLARK: Okay. What I gather I
2 can use this for is to check it against what we believe
3 is still outstanding to, in fact, identify what we
4 still have to deal with. Okay.

5 I do, I think the order on reconsideration
6 from the full Commission's review of my order on the
7 audits is either out or -- I know I signed it
8 yesterday, and it should -- it will be out sometime
9 today. I have also seen and have not yet signed
10 because there are some changes to be made with respect
11 to the witness statements, but that, likewise, should
12 be out this morning.

13 I know I have to deal with the Cuthbertson
14 and Sanders issue, but I think that will be forthcoming
15 as well. Are there any more left on the privilege and
16 work product issue?

17 MR. BECK: Commissioner, there have been a
18 number of motions pending, they are filed in the 910163
19 docket.

20 COMMISSIONER CLARK: Yes. And having to do
21 with the witness statements?

22 MS. RICHARDSON: We have, and I believe it's
23 on your matrix, there is a deposition of Shirley T.
24 Johnson, who is the internal auditor, and also
25 Dwayne Ward, who is in the Personnel Department for

1 Southern Bell, that we've requested that they answer
2 questions that they refused to answer under claim of
3 attorney-client privilege.

4 COMMISSIONER CLARK: Okay.

5 MS. RICHARDSON: We have one coming from a
6 deposition that we took of Mr. Danny King, who has an
7 affidavit on the statistical analysis that still --

8 COMMISSIONER CLARK: You said you have one
9 coming? You mean, you're going to be filing a motion?

10 MS. RICHARDSON: We will be filing two more
11 motions, actually. One is a deposition that was
12 taken of --

13 COMMISSIONER CLARK: I want to know what's
14 outstanding. I'm sure there is more coming down the
15 pike, but what is filed and is ripe for decision?

16 MS. RICHARDSON: I believe the ones that
17 Staff has -- and I apologize for dealing with this this
18 morning. But on Staff's matrix, I believe they are up
19 to date with our 14th motion, which is the last one
20 that was filed.

21 COMMISSIONER CLARK: Great. I'll just look
22 at those.

23 MS. RICHARDSON: Okay.

24 COMMISSIONER CLARK: What's next, Angela?

25 MS. GREEN: All right. On the 15th of

1 February, Public Counsel filed a motion for review by
2 the full Commission of your order revising the
3 procedural schedule, and that had to do with the
4 testimony for the second phase. Southern Bell faxed a
5 response to that yesterday, basically in opposition to
6 that. And that's not something that you can dispose
7 of, but I just think that everybody needs to be aware
8 that that is out there. And it's my understanding that
9 this is going to be scheduled as a special item for the
10 Commission, full Commission, to take up prior to the
11 next scheduled agenda conference. We don't have an
12 agenda conference until March the 16th.

13 COMMISSIONER CLARK: And when is this hearing
14 scheduled to start?

15 MS. GREEN: The 17th.

16 COMMISSIONER CLARK: Okay. And it's your
17 information that we are likely to schedule a special
18 conference to take care of this?

19 MS. GREEN: That's what we're trying to do
20 with it.

21 COMMISSIONER CLARK: Okay.

22 MS. GREEN: I assume it would be patently
23 unfair to have everyone prepared and flown in here to
24 start the hearing and possibly have it moved, so --

25 COMMISSIONER CLARK: Okay.

1 MS. GREEN: There is also another motion
2 strictly to postpone the hearings, and that was filed
3 by Public Counsel on February 17th. It's directed to
4 yourself and to Chairman Deason, which I interpret as
5 being directed to the full Commission, and that would
6 be taken up at the same time.

7 COMMISSIONER CLARK: Okay.

8 MS. GREEN: Southern Bell also early faxed a
9 response to that rather than letting the entire time
10 period run --

11 COMMISSIONER CLARK: Good, thank you.

12 MS. GREEN: -- so that that can be taken up.

13 Then there is a motion that is here --

14 COMMISSIONER CLARK: So Southern Bell has
15 already responded?

16 MS. GREEN: Yes, ma'am.

17 COMMISSIONER CLARK: Also yesterday?

18 MS. GREEN: Yes, ma'am. There is a motion
19 that is here that you may not have a copy of. It's a
20 motion to accept testimony and add issues relating to
21 the treatment of costs from Hurricane Andrew?

22 COMMISSIONER CLARK: I do have that. I have
23 that motion.

24 MS. GREEN: And that is something that you
25 would be capable of disposing of if, perhaps, we can

1 reach some agreement today from the parties. Perhaps
2 Southern Bell would be in a position to state today
3 whether they plan to interpose any objection to this?

4 MR. ANTHONY: I haven't seen the motion, so I
5 just don't know what it requests.

6 COMMISSIONER CLARK: Okay. Well, --

7 MS. GREEN: Basically what it states, not
8 wanting to make Mr. Beck's case for him; however, Staff
9 is in agreement with his motion and he proposes adding
10 two issues. One is, "How Southern Bell's insurance
11 proceeds from Hurricane Andrew be apportioned between
12 Louisiana and Florida?" And the other one, "How should
13 Southern Bell account for the net cost of Hurricane
14 Andrew?" We agree those are appropriate issues.

15 COMMISSIONER CLARK: Mr. Anthony, I would
16 simply request that you respond to these as quickly as
17 you have with the others. But I recognize you do have
18 time limits, time accommodations, in the rule; but I
19 certainly think that this is something that you should
20 be able to take care of quickly.

21 MR. ANTHONY: We'll file the response as
22 expeditiously as possible.

23 COMMISSIONER CLARK: Okay.

24 MS. GREEN: That has with it proposed direct
25 testimony of Victoria Montanaro, who is not yet a

1 witness in the proceeding.

2 COMMISSIONER CLARK: Okay.

3 MS. GREEN: That is all that I am aware of,
4 other than the ordering of the witnesses.

5 I received input from Southern Bell regarding
6 a proposed ordering of witnesses, and they served that
7 on all the parties.

8 COMMISSIONER CLARK: I don't have a copy of
9 that.

10 MS. GREEN: We've got some extra for you here
11 somewhere. If anyone else needs a copy of that? This
12 was your proposal.

13 MR. ANTHONY: That, I believe, is our
14 proposed order of witnesses. I just, if we could go
15 back to one issue that we discussed earlier about
16 Public Counsel's motion to postpone the hearings?

17 COMMISSIONER CLARK: Yes.

18 MR. ANTHONY: We have filed a response. I
19 don't know, Ms. Green said that it was also directed at
20 Chairman Deason, I didn't realize that. But, if you
21 wanted to take that up today, we would certainly be
22 prepared to discuss it, just so the parties could have
23 a better feel for what the schedule would be.

24 COMMISSIONER CLARK: Well, it seems to me
25 that the two orders -- the first motion filed February

1 15th for review of my order on prehearing procedure,
2 does that deal with primarily the -- well, what we have
3 referred to as the second phase?

4 MR. BECK: That deals with the order that
5 required us to file testimony without having the
6 documents and discovery back from Southern Bell.

7 As I see the distinction between first and
8 second phase, Commissioner, it seems to me that the
9 full Commission's decision to consolidate the issues
10 simply makes it one total hearing that happens to have
11 a two-week break in the middle of it. And I think
12 Southern Bell is trying to position it as if there are
13 two separate proceedings; and to me the way Southern
14 Bell is trying to position it is to have the Commission
15 reverse its decision to consolidate the cases. So I
16 don't see it as Phase I and Phase II, I see it as one
17 proceeding with a two-week break in the middle.

18 COMMISSIONER CLARK: I would concur with the
19 idea of taking it up, both motions, by the full
20 Commission at appropriate special agenda.

21 MS. GREEN: Well, unless the parties are in a
22 position to all agree with Public Counsel's motion, I
23 don't believe you can dispose of it.

24 MR. BECK: Commissioner Clark, let me mention
25 why we filed it the way we did. The motion on your

1 order on prehearing procedure, I think the only thing
2 we could do is take that to the full Commission.

3 Now the motion to postpone the hearings, it was
4 my feeling I didn't know quite who to address it to. It's
5 my feeling, as Prehearing Officer, it would be to you.
6 But often it's said that the Prehearing Officer doesn't
7 have the authority to schedule hearings, so we also
8 addressed it to the Chairman.

9 COMMISSIONER CLARK: I believe it may be one
10 issue the Chairman would appreciate the input from
11 other Commissions on as to how they want to handle it;
12 and with respect to that, I think that it would be well
13 to have all the Commissioners hear the arguments on
14 both of those motions.

15 All right. Let's move to the order of
16 witnesses. I have been provided by Staff a possible order
17 of witnesses. I am not sure that everyone has a copy; and
18 if Staff has extras, I would like them passed out.

