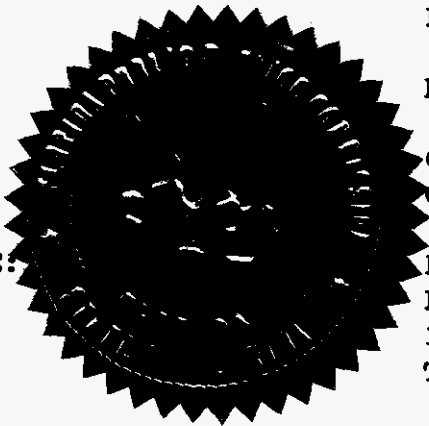


BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

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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, :
Rebate. :
:
:

PROCEEDINGS: STATUS CONFERENCE 4-c
BEFORE: COMMISSIONER SUSAN F. CLARK
Prehearing Officer
DATE: Monday, July 19, 1993
TIME: Commenced at 1:00 p.m.
Concluded at 1:43 p.m.
PLACE: FPSC Hearing Room 106
Fletcher Building
101 East Gaines Street
Tallahassee, Florida
REPORTED BY: SYDNEY C. SILVA, CSR, RPR
Official Commission Reporter



DOCUMENT NUMBER-DATE

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FLORIDA PUBLIC SERVICE COMMISSION

1 APPEARANCES:

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

10 MICHAEL B. TWOMEY, Assistant Attorney
11 General, Department of Legal Affairs, The Capitol, Room
12 1603, Tallahassee, Florida 32399-1050, Telephone No.
13 (904) 488-8253, on behalf of the Attorney General of
14 the State of Florida.

15 MICHAEL W. TYE, 106 East College Avenue,
16 Suite 1410, Tallahassee, Florida 32301, Telephone No.
17 (904) 425-6360, on behalf of AT&T Communications of the
18 Southern States, Inc.

19 RICHARD D. MELSON, Hopping Boyd Green & Sams,
20 Post Office Box 6526, Tallahassee, Florida 32314,
21 Telephone No. (904) 222-7500, and MICHAEL J. HENRY, MCI
22 Center, Three Ravinia Drive, Atlanta, Georgia 30346,
23 Telephone No. (404) 668-6324, on behalf of MCI
24 Telecommunications Corporation.

25

1 APPEARANCES CONTINUED:

2 SUE RICHARDSON, Office of Public Counsel, c/o
3 The Florida Legislature, 111 West Madison Street, Room
4 812, Tallahassee, Florida 32399-1400, Telephone No.
5 (904) 488-9330, on behalf of the Citizens of the State
6 of Florida.

7 ANGELA B. GREEN, TRACY HATCH and JEAN WILSON,
8 FPSC Division of Legal Services, 101 East Gaines Street,
9 Tallahassee, Florida 32399-0863, Telephone No. (904)
10 487-2740, appearing on behalf of the Commission Staff.

11

12 ALSO PRESENT:

13 KAREN KAETZ, Southern Bell

14 TIM DEVLIN, Director of Audit & Financial
15 Analysis, FPSC

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I N D E X

MOTIONS

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P R O C E E D I N G S

(Hearing convened at 1:00 p.m.)

COMMISSIONER CLARK: I call the status conference to order. Do we need Tim Devlin here? He's not here right at the moment.

UNIDENTIFIED SPEAKER: He'll be here in about five minutes.

COMMISSIONER CLARK: Okay. I guess we can cover it. As I understand from Staff, we have a motion from Southern Bell having to do with some audit requests? And then I have a copy of Staff's response that was filed on Friday.

MR. HATCH: Yes, ma'am. That's correct.

COMMISSIONER CLARK: Let's put that aside for a minute and ask if there are any other pending matters that I need to take care of.

MS. WHITE: Yes, Commissioner Clark. Nancy White for Southern Bell. We have discovered that there is a Motion to Compel that was filed by Southern Bell against the Office of Public Counsel, and apparently that has not been ruled upon yet.

COMMISSIONER CLARK: You have filed a Motion to Compel with respect to?

MS. WHITE: To interrogatory and production of document requests. And the Motion to Compel was

1 filed in February of '93 and we discovered that it had
2 not been ruled upon yet.

3 MS. GREEN: Ms. White, do you know which
4 particular docket it is for?

5 MS. WHITE: Yes. It was 900960.

6 MS. RICHARDSON: Could you, Nancy, refresh my
7 memory as to what specifically you were looking for?

8 MS. WHITE: We filed interrogatories and a
9 production of document request concerning a statement
10 made by Public Counsel at an agenda meeting concerning
11 presenting evidence about the hard sale of optional
12 service. Public Counsel gave what we considered to be
13 nonresponses to certain of the questions, and to other
14 of the questions they responded claiming
15 attorney-client or attorney work product privilege.

16 COMMISSIONER CLARK: Do you remember that, Sue?

17 MS. RICHARDSON: Well, generally Charlie handles
18 this, but I'm going to make a stab at that this one.

19 I believe we did respond to that particular
20 request. We responded fully, stating that the
21 information that we had had been fully disclosed in the
22 testimony of Mr. Mark Cooper, who is our witness and
23 who was open for deposition, and they could certainly
24 depose Mr. Cooper if they so chose.

25 Any information that had been withheld was

1 information that was produced solely inhouse by Mr.
2 Beck or myself or our staff who are working as agents
3 of us under the work product privilege and was so
4 designated as such. To my knowledge, the information that
5 was made available, I think to Southern Bell, has never
6 been asked about. They never came to look at any
7 documents that we made available to them under this
8 particular request or motion.