19 It is my intention to segregate the portions
20 of this hearing to allow the Commission to focus on the
21 various areas. And to that -- and taking into account
22 the fact that we will have a break, and that gives even
23 greater reason to segregate them as much as I can. I
24 have looked through the order of witnesses provided by
25 the Staff and I am in basic agreement with, at least

1 through the first page, those witnesses that will be
2 scheduled for the first part of this hearing.

3 What I would like to do is take about a
4 15-minute break and allow you to look at this list, and
5 we'll reconvene. And in the meantime, I will have the
6 opportunity the look at Public Counsel -- I mean, Southern
7 Bell's suggestions. Let me ask a question. Public
8 Counsel, did you file any suggested witness order?

9 MR. BECK: No, we did not.

10 COMMISSIONER CLARK: Great. One thing I
11 would point out, it's my view that we cannot avoid in
12 some witnesses coming up twice. And I think you'll
13 notice that Mr. Lombardo is shown twice. My view is he
14 would come up and he would -- the total testimony would
15 be inserted into the record; and the cross examination,
16 at least initially, should go just to rate design and
17 pricing policy. When he comes back up, we would again
18 give him the opportunity to summarize with respect to
19 the competition and incentive regulation and allow
20 cross examination on those.

21 It's not going to be a completely clean
22 system, I'm aware of that. There may be overlaps and
23 there may be a necessity of cross examination to be
24 continued from one group, one set of hearing dates, to
25 the second. But I do feel it's necessary for the

1 Commissioners to be able to understand and put some
2 coherence into this proceeding that we segregate them
3 in this way.

4 MR. LACKEY: Before we take a break, can I
5 ask you a question about what you just said?

6 COMMISSIONER CLARK: Yes.

7 MR. LACKEY: I don't have any objections to
8 the witnesses coming up twice if it's necessary, if we
9 segregate the witnesses' testimony very cleanly and
10 don't allow mixing and matching, if you would. If the
11 witnesses are coming up twice, would it be your
12 intention to limit the cross examination and the direct
13 examination to the subject for which they are being
14 presented at the time? Like if Lombardo is going to
15 get up to testify about rate design and pricing policy,
16 and then he's going to get you up later to talk about
17 competition and incentive regulation, would it be your
18 intent to split his testimony and --

19 COMMISSIONER CLARK: My view is the total
20 testimony will be inserted at one time; and then it
21 would seem to me the logical thing to do would be to
22 say, summarize those parts of your testimony dealing
23 with the issue on rate design and policy, and that
24 cross examination and direct will be confined to those
25 areas to the extent possible. It's not going to be

1 completely clean and I'm aware of that. And we're
2 going to have to sort of deal with objections that
3 cross examination should wait or should be done now at
4 the time that comes up. That's the nature of the
5 complexity of this proceeding. And then when he came
6 up again, he would summarize his testimony as it
7 relates to those issues.

8 So let's take a 15-minute break and we'll be
9 back in and hear it.

10 MS. GREEN: Just for your information, there
11 is no one other than Bell that submitted any written
12 proposals. A few people contacted to indicate that
13 they, you know, agreed with Bell's proposal; and then
14 there were a few people who had some scheduling issues
15 and we believe we've taken those into account in the
16 draft that you see from the Staff.

17 COMMISSIONER CLARK: One other thing. The
18 list of issues that we have produced in the draft
19 prehearing order, is there any necessity that we go by
20 them issue-by-issue at this time? I think we've pretty
21 much gone through them. If no one has any changes or
22 other suggestions with regard to those issues, those
23 are the issues that will appear in the final order. Is
24 there any comment on those issues?

25 MR. ANTHONY: Just a question. I assume that

1 list, together with the revised list that had been
2 handed out last time that nobody had any comments on
3 this morning, the four or five pages that incorporated
4 the other dockets into the rate case, those would be
5 added to the --

6 COMMISSIONER CLARK: That was the restructure
7 you were talking about.

8 MR. HATCH: Yes, ma'am.

9 COMMISSIONER CLARK: And they are in here?

10 MS. GREEN: They are not in there yet.

11 MR. HATCH: The restructured issues from the
12 investigations are not part of this draft yet. We
13 haven't even had a prehearing conference or anything
14 related to that yet, so it can't be attached to this.
15 The prehearing conference for the investigation portion
16 of the proceedings is March 29th, I believe.

17 MS. GREEN: We plan to do that as like a
18 supplemental order or an addition --

19 COMMISSIONER CLARK: Okay.

20 MR. HATCH: Yes, ma'am. I don't even have
21 the prehearing statements yet for that.

22 COMMISSIONER CLARK: And you have previously
23 been furnished with the restructuring of those issues
24 and nobody has commented back to you, Mr. Hatch?

25 With respect to the issues here, does anyone

1 need to advise me of a change in position or any other
2 matter that needs to be corrected? All right, we'll be
3 back here at --

4 MR. BECK: I'm sorry, just one short item.
5 You had mentioned earlier about pending motions. When
6 we met last time, I had argued that Southern Bell had
7 not complied with your motion -- or with your order
8 requiring quality of service witness. And at that
9 time, Southern Bell had said perhaps our concerns were
10 premature, because they were going to be filing the
11 testimony of Wayne Tubaugh the following Monday. I
12 have read that testimony, nothing in that testimony
13 changes one iota of what I said the last time, and we
14 still feel that that's pending as well.

15 COMMISSIONER CLARK: You made an oral motion?

16 MR. BECK: Well, we had a written motion long
17 ago about having --

18 COMMISSIONER CLARK: Okay.

19 MR. BECK: -- a Southern Bell witness sponsor
20 the quality of service reports. And we still feel they
21 haven't complied with the oral order to do so.

22 COMMISSIONER CLARK: Okay. We'll be back
23 here at, we'll make it, 10:30.

24 (Brief recess.)

25

1 COMMISSIONER CLARK: Let's go back on the
2 record.

3 I've looked through the letter from Ms. Nancy
4 White to Jean Wilson, and it appears to me it does
5 encompass all the motions, some of which will no longer
6 be outstanding after today and some of which aren't.
7 And as I see it, there is -- the Johnson and Ward
8 motions are listed, as are the ones that I think that
9 you have just filed, which is No. 15.

10 After we've gone through the order of
11 witnesses, I would propose to hear argument on the
12 Johnson and Ward motions and in the motions covered
13 under Item 15. I will tell you that I have not read
14 either one of those, so you'll need to be a little more
15 -- you'll need to tell me the basis of your motion. Is
16 that going to be all right? I mean, we can forego oral
17 argument.

18 MS. RICHARDSON: Excuse me, Commissioner. I
19 had someone bringing them over this morning, and I'll
20 have to go over and get them. He's not here, so I'll
21 have to go over and get my copies, I should have
22 brought them myself. I'm sorry.

23 COMMISSIONER CLARK: Do we have any extra
24 copies? Okay.

25 All right, going back to the order of witnesses.

1 I have looked over Southern Bell's, but basically you
2 break it up into Southern Bell providing their case in its
3 entirety first. We're not going to do that. We're going
4 to break it up.

5 I understand your view that you have the
6 right to put on your case, but I also feel it's my
7 responsibility to structure the case in the way that I
8 feel will be consistent with what the Commission voted
9 on with respect to consolidating these cases and to
10 allow the areas that properly belong together to be
11 heard together.

12 This is not atypical, that's the way we did
13 it, I believe, in the last two cases.

14 MR. LACKEY: I have another suggestion. I
15 have a fall-back position.

16 COMMISSIONER CLARK: Okay.

17 MR. LACKEY: If I have to operate from the
18 Staff's witness list, a couple of thoughts. First of
19 all, I think that if we look at the rate design pricing
20 policy piece, we were discussing this while we were on
21 break, and we may have made an error in the prehearing
22 statement listing witnesses and issues they go with.
23 But Lombardo talks about rate design and pricing
24 policy; he talks about the extended calling area, other
25 such things. And I believe that under the rate design

1 pricing policy, it ought to be Lombardo, Sims, and then
2 Gillan, if we've got to have him at all.

3 COMMISSIONER CLARK: Yes, okay. Gillan, yeah, I
4 would agree with that. I wrote down that the proposed
5 price regulation starts on Page 19 of Mr. Lombardo's
6 testimony and then the OES is on 50, according to his
7 index. Okay. So he would go first and then Sims.

8 MR. LACKEY: The other problem I have is --
9 and we can do this and make it consistent at least
10 somewhat with our issues list.

11 COMMISSIONER CLARK: Okay.

12 MR. LACKEY: We'd like to move Lacher from an
13 overview to a summary position after the rate design
14 pricing, and that will allow him to summarize the rate
15 case and lead right into the quality of service,
16 rebate, and what have you. He's listed as the first
17 witness there. We can put him up, have him include the
18 main case, and then he would be the first lead-off
19 witness in the investigation case.

20 COMMISSIONER CLARK: Okay. Now, are you
21 suggesting -- you'll notice that the -- I would like to
22 get as many witnesses as we can in the first portion of
23 these hearings, and you'll notice the break does come
24 with Lacher leading off in the second two weeks of
25 hearings. Is that where you want him?

1 MR. LACKEY: I want him to end the first
2 hearings and lead off the next.

3 COMMISSIONER CLARK: Okay. He would not be
4 doing the overview?

5 MR. LACKEY: We'd rather have it treated as a
6 summary instead of the overview. If we're breaking up
7 the case the way we are, it doesn't make any difference
8 anyway, it seems to me. We'd rather have him summarize
9 where we've been --

10 COMMISSIONER CLARK: Okay.

11 MR. LACKEY: -- than give a map where we're
12 going. With that and with your ruling that you're not
13 going to accept my order of witnesses, I guess we'll
14 start with the cost of equity like you've got it,
15 revenue requirements next. There's a McClellan
16 rebuttal that's missing off that list that I noticed.

17 COMMISSIONER CLARK: Where do you suggest he go?

18 MR. LACKEY: Right after Allen and before
19 Wilson. Or actually, he could go after Wilson and
20 before Reid, either one. He's just got rebuttal
21 testimony, according to our records, and I didn't see
22 it on here.

23 COMMISSIONER CLARK: Okay.

24 MR. BECK: May I address the comments about
25 Mr. Lacher?

1 COMMISSIONER CLARK: Yes.

2 MR. BECK: Mr. Lacher filed direct testimony.
3 And under the proposal Southern Bell's now making, they
4 want to have him to come after our witnesses on the
5 case. I don't think that's appropriate. They're
6 putting him in, essentially, a rebuttal position when
7 the testimony filed is direct testimony.

8 COMMISSIONER CLARK: Well, Mr. Beck, you'll
9 notice that we show him also as leading off on the
10 second phase of these hearings.

11 MR. BECK: And that's direct testimony there.
12 That's a separate piece of testimony. He's filed two
13 pieces of testimony, and the one I'm referring to is
14 the first one that he filed back in July.

15 MR. LACKEY: Well, of course, I didn't agree
16 with scrambling all these witnesses anyway. I mean, I've
17 got rebuttal witnesses from Public Counsel that are
18 testifying before some of my direct witnesses and what
19 have you, and I think that --

20 COMMISSIONER CLARK: I do think to the extent
21 that -- and I should have paid closer attention to this
22 -- I do think that in the particular areas that we
23 ought to stick with Southern Bell going first.

24 MS. NORTON: Within the topics?

25 COMMISSIONER CLARK: Within the topics.

1 MS. NORTON: That we have attempted to do,
2 and that's traditionally the way it is handled in rate
3 cases.

4 COMMISSIONER CLARK: All right. The first,
5 the return on equity is fine, as is the revenue
6 requirements, with the addition of McClellan after
7 Wilson; is that correct?

8 MR. LACKEY: I think that's the place to put
9 him.

10 MR. BECK: Commissioner Clark, we've also --
11 Ms. Montanaro's testimony on Hurricane Andrew, I mean,
12 it's not been ruled on yet. But it would seem to me
13 that if it is ruled affirmatively that she should go
14 after Allen.

15 MS. GREEN: I didn't hear whom, after whom?

16 MR. BECK: After Mr. Randy Allen.

17 MS. GREEN: Oh, after Allen. Okay. I think
18 that sounds right.

19 MR. BELL: Commissioner, before you get too
20 far along into settling into this proposed plan, one of
21 AARP's witnesses, David Chessler, is scheduled on
22 Staff's proposal to appear twice.

23 COMMISSIONER CLARK: That's right.

24 MR. BELL: The first time on the 24th and the
25 second time on the --

1 COMMISSIONER CLARK: That's right.

2 MR. BELL: -- 19th. I would suggest, first
3 of all, that that's a lot of inconvenience and expense
4 to impose on an intervening party.

5 Second of all, we believe that it would be
6 damaging to Mr. Chessler's testimony. I don't believe
7 -- it may be true that the first two issues should be
8 separated out from the others. But I just don't see
9 that great -- I don't see a clear bright line
10 distinction, at least in his testimony, between the
11 last three sets of issues.

12 And, for example, for him to testify first on
13 the rate cap plan, I would assume that there would be a
14 break there on 3/24. And then to come back and testify
15 on incentive regulation, I believe, would make his
16 testimony look entirely misleading.

17 COMMISSIONER CLARK: You're suggesting that
18 Mr. Chessler only needs to appear that one time?

19 MR. BELL: Correct.

20 COMMISSIONER CLARK: Under the rate design
21 and pricing policy.

22 MR. BELL: Correct. And then perhaps, if
23 necessary, we could reinsert the results of his cross
24 examination at a later point in the proceedings if
25 Staff sees some clear distinction in the testimony,

1 perhaps have it in the record twice.

2 COMMISSIONER CLARK: Is it necessary to have
3 Mr. Chessler come back? Because I do notice on your
4 matrix you show him as price cap and it's OELS, I that
5 it was OEAS. Is that --

6 MS. GREEN: No, it's OELS.

7 COMMISSIONER CLARK: What does that stand for?

8 MS. NORTON: Optional Expanded Local Service
9 Plan.

10 COMMISSIONER CLARK: Okay. All right. All
11 right. Isn't that more appropriately in the rate
12 design and pricing?

13 MS. NORTON: That's correct.

14 COMMISSIONER CLARK: All right.

15 MR. LACKEY: Wait a minute. Doesn't the man
16 testify on incentive regulation, as well?

17 MS. GREEN: Yes, he does. And so do a lot of
18 the witnesses, that's why they're split up. I mean,
19 the same complaint --

20 MR. LACKEY: I hate to be a poor loser, but I
21 am. And, you know, I don't see why, if we're going to
22 split all our witnesses and bring all our witnesses
23 back and go through that, why we should let Mr. Chessler
24 dump incentive regulation testimony in the middle of the
25 rate design pricing policy piece. I hate to be unkind and

1 make him come back to Tallahassee twice, but that's what's
2 happening to all our witnesses.

3 COMMISSIONER CLARK: That's right.

4 MR. BELL: Commissioner, Mr. Chessler's
5 testimony on incentive regulation, I would say, differs
6 substantially from what he has to say about price caps.
7 And, you know, to break up -- that's one example of
8 trying to --

9 COMMISSIONER CLARK: Different in what way?
10 I mean, does it -- incentive regulation, how much
11 testimony does he have on that?

12 MR. BELL: Quite a bit. But I think more
13 importantly, for example, in the area of incentive
14 regulation, it's clear from his testimony in that area
15 that he does not necessarily have any fundamental
16 opposition or objections to the principles of incentive
17 regulation.

18 In some aspects of Southern Bell's
19 performance in that area, I believe, that he has
20 indicated that he feels like they have done fairly
21 well. To present that testimony separately from
22 statements that he makes about their price cap plan --
23 for example, he states that if Southern Bell's
24 performance under their incentive regulation plan to
25 date has been satisfactory, why are we considering

1 going to a price cap plan? To break those things out
2 would be very misleading.

3 COMMISSIONER CLARK: Well, --

4 MS. NORTON: Commissioner, I'm sorry. Staff
5 would view that testimony as all going in the, both of
6 those, would go in the April hearings. I mean,
7 consideration of incentive regulation in general and
8 consideration of specific price cap plan in our view
9 would be under this schedule heard in April. It would
10 be other pure rate design issues that would be heard.

11 MR. BELL: OELS, for example.

12 MS. NORTON: Correct.

13 COMMISSIONER CLARK: When would that be heard?

14 MS. NORTON: OELS would be heard in March.

15 COMMISSIONER CLARK: That's right.

16 MR. BELL: Again, Commissioner --

17 COMMISSIONER CLARK: I understand thoroughly.

18 It is something that is going to happen with each one
19 of these witnesses. It's the nature of this hearing
20 that it is complex, and we are trying to fit it into
21 the schedule we have. Your witness may have to come
22 back.

23 MR. BELL: Could I offer two alternative
24 suggestions and then I'll let it go? One would be to
25 go ahead and break out the first two sets of issues and

1 combine the last three. I don't see as much
2 distinction there and, in fact, I think most people's
3 testimony would be enhanced if those were combined.

4 Second, as to this proposal, I favor Southern
5 Bell's approach, which would just allow them to put
6 their case on first and everyone else follow up.

7 COMMISSIONER CLARK: We're not going to do it
8 that way.

9 MR. BELL: I heard you earlier.

10 COMMISSIONER CLARK: We are dealing with a
11 unique scheduling here. And I think what you need to
12 keep in mind is the goal here is for the Commissioners
13 to hear the evidence and hear the evidence on the
14 various issues in as cohesive a package as we possibly
15 can. We have voted to consolidate these hearings and
16 we have voted to have them in the two weeks. Those are
17 the givens. And we're going to deal with breaking --
18 and we've done it in other rate cases where we
19 segregate those issues to the extent we can.