9 MS. WHITE: Excuse me. I'm going to have to
10 dispute that. You said in answer to a lot of the
11 questions they said, "See the documents that you gave us,"
12 period.

13 MS. RICHARDSON: Well, this is true. Any
14 documents that we have were documents that we had
15 gotten from Southern Bell. And Southern Bell is asking
16 us to sort through those documents and determine which
17 one that we, as legal counsel, believe to equate to
18 hard sell. And that, of course, requires us to give
19 our opinion and express our opinion after having read
20 Southern Bell's documents. I don't feel that that's
21 proper; that's work product, that's invading the
22 attorney mental processes.

23 COMMISSIONER CLARK: I'll tell you what I'll
24 do. Staff, if you would locate the motion and the
25 response to the motion and deliver it to my office,

1 I'll take a look at it. In the meantime, I would
2 request that both Ms. White and Ms. Richardson look at
3 those two documents and the motions and determine what
4 remains in dispute. See if you can work it out; if
5 not, let the Staff know and I'll deal with the motion
6 and the answer. Okay?

7 MR. HATCH: It was our understanding,
8 Commissioner, that that had in fact been resolved
9 between the two of them.

10 COMMISSIONER CLARK: Okay. All right.
11 Within a week's time, see what you can resolve. If you
12 can't resolve anything, let the Staff know. But Staff,
13 in the meantime, if you would give me the motion and
14 the response, I would appreciate it.

15 Is there anything else pending? I'll get to
16 you in just a minute. That you know?

17 MS. WHITE: Not filed by Southern Bell.

18 COMMISSIONER CLARK: Okay.

19 MS. RICHARDSON: I do have a couple of
20 questions, if I might.

21 Number one is, Southern Bell has filed
22 testimony, I believe on July 2nd, from a number of
23 witnesses in the 260 docket, and one of my questions
24 relates to are we to file all of our witness testimony
25 in 260 or will we to file specific testimony in each of

1 the four dockets that relates to each docket?

2 MR. HATCH: It was my understanding that you
3 would file testimony in the docket to which it directly
4 related, not just in 260 in the mix. There has been an
5 ongoing problem with mixing discovery and everything
6 else into 260 and we're trying to sort all that stuff
7 out, because it makes it very difficult to keep track.

8 MR. ANTHONY: Commissioner Clark, Hank
9 Anthony on behalf of Southern Bell.

10 That may pose a little bit of a problem for
11 us because it is my understanding, at least, that
12 everything had consolidated into the 260 docket. And
13 so our testimony had all been filed under that
14 particular caption. We can go back if we need to, but
15 it addresses all the issues in all the dockets. So we
16 had thought, since it was all consolidated, the best
17 way was to handle it just under that one docket number.

18 COMMISSIONER CLARK: I don't recall the
19 specifics, but didn't we issue an order dealing with
20 how things should be filed?

21 MS. GREEN: No, that one addressed only the
22 discovery portion of it. And I'm not clear what
23 purpose would be served by requiring testimony to
24 identify specific dockets.

25 Certainly, the discovery, Staff had

1 underlined the rationale for asking to have it
2 identified that way, which basically comes down to a
3 staffing issue and a responsibility issue in making
4 sure everything was processed in a timely fashion. But
5 as to the testimony itself, I'm just not clear that any
6 particular purpose would be served by requiring
7 identification of a docket. Clearly, it all relates
8 right back into the 920260 docket.

9 COMMISSIONER CLARK: So your recommendation
10 is that all testimony should be filed in the 260
11 docket?

12 MS. GREEN: As far as the testimony itself. But
13 the discovery, there's a different issue there and it is a
14 very personal issue, and that is how do we allocate the
15 Commission's resources to deal with those items?

16 COMMISSIONER CLARK: Ms. Richardson, is there
17 a problem just by identifying it as all 260?

18 MS. RICHARDSON: I have no problem with it.
19 I'm just asking for information; because our testimony
20 has to be filed, too, and I want to make sure that if
21 it is all 260, then I'm fine, I'm going to do it in
22 260. If we're required to do it in separate dockets,
23 then I want to know that on the front end.

24 COMMISSIONER CLARK: All right. And you
25 filed all yours in 260?

1 MR. ANTHONY: Yes, ma'am.

2 COMMISSIONER CLARK: All right. File it in
3 260 then. Any other questions?

4 MS. RICHARDSON: Yes, I did have another
5 question. Reading Southern Bell's witness list and the
6 witnesses that I thought related to the repair and
7 rebate dockets, I found Mr. Madden was related to
8 sales, it appeared to me; Ms. Ivy related to the repair
9 docket, I thought; and Mr. Tubaugh related to, most
10 specifically, the PSC Schedule 11s, which was also the
11 repair docket.

12 I looked for witness testimony on the rebate
13 docket, which was originally 910727. And it could have
14 been just my oversight, I may have missed it. It may
15 be there, but I didn't really find testimony that
16 addressed the issues in the 727 docket.

17 COMMISSIONER CLARK: Well, what you're really
18 asking is for Southern Bell to identify the witness that
19 can answer questions on the rebate issue; is that correct?

20 MS. RICHARDSON: That would assist. And to
21 know whether or not they did actually file any
22 testimony on the rebate issues.

23 COMMISSIONER CLARK: Mr. Anthony, can you
24 answer that?

25 MR