20 MR. BELL: Well, I can see where breaking out
21 the first two issues would avoid some confusion. The
22 last three, I think, will lead to additional confusion.

23 COMMISSIONER CLARK: Well, we have a time
24 period. We have two weeks in March that we can use and
25 two weeks in April. If we move it to April, we're not

1 going to get it done.

2 Does Southern Bell have anything else?

3 MR. LACKEY: On the first page, I think that
4 were the points that I wanted to make on the first
5 page: putting McClellan in, putting Lombardo at the
6 front of the rate design pricing and moving Lacher to
7 the end of that. I have some comments on the second
8 page, but you want to get rid of the first one first?

9 COMMISSIONER CLARK: Yes. What I do want to
10 know, is there anyone appearing on the second page that
11 you believe is more appropriate to have on the first page?

12 MR. LACKEY: No.

13 MR. SIMPSON: Commissioner, if I might? The
14 DOD witness, Charles King, who is correctly listed in
15 the competition incentive regulation April phase of the
16 case, the date set for him is April 21st. I would
17 request that that or any other day would be fine, but
18 it be granted as a date certain to minimize our costs
19 in this.

20 COMMISSIONER CLARK: Well, Mr. Simpson, I
21 would love to do that. I don't know that I can. I
22 think what you'll have to do is wait until we get
23 closer to that and can predict with more accuracy as to
24 when He's going to come up.

25 MR. SIMPSON: I might then ask for some

1 flexibility as the time comes up to perhaps move him a
2 witness or two. The dilemma is --

3 COMMISSIONER CLARK: We've done that before;
4 and to the extent we can, we will accommodate your
5 request.

6 MR. SIMPSON: I appreciate it. Because he
7 will be testifying in a lot of places; and we're trying
8 to set this as the benchmark, but we may not be able
9 to. So I appreciate whatever flexibility. Thanks.

10 COMMISSIONER CLARK: Okay. Mr. Melson, do
11 you have any comments on where your witnesses appear,
12 or suggestions?

13 MR. MELSON: No, ma'am, it's fine.

14 COMMISSIONER CLARK: Mr. Bell?

15 MR. BELL: Commissioner, I understand. Does
16 Southern Bell oppose the possibility, then, of
17 Mr. Chessler testifying all in one, on one day and then
18 reinserting his testimony at a later point?

19 MR. LACKEY: If it is on the first day, we
20 oppose it. Our witnesses are going to be split, his
21 can be split. If you want to move them to the April
22 hearings and put it all in there, we'd be okay with
23 that.

24 MR. BELL: Commissioner, with all due
25 respect, I'm not sure that the object of the

1 proceedings ought to be disbursing inconvenience
2 equitably amongst the parties.

3 COMMISSIONER CLARK: Do you have any -- is it
4 inappropriate to have him appear -- in the order given
5 for the hearings in March, is Chessler and Cooper in a
6 logical place with respect to that?

7 MR. BELL: I'm sorry, Commissioner. What was --

8 COMMISSIONER CLARK: We show them coming
9 after Metcalf.

10 MR. BELL: Cooper's testimony is unrelated to
11 Chessler's so that really won't make too much
12 difference to us, I don't think.

13 COMMISSIONER CLARK: Cooper does not come
14 back, does he? No. No, he does --

15 MS. NORTON: Yes, he does.

16 MR. BELL: To redirect the question to Southern
17 Bell, does it somehow interfere with the testimony of your
18 witnesses for Mr. Chessler to testify at one point in the
19 proceedings and then reinsert his --

20 COMMISSIONER CLARK: There may be other parties
21 who believe it will interfere with the flow as I've set it
22 out here, it's not just up to Southern Bell.

23 MR. BELL: Correct.

24 COMMISSIONER CLARK: If you want to talk with
25 the other parties about having his testimony at that

1 time, you can do so. But at this point, we're going to
2 schedule him; and if you can get an agreement from the
3 other parties to move him, that will be fine.

4 MR. BELL: Thank you, Commissioners.

5 COMMISSIONER CLARK: Cooper is shown as -- is
6 it a different Cooper?

7 MR. BELL: No, ma'am. Mr. Cooper is
8 testifying on some issues for OPC that are unrelated to
9 his testimony for AARP.

10 COMMISSIONER CLARK: Okay.

11 MS. NORTON: Commissioner, we're checking
12 now, but I am thinking that perhaps since we've got two
13 Mark Coopers, the one incentive regulation it's showing
14 that's the Public Counsel Cooper, but I'm checking
15 right now, but that may not be correct.

16 MR. BECK: He addresses incentive regulation
17 in his testimony.

18 COMMISSIONER CLARK: Yeah. I mean, it's the
19 same person but --

20 MR. BECK: There's two pieces of testimony,
21 one on behalf of AARP addresses --

22 (Simultaneous conversation.)

23 COMMISSIONER CLARK: He can be treated as two
24 different people.

25 MR. BECK: Right, because it's two separate

1 pieces of testimony.

2 COMMISSIONER CLARK: Ms. Kaufman, I need to
3 clarify, are you now appearing on behalf of Ad Hoc or
4 are you just --

5 MS. KAUFMAN: I am appearing on behalf of
6 them, but at the hearing Mr. Dickens and Mr. Metcalf
7 will be here. I'm appearing for purposes of this
8 conference, and they do not have a problem with where
9 Mr. Metcalf is placed.

10 For FIXCA, I don't know if you decided yet
11 whether Mr. Lacher is going to be the first or the last
12 witness in the list on the first page. But, at any
13 rate, I know everybody has scheduling difficulties.

14 I would just point out that Mr. Gillan is
15 going to be leaving the country, and he needs to leave
16 here by lunchtime on that Friday. And I would just
17 suggest that right now he would be -- if Mr. Lacher is
18 moved to the summary position, Mr. Gillan will be the
19 eighth witness; and right now I'm wondering if that
20 might be a little bit ambitious, especially if Mr.
21 Lombardo and Ms. Sims precede him. They have quite
22 lengthy testimony and I would expect there would be a
23 lot of cross examination.

24 MS. GREEN: He's not the eighth witness. If
25 you'll notice, we have him down in the group. But if

1 you look at the dates, he's -- take Lacher out, and
2 then you've got your return on equity folks, and then
3 he's going to come in that second day.

4 MS. KAUFMAN: Well, that was before we added
5 Mr. Lombardo and Ms. Sims.

6 MS. GREEN: Oh, you're right.

7 MS. KAUFMAN: And I'm concerned that their
8 testimony is very detailed and there will be a lot of
9 cross examination. So, Commissioner Clark, I would
10 just ask that Mr. Gillan be accommodated; and if he has
11 to precede those witnesses, that he be given that
12 consideration.

13 COMMISSIONER CLARK: We have done that before.

14 MS. KAUFMAN: I understand.

15 COMMISSIONER CLARK: What I would propose to
16 do is leave him in the appropriate order, but with the
17 notation he may be taken out of order in order to
18 accommodate his leaving.

19 MS. KAUFMAN: Thank you.

20 MR. SHREVE: Commissioner, I didn't
21 understand that you had moved Mr. Lacher to a summary
22 position.

23 COMMISSIONER CLARK: That's all she said, she
24 suggested it, I haven't didn't it yet.

25 MR. SHREVE: No, no, not her. But it was

1 discussed at two different times right then and --

2 COMMISSIONER CLARK: Your chance is coming.

3 Let me get down the line.

4 MR. SHREVE: We're talking about Bell's
5 chance where you talked about moving Lacher. And it
6 was my understanding you had said the direct testimony
7 goes first.

8 COMMISSIONER CLARK: Anything else?

9 MS. KAUFMAN: That's all, Commissioner Clark.
10 Thank you.

11 COMMISSIONER CLARK: What about the Attorney
12 General?

13 MR. TWOMEY: No problems, Commissioner Clark.

14 COMMISSIONER CLARK: Okay. Mr. Shreve, now
15 it's your turn.

16 MR. SHREVE: It's on the point that was
17 raised by Bell. It was my understanding and I
18 violently object to Mr. Lacher being used in rebuttal
19 testimony when he's filed direct.

20 COMMISSIONER CLARK: Uh-huh. I understand
21 your position. Now, with respect to the order of the
22 other witnesses?

23 MR. BECK: I'll address the others. Rothschild
24 I think is fine, as is Brosch and Allen. We've discussed
25 Ms. Montanaro.

1 COMMISSIONER CLARK: As -- okay.

2 MR. BECK: Brosch and Allen on revenue
3 requirements. Montanaro I would ask be after Allen, if
4 you allow her testimony.

5 COMMISSIONER CLARK: Got that.

6 MR. BECK: On the second page, there's a
7 number of matters.

8 COMMISSIONER CLARK: Let me just ask you. Is
9 there anyone on the second page that can be moved to
10 the first page?

11 MR. BECK: No.

12 COMMISSIONER CLARK: No.

13 MR. BECK: I don't believe so, no.

14 COMMISSIONER CLARK: No, okay.

15 MR. BECK: Now, on the second page, we have --

16 COMMISSIONER CLARK: I'd like to sort of
17 clear, get the first page done.

18 MR. BECK: Okay.

19 COMMISSIONER CLARK: Let me ask a question.
20 Is there a need for me to set the witness order on the
21 second page at this time, or is it more appropriate to
22 do it at the next prehearing?

23 MS. NORTON: Commissioner, rebuttal still has
24 to get filed so the total number of witnesses is not
25 yet firm. It probably won't vary substantially, but we

1 don't have that yet. And that won't occur until March
2 15th I think is when the rebuttal is filed.

3 COMMISSIONER CLARK: Okay.

4 MS. NORTON: So I think it's still it would
5 be a guess anything we tried to do today, really.

6 COMMISSIONER CLARK: All right. Let me go
7 back to the first order of witnesses.

8 I would propose to leave Mr. Lacher first.
9 However, I will allow Mr. Lacher at the beginning of
10 the second hearings to give a summary and an overview
11 at that time. It's a continuation of the same hearing,
12 he's scheduled to be first there, and that's when I
13 want Mr. Lacher to sort of set an overview of the case
14 in general. I will allow him to do something to sort
15 of resummarize at the beginning of the next two weeks.

16 I will show Ms. Montanaro after Allen;
17 Mr. McClellan will go after Mr. Wilson. With regard to
18 rate design, we'll do Lombardo, Sims, and then Gillan
19 with the notation that Gillan needs to go on prior --
20 well, I guess on the 18th, no later than the 18th.

21 MS. KAUFMAN: Okay.

22 COMMISSIONER CLARK: Okay. At this time, I
23 won't set the witness order for the second day except
24 to the extent I will allow Mr. Lacher to summarize and
25 give an overview to provide the continuity into the

1 second phase of the hearing.

2 MR. LACKEY: Commissioner?

3 COMMISSIONER CLARK: Yes.

4 MR. LACKEY: To clarify our thinking about
5 what we're going to do next, can I ask you again
6 whether it's your intention then, if you're going to
7 keep that order of witnesses, to keep the testimony
8 separate? That is, as Mr. Locker's testimony, just to
9 put the cap on it, as his testimony stands right now,
10 we have stricken the language in his direct testimony
11 that relates to the investigations and everything and
12 it's in his second set of testimony that appears on
13 April 12. Is it my understanding you intend to limit
14 his examination in that regard?

15 COMMISSIONER CLARK: Yes.

16 MR. LACKEY: Thank you.

17 MS. GREEN: And I think that there needs to
18 be a clarification back to the question you asked Staff
19 a moment ago regarding whether you needed to set an
20 order of witnesses for April. I believe it's correct
21 that you do not need to set an order of witnesses, but
22 I think we do need a definitive statement regarding
23 witnesses who filed testimony in 920260 that they will
24 be heard in the April phase as shown regarding the
25 issues.

1 COMMISSIONER CLARK: That's right.

2 MS. GREEN: Not the specific order or dates
3 or how they will --

4 COMMISSIONER CLARK: It's all one hearing.
5 The order for the second phase will include these
6 people on this list on the second page.

7 MR. BECK: Commissioner?

8 COMMISSIONER CLARK: Yes.

9 MR. BECK: Again, I had no idea Mr. Locker's
10 testimony was going to be a matter of contention this
11 morning. As I recall his testimony, he discusses
12 incentive regulation as well in his testimony. And if
13 he's going to testify on incentive regulation in the
14 overview, then I feel that he ought to be open for
15 cross examination about anything relevant to incentive
16 regulation, as well.

17 I don't know if Bell is intending to take out
18 his portion of his testimony that relates to incentive
19 regulation or not, you know, as far as his testimony in
20 the March hearings. I would just state, you know, you
21 have said you will limit the cross examination of him;
22 but if he's going to testify on incentive regulation
23 matters, then we feel that we ought to be open to cross
24 examine on that as well.

25 MR. LACKEY: I'm sort of at a loss. You all

1 want him to give an overview, so he's going first. I
2 haven't thought about what's in his testimony or how we
3 would split it. I guess we'll just have to look at it
4 and see. I don't think I can give you a better answer
5 than that right now.

6 COMMISSIONER CLARK: Mr. Beck, as with
7 numerous things in this hearing, I think he will put on
8 his testimony, we are not going to cut off your
9 opportunity to cross examine, it may come at a later
10 time. We'll do our best to make it a coherent
11 presentation so that the Commissioners can focus on the
12 particular areas and hear from all the witnesses on all
13 those particular areas to the extent it can be done.
14 But I'm well aware of the fact that there is no clean
15 segregation of the testimony and the issues with
16 respect to the rate design, the quality of service and
17 the competitive issues.

18 MR. BECK: I'm really merely just responding
19 to Southern Bell's request to you to limit the scope of
20 the cross. And my response is: I hope you wouldn't
21 limit me to something he testifies; and when he
22 testifies to something, we ought to be able to cross
23 examine on it. That's all.

24 COMMISSIONER CLARK: We may defer the cross
25 examination. I'm informed that we are looking at two

1 dates for possible special agenda on the review of my
2 procedural order by the full Commission and the
3 postponement of the hearing. I understand it will be
4 either the 5th or March the 10th -- the 5th of March,
5 which is a Friday, or March 10th, which is the first
6 day of the cross-subsidization hearings. We're still
7 working on that. (Pause)

8 Is there anything else that I need to take up today?

9 MS. GREEN: I believe there was something
10 else you stated you wanted to take up.

11 COMMISSIONER CLARK: Okay.

12 MR. LACKEY: We have one 30-second issue
13 here.

14 COMMISSIONER CLARK: All right.

15 MR. LACKEY: There are some subpoenas that
16 are outstanding for, I guess, March 17th, whatever the
17 first day of the hearings are. It appears that the
18 people who have been subpoenaed are actually for the
19 second set. We had some discussion about relieving
20 them of the obligation of showing up the first day?

21 MR. BECK: Oh, yeah. We agreed to that. As
22 long as you'll produce them on the date they're
23 scheduled, that's fine with us, as far as the subpoenas
24 go. And I realize the subpoenaed witnesses are yet to
25 be actually scheduled, you know, for the days. As long

1 as Southern Bell is going to produce them on the
2 scheduled day, that's fine with us. (Pause)

3 MS. GREEN: And there is a ministerial
4 matter, I apologize. Mr. Belote approached me during
5 the break. He was not here when appearances were
6 taken, he needs to make his appearance.

7 COMMISSIONER CLARK: Okay go ahead.

8 MR. BELOTE: Monte Belote, on behalf of the
9 Florida Consumer Action Network.

10 MS. KAUFMAN: Commissioner Clark, FIXCA does
11 have another matter they would like to bring to your
12 attention, and that is to simply alert you that it
13 would be our intent to use some confidential documents
14 during the hearing. And we will attempt to identify
15 those and let Southern Bell know which ones they are as
16 soon as possible, but I wanted to let you know about
17 that.

18 COMMISSIONER CLARK: Okay. The handling of
19 confidential information, the procedure is in the
20 order, so we'll follow that procedure.

21 MS. GREEN: Then I have distributed to --
22 well, I probably shouldn't say I've distributed to the
23 parties; I believe I have -- a list, a partial list, of
24 Staff's proposed exhibits. That is not complete, there
25 are additional proposed exhibits, and I will attempt to

1 have those out to folks by the end of the week or the
2 beginning of next week.

3 And then I believe one thing we need to do
4 before we leave today is to set a date certain for
5 folks to get back to us with any changes or corrections
6 that need to be made to their positions as stated in
7 the draft prehearing order.

8 COMMISSIONER CLARK: Well, now, it's my
9 understanding that there are none, it's ready to go.

10 MS. GREEN: Well, I would not want to say
11 that completely. I would say to you it is my belief
12 this is the same document; but I have not proofed it
13 with my eyes, so --

14 COMMISSIONER CLARK: Let's make that a week
15 from today. Is that going to be --

16 MS. GREEN: Thank you. That's sufficient for
17 my purposes.

18 COMMISSIONER CLARK: March 2nd; is that
19 correct?

20 MS. GREEN: We're electronically transmitting
21 things to the copy room and I'm not real comfortable
22 until I sit down and look at it.

23 COMMISSIONER CLARK: All right. By the 2nd
24 of March, get to Angela any additions or corrections
25 you have to the prehearing orders and the issues, the

1 issues and your positions. All right. Is anything
2 else we need to take up at this time? Nothing from
3 you, Mr. Melson? Mr. Bell?

4 MR. BELL: No. Thank you, Commissioner.

5 COMMISSIONER CLARK: Mr. Twomey?

6 MR. TWOMEY: No, thank you.

7 MS. RICHARDSON: Did you want to have any
8 oral argument on the Johnson?

9 COMMISSIONER CLARK: Well, I was going to try
10 and get done with everyone else.

11 MS. RICHARDSON: Oh, I'm sorry. I thought
12 you were closing.

13 COMMISSIONER CLARK: Do you have anything
14 further?

15 MR. SIMPSON: No.

16 COMMISSIONER CLARK: All right. Let me go
17 ahead and take argument on the motion with respect to
18 Johnson and Ward and then Public Counsel's Motion to
19 Compel that was filed on the 29th.

20 Since this is our last opportunity before the
21 hearing to take oral argument, or the last scheduled
22 opportunity, I'd like to go ahead and hear those.

23 Let me ask. Hank, are you prepared to argue
24 on those two motions?

25 MR. ANTHONY: Ms. White will.

1 COMMISSIONER CLARK: Okay. Do you want, say,
2 20 minutes to look over them? Would you like 20
3 minutes and we'll reconvene at --

4 MS. WHITE: I'm ready to start now.

5 MS. RICHARDSON: Is this the Johnson?

6 COMMISSIONER CLARK: Johnson, Ward and also
7 the one listed on Item 15. I mean, I --

8 MS. WHITE: Excuse me, the 14th Motion to
9 Compel.

10 MS. RICHARDSON: All right, yes. If we're
11 doing the 14th as well, I do need to have a few minutes
12 to look over that.

13 COMMISSIONER CLARK: All right. Why don't we
14 reconvene at 11:30. And to the extent you're not
15 interested in the motion, you all can go home.

16 Mr. Bell, did you have something?

17 MR. BELL: Yes, Commissioner. I would like
18 an opportunity, I'm not sure, I take it we have a final
19 order on the order of witnesses here from you. You did
20 indicate that I could seek agreement amongst the
21 parties on Mr. Chessler's testimony --

22 COMMISSIONER CLARK: That's right.

23 MR. BELL: -- and I will follow up on that.
24 Thank you.

25 COMMISSIONER CLARK: All right, we'll be back

1 here at 11:30. Just a minute -- nothing? All right.
2 We're adjourned until 11:30.

3 (Recess)

4

5 COMMISSIONER CLARK: We'll go back on the
6 record. And, Ms. Richardson, we're ready to hear from
7 you. Why don't you argue the Johnson, Ward motion
8 first.

9 MS. RICHARDSON: Yes, Commissioner.

10 First, I think we can make this very short
11 instead of going back through all of the arguments in
12 my motion. No. 1, Ms. Johnson is the auditor or the
13 chief auditor for the Company who oversaw the five
14 audits that you have already ruled are open to
15 discovery and that the full Commission has agreed or
16 affirmed your order on that. My questions for Ms.
17 Johnson in deposition were directed to those five
18 audits; so I believe, since the audits are not
19 privileged, neither are her responses to those audits.

20 COMMISSIONER CLARK: Okay.

21 MS. RICHARDSON: I also have a motion to
22 strike her affidavit, which was submitted by Southern
23 Bell in support of its privilege request. And since
24 the audits are not privileged, I believe the motion to
25 strike is either moot or should be affirmed.

1 The other part of that particular motion
2 dealt with a Mr. Dwayne Ward, who is a personnel
3 manager in the Human Resources Department for the
4 Company. Mr. Ward made some handwritten notes that he
5 took based upon certain information that the Company
6 states was from the alleged privileged investigation
7 that was conducted. I don't know if that investigation
8 or his notes were taken from the audits, from
9 statements from individual employees or what, I don't
10 have that information. But I believe that since you
11 have already ruled and the full Commission has affirmed
12 that personnel documents in terms of the panel
13 recommendations and discipline are not privileged, then
14 I believe, on that same basis, Mr. Ward's personal
15 notes of personal disciplinary matters are not
16 privileged, and so I believe our motion should be
17 upheld.

18 COMMISSIONER CLARK: Okay.

19 MS. WHITE: Commissioner Clark, with regard
20 to the deposition questions asked of Shirley Johnson,
21 we would agree that they were in connection with the
22 audits that you reviewed in camera and they are the
23 subject of Order No. 93-0151.

24 COMMISSIONER CLARK: If that order is upheld,
25 then you will not -- then it follows that she will have

1 to answer those questions.

2 MS. WHITE: Depending on any outcome of any
3 possible appeal, of course. So essentially, I guess
4 with regard to that, we would be asking for a stay of
5 that pending the Company's decision to appeal and the
6 outcome of that appeal, if it occurs.

7 With regard to Dwayne Ward, he's an
8 Operations Manager in the Human Resources Department.
9 He works for Mr. Cuthbertson, which is apparently going
10 to be the subject of an order that you'll be rendering
11 soon.

12 He had reviewed some of the legal
13 investigative materials that you reviewed in camera
14 last week and which we're expecting an order on so that he
15 can provide regulations regarding discipline. When he was
16 deposed, Public Counsel attempted to get the privileged
17 info, information, that had been developed in the
18 investigation. So we would feel that that piece of the
19 Motion to Compel would go along with your decision on Mr.
20 Cuthbertson's deposition questions, as well as the
21 decision on the information you reviewed last week in
22 camera.

23 COMMISSIONER CLARK: All right. Now the
24 latest motion?

25 MS. RICHARDSON: Our 14th Motion to Compel?

1 COMMISSIONER CLARK: Yes.

2 MS. RICHARDSON: All right. There were a
3 number of matters that Public Counsel requested
4 production of from the Company. We requested these
5 back in the fall. Southern Bell responded on two
6 matters or in two ways, protesting production. The
7 first matter was that what we had requested in terms of
8 certain reports on their repair activities was over-
9 burdensome because it required the production of
10 hundreds of thousands of DLETHs, which are customer
11 trouble records, and also customer billing or credit
12 records. That was one part of their objection.

13 The other part of their objection was to our
14 request for documents that they had produced to the
15 Attorney General. And their objection on that basis
16 was under the grand jury secrecy rule, which they cite
17 at Page 9 of their responsive motion, which is Section
18 905.27 of the Florida Statutes.

19 We then -- in terms of "we" being myself --
20 wrote a letter dated December 9 trying to accommodate
21 their objection based on burdensomeness of production, and
22 that is attached to my motion, in which we narrowed our
23 request stating that if the Company would simply produce a
24 small sample, statistical sample, of their choosing --

25 COMMISSIONER CLARK: Excuse me, I can hear

1 you. I need to listen to her. Go ahead.

2 MS. RICHARDSON: Okay. A small statistical
3 sample of their choosing that would be responsive to
4 the reports requested, then we would be willing to
5 accept that in lieu of the entire production. I heard
6 nothing from the Company on that.

7 I called them back the last week of January
8 to see where it was. Frankly, I thought they were
9 working on it and I wanted to give them time. It turns
10 out that somehow or other the Company had lost track of
11 my request and my letter and had done nothing with it.
12 And at that point we had a February 1 filing date.

13 We had some discussion over whether or not
14 they would produce. We had phone calls back and forth
15 for a couple of days. And then, as I was going to be
16 out, we decided we would finally just file the motion
17 and let you make a decision.

18 So we, in terms of Public Counsel, would be
19 fine with their producing our amended request, which is
20 attached in my letter. In terms of burdensomeness of
21 production, I believe that satisfies it, because we're
22 requesting a very small sample now, a statistical
23 sample, from each of the IMCs in Florida for each of
24 the reports requested. And I feel like that's
25 something that they can do.

1 They have stated in a number of affidavits
2 that in order for us to look at -- affidavits and
3 depositions -- in order for us to really check into
4 their repair system and the questions that we have, we
5 would have to have the D list, and the billing records
6 in order to determine whether a report was accurate or
7 inaccurate or falsified. And so just getting the
8 sample reports without the backup documents will not
9 satisfy our need to determine whether the original
10 trouble report was accurate, inaccurate, or falsified.

11 So I need not only statistical reports, but
12 the backup documents to go along with it. And that's
13 why I was hoping my small sample request would meet
14 their objection to burdensome production.

15 Then, as to the second portion of their
16 objection, their objection on the grand jury secrecy
17 rule, there isn't much case law, frankly, on that
18 particular rule, at least that I could find. I did go
19 to some of the federal laws on grand jury secrecy,
20 there's much more out there.

21 It's not directly on point because the
22 Federal Grand Jury Secrecy Rule 6E is not identical to
23 the Florida rule. But I believe, in terms of using the
24 federal law as a background for a policy decision, the
25 purpose of the grand jury secrecy rule -- which is to

1 protect individuals who appear before the grand jury,
2 to protect the integrity of the process, to prevent
3 subornation of witnesses, to prevent witness tampering,
4 to prevent perjury, possible perjury, and to prevent an
5 innocent accused from being subject to a lot of
6 publicity surrounding the event, those are primarily
7 the purposes behind the grand jury secrecy rule. And I
8 believe in this case, then, since the grand jury has
9 basically finished its work, has even itself published
10 a report, although it has not published the background
11 evidence, it has published the report, I believe that
12 much of the need for secrecy at this point has passed.

13 COMMISSIONER CLARK: What does the federal
14 law say with respect to once the grand jury has
15 conducted its business and issued a report and is
16 basically done, is there any --

17 MS. RICHARDSON: Then the information is
18 available to any of the parties.

19 COMMISSIONER CLARK: Under the federal law?

20 MS. RICHARDSON: I believe so.

21 COMMISSIONER CLARK: Now, is it or isn't it?
22 Is there a case law out there that says after the
23 inquiry by the grand jury is concluded that it is
24 available, it can be made public? (Pause) That's a
25 question, frankly, I've had myself.

1 MS. RICHARDSON: I'm sorry, Commissioner.
2 I'm not quite ready for a response on that and I should
3 be, and I apologize. I'll have to look. Can I get
4 back to you on that part?

5 COMMISSIONER CLARK: Sure.

6 MS. RICHARDSON: I guess the last portion of
7 my argument with this is that it's very difficult for
8 us to determine, other than a blanket request, to be
9 specific in terms of what we ask for. Because the
10 Company did not provide any index of documents that
11 they're withholding, so we don't know what's being
12 withheld under this very broad claim of a grand jury
13 secrecy rule.

14 I don't know how to satisfy that particular
15 argument or to satisfy that problem, but it is a
16 problem that prevents us from going forward with an
17 argument as to specific documents because we don't know
18 what's being withheld.

19 COMMISSIONER CLARK: Let me ask you a
20 question. Have you been in touch with the Statewide
21 Prosecutor to ask her advice on this issue?

22 MS. RICHARDSON: I did talk to someone in the
23 Attorney General's office.

24 COMMISSIONER CLARK: Have you talked to
25 Melanie Hines about this? Let me be real specific.

1 MS. RICHARDSON: No, ma'am, I have not. I
2 have not contacted Ms. Hines personally.

3 COMMISSIONER CLARK: Well, because it seems
4 to me that she may be the source for information on
5 this issue as to whether it's been done before. And
6 quite frankly, I have questions on it regarding the
7 witnesses who have testified once the testimony is over
8 and the report has been issued. Are they compelled to
9 keep their testimony secret after that?

10 MS. RICHARDSON: We are not seeking testimony
11 of witnesses. We are not seeking to depose --

12 COMMISSIONER CLARK: That's my own curiosity.

13 MS. RICHARDSON: Oh, okay. I'm sorry.

14 COMMISSIONER CLARK: Because there have been --

15 MS. RICHARDSON: There are three exceptions
16 in the statute; that is again on Page 9 of Southern
17 Bell's motion, they have laid it out. There are three
18 exceptions there for individuals who have actually
19 testified, when we're speaking about a person who has
20 been a witness.

21 One is for ascertaining whether it is
22 consistent with the testimony given by the witness
23 before the court. So if you have a civil case that
24 comes along after the grand jury has adjourned, then
25 some of that testimony can be available on court order

1 for that purpose.

2 Another one is to determine whether or not
3 the witness was guilty of perjury. And the last is
4 very broad, it's a policy statement "furthering
5 justice."

6 It would be very difficult, I think, for this
7 Commission to comply with the charge laid upon it by
8 the 10th Statewide Grand Jury to fully look into the
9 matters at issue in the repair and rebate dockets
10 without having access to all of the facts.

11 COMMISSIONER CLARK: Okay.

12 MS. RICHARDSON: And I believe in the cause
13 of furthering justice that this Commission, especially
14 since the grand jury has discharged its responsibility at
15 this point, that the Commission -- and laid the burden on
16 the Commission, frankly, to look into it -- that in that
17 interest this Commission would have reason to ask for
18 these documents or to support Public Counsel's motion to
19 have access to these particular documents.

20 And the last point is: Southern Bell did not
21 identify documents, and I made this a question. We
22 don't know, and Southern Bell has not identified, which
23 documents were submitted to the grand jury under a
24 grand jury subpoena duces tecum and which documents
25 were simply produced for the Attorney General on their

1 civil case.

2 Now, if the documents were produced to the
3 Attorney General on their civil case, then they're not
4 going to be subject to the grand jury secrecy rule. So
5 if there is any way to distinguish those documents from
6 the ones that went to Ms. Hines, then it seems to me
7 that would be at least one way to clearly define and
8 delineate which ones we might have access to if there
9 remains any question under the grand jury secrecy rule
10 that the Company has raised.

11 COMMISSIONER CLARK: Is that it?

12 MS. RICHARDSON: Basically, I believe that's
13 it. The last is that Southern Bell is the sole source
14 for this documentary information. They're the only
15 place that these documents are produced and reside,
16 essentially. So I believe in that sense that we have a
17 strong argument for their production. Thank you.

18 COMMISSIONER CLARK: Okay.

19 MS. WHITE: Commissioner Clark, I think I'll
20 start with the grand jury argument first.

21 Essentially, Southern Bell provided to the
22 Statewide Prosecutor and the Attorney General documents
23 under an agreement. Some of these documents were
24 presented to the grand jury. We do not know which of
25 these documents were present to the grand jury and

1 which were not. The Florida Statutes state that
2 persons appearing before the grand jury and presenting
3 evidence there are prohibited from disclosing that.

4 With regard to whether the grand jury has
5 closed, the Office of the Statewide Prosecution has
6 kept this investigation open so it is not a completely
7 closed matter. Southern Bell just wants to protect
8 itself and not be accused of violating the grand jury
9 secrecy laws by providing this information to Public
10 Counsel.

11 Now Public Counsel, the way they asked for
12 it, they asked for everything you gave to the Attorney
13 General and the Office of Statewide Prosecution. If
14 they could rephrase their request to state they need to
15 ask for the specific documents they're looking for, or
16 even in general the documents they're looking for, we
17 will attempt to comply with that; but the way they
18 phrased it, we could not comply with that.

19 In regard to the --

20 COMMISSIONER CLARK: Have you gotten in touch
21 with the Attorney General and Statewide Prosecutor to get
22 clarification from them as to what your obligations are?

23 MS. WHITE: Not to my knowledge.

24 COMMISSIONER CLARK: Why not? I mean, it
25 seems to me that in an effort to facilitate this

1 process -- and let's face it, they're in this process,
2 too. You would go to them and say, "We've had this
3 request, you know, we need to comply with the laws, but
4 what is your read on what we can produce and what we
5 can't produce?"

6 MR. LACKEY: Commissioner?

7 COMMISSIONER CLARK: Just a minute. Go ahead.

8 MR. ANTHONY: Commissioner Clark, we haven't
9 done that and maybe that's something we should have,
10 but we have some other disagreements with the Office of
11 Statewide Prosecution, the Attorney General, about what
12 can or can't be used in a subsequent proceeding. So
13 I'm not sure that even if we went to them to get an
14 interpretation, that we'd necessarily agree with it.
15 We have some other differences --

16 COMMISSIONER CLARK: That may be true. But
17 we could certainly narrow the issue, couldn't we?

18 MR. ANTHONY: I think the point is that our
19 objection is to the blanket type of request that was
20 made, "Give us everything that you gave to the Office
21 of Statewide Prosecution." If Public Counsel has
22 documents that they are relevant --

23 COMMISSIONER CLARK: Hank, have you asked
24 them?

25 MR. ANTHONY: No, we have not.

1 COMMISSIONER CLARK: Have you not asked them?
2 Why have you not asked them? I mean, you may have some
3 disagreement with them but they may be able to tell
4 you, "You can let these things go."

5 MR. ANTHONY: I'm not sure that we can -- we
6 haven't done it. And I'm not a criminal law expert, so
7 I can't tell you, it's beyond my expertise. We haven't
8 done it. That's all I can say.

9 COMMISSIONER CLARK: The Attorney General's
10 office has intervened in this. Have you made this
11 discovery request of them? Have you made --

12 MS. RICHARDSON: Are you speaking to me or to
13 Mr. Twomey?

14 COMMISSIONER CLARK: You.

15 MS. RICHARDSON: I did ask for clarification
16 of the statute and as it applied, and without the
17 individual here, I'd just assume not use the name. I
18 don't know if that's kosher or not, but I'd like to
19 withhold speaking for them if I could.

20 My general impression was that since Southern
21 Bell had the documents in their possession and since
22 Southern Bell, unless they knew specifically whether or
23 not it had been presented to the grand jury, that they
24 should turn it over. But now, like I said, that's
25 speaking strictly off the record; a private phone call

1 conversation; Southern Bell was not a part of that, and
2 that is just one person's opinion. So I don't -- I
3 really hesitate to put that forward, I'm just answering
4 your question.

5 COMMISSIONER CLARK: Go ahead.

6 MS. WHITE: With regard to the remainder of
7 the motion to compel, Public Counsel had sought all
8 documents consisting of hundreds of thousands, in fact,
9 I believe it numbers approximately 695,000.

10 COMMISSIONER CLARK: I know you have
11 responded it's burdensome. What about the fact that
12 they suggested to you to do a sample?

13 MS. WHITE: They gave us no instructions on
14 that sample. If they want to tell us how to do it,
15 we'll be glad to --

16 COMMISSIONER CLARK: Wait a minute. You said
17 it's burdensome. Why can't you come up with the sample
18 as to what you think would accommodate their request?
19 You know, I'm to the point I'm going to ask you to
20 produce those things and I don't care how burdensome it
21 is, if there is not more cooperation between the
22 parties on this.

23 MR. ANTHONY: I haven't been involved in the
24 conversation. It's my understanding, however, that
25 that was discussed with Public Counsel, that if -- we

1 don't want to have anybody to come in and say that our
2 sampling process wasn't appropriate. So all we said
3 is, "If you tell us how to sample it, we're provide you
4 the document --"

5 COMMISSIONER CLARK: Have you suggested to
6 them a way to sample?

7 MR. ANTHONY: No.

8 COMMISSIONER CLARK: Well, why don't you get
9 together --

10 MS. RICHARDSON: Commissioner Clark, we told
11 them specifically that we would accept their sample as
12 valid, that we would not in any way object to the type
13 of sample produced. That if they would use the same or
14 a standard statistical sampling that the Company uses,
15 that that was fine with us, we would accept it, no
16 question as to the sampling method. And they objected.

17 MR. ANTHONY: Well, that's news to me. But
18 if that's the case, I don't mind doing that as long as
19 there's no objection to it. There may be a
20 communications problem. I have not heard that, but if
21 there's no objection to our doing it, that --

22 COMMISSIONER CLARK: Here's what I'd like you
23 both to do. Get together on this point, and also with
24 respect to the Statewide Prosecutor, and see if you can
25 narrow the issue that I have to deal with.

1 MR. ANTHONY: Yes, ma'am.

2 COMMISSIONER CLARK: I don't like losing my
3 temper. It's not directed personally, but we need to move
4 forward and get this case on and let the Commissioners
5 hear it and get it behind us, so we can move forward with
6 respect to getting refunds to people and moving on to
7 other issues that are before the Commission.

8 MS. RICHARDSON: We appreciate your sentiment.

9 MR. ANTHONY: We will do that.

10 COMMISSIONER CLARK: Work on that, and let me
11 know if there is an area that I still have to rule on
12 with respect to that. And meanwhile, I'll be looking
13 into -- I'll be reading your motion so I am prepared to
14 do it on a fairly quick basis if it cannot be resolved.
15 Mr. Twomey?

16 MR. TWOMEY: Thank you, Commissioner Clark.
17 I'd like to briefly support, if I may --

18 COMMISSIONER CLARK: Let me ask you a
19 question about that. Have you filed anything?

20 MR. TWOMEY: You mean a document?

21 COMMISSIONER CLARK: In support of the motion?

22 MR. TWOMEY: No.

23 COMMISSIONER CLARK: Here's my concern. It
24 seems to me that if you want to be heard on a
25 particular motion that you ought to file in support of

1 it and put forth the argument you're going to make so
2 that Southern Bell or anyone else who may oppose it,
3 has notice of the points in your argument and they can
4 respond. I think it's unfair to simply allow you to
5 come and present your arguments orally.

6 MR. TWOMEY: Okay. I can do that in the
7 future but right now I would ask you to allow me to
8 speak, because the intention -- my intention --

9 COMMISSIONER CLARK: Let me say that I will
10 allow you to speak but this is the last time.

11 MR. TWOMEY: Okay. Because my intention is
12 to try and help. Which it always is.

13 I think -- I appreciate Southern Bell's
14 concern dealing with the statute on the grand jury
15 secrecy. I think a close reading of the plain language of
16 the statute, Commissioner Clark, would relieve them of any
17 concern.

18 COMMISSIONER CLARK: This is on the statewide
19 grand jury?

20 MR. TWOMEY: Yes, ma'am. It's on Page 9 of
21 their --

22 COMMISSIONER CLARK: Would the Statewide
23 Prosecutor or the Attorney General be willing to send a
24 letter or do whatever they need to to make it clear
25 that it's their position that they can produce that

1 information?

2 MR. TWOMEY: I don't know, I could inquire.
3 I'm not in a position to speak for them. But, if I
4 could, I would like to --

5 COMMISSIONER CLARK: You are in a position to
6 speak for the Attorney General, are you not?

7 MR. TWOMEY: I'm for the Attorney General,
8 but not for the Statewide Prosecutor.

9 What I wanted to point out to you is the text
10 of Section 905.27, which is on Page 9 of Southern
11 Bell's response to document, I think clearly points out
12 the purpose of the law is to prevent the disclosure --
13 and this says so -- to prevent the disclosure of a
14 witness' testimony before the grand jury. And that to
15 me means the testimony they heard while they were, in
16 fact, sitting. And to prevent the disclosure --

17 COMMISSIONER CLARK: So what you're saying
18 is, once it's over, it is not at issue?

19 MR. TWOMEY: No, ma'am. No. It's not, the
20 law doesn't say that people can't give over to other
21 people documents that might have been received by the
22 grand jury or even that they know were received by the
23 grand jury. What the plain language of the statute
24 says is that they cannot, and it lists specific
25 classification of persons that are included -- grand

1 jurors, reporters, stenographers, witnesses, and so
2 forth -- can't disclose testimony or what evidence was
3 given to the grand jury. The statute says nothing
4 about giving that same documentary evidence in other
5 proceedings. It says you can't tell anybody else what
6 was given to the grand jury. And that's what the
7 statute says.

8 So it would be my opinion that what the law
9 says is that even if Southern Bell knew specifically,
10 which it denies knowing, that a document was used
11 before the grand jury, would not under this statute
12 preclude it from providing it to Public Counsel or your
13 Staff, who, in my estimation, clearly need this same
14 information to fulfill, not the requirements of the
15 grand jury, but your own investigative goals.

16 COMMISSIONER CLARK: Is the Attorney General
17 willing to issue an opinion on that?

18 MR. TWOMEY: I would have to inquire.

19 COMMISSIONER CLARK: I'd like to ask that you
20 do that.

21 MR. TWOMEY: Because I think, as you know,
22 Commissioner Clark, the Attorney General's office, by
23 statute, only issues opinions upon the request of a
24 select group of governmental officials, and I'm not
25 sure if you're included in that.

1 COMMISSIONER CLARK: Well, certainly you
2 could take that position in the filing here, that the
3 Attorney General is of the opinion that it doesn't
4 apply, as part of your position on this issue.

5 MR. TWOMEY: I'll inquire.

6 COMMISSIONER CLARK: Okay. And I would like
7 to ask Public Counsel if you would get in touch with the
8 Statewide Prosecutor, and by that I mean Melanie Hines.

9 MS. RICHARDSON: Yes, ma'am. I'll call her.

10 COMMISSIONER CLARK: And ask her whether or
11 not this can be disclosed, in her view. I don't think
12 that's dispositive, but I certainly think it will go a
13 long way to narrowing, perhaps, the way you need to
14 phrase your request, if you need to change it at all.

15 MS. RICHARDSON: I will do so.

16 COMMISSIONER CLARK: Okay, anything else? Go
17 ahead.

18 MR. TWOMEY: You understand my distinction,
19 though? Thank you.

20 COMMISSIONER CLARK: Anything further?

21 MS. WHITE: Yes, Commissioner Clark. I would
22 just point out, in lieu of Mr. Twomey's argument, that
23 Southern Bell did appear before the grand jury through
24 a number of employees who were called to testify.

25 COMMISSIONER CLARK: Okay. Thank you. This

1 hearing is adjourned.

2 (Thereupon, hearing adjourned at 12:00 noon)

3 - - - - -

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

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

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

6 DO HEREBY CERTIFY that Prehearing Conference
7 No. 3 in the captioned matter, Docket Nos. 920260-TL,
8 900960-TL, 910163-TL and 910727-TL, was heard by the
9 Florida Public Service Commission at the time and place
10 herein stated; it is further

11 CERTIFIED that I reported in shorthand the said
12 proceedings; that the same has been transcribed under my
13 direct supervision, and that this transcript, consisting
14 of 73 pages, inclusive, constitutes a true and accurate
15 transcription of my notes of said proceedings; it is
16 further

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

20 IN WITNESS WHEREOF, I have hereunto set my hand
21 at Tallahassee, Leon County, Florida, this 1st day of
22 March, A.D., 1993.

23 
24 SYDNEY C. SILVA, CSR, RPR
25 Official Commission Reporter
FPSC Bureau of Reporting
Telephone No. (904) 488-5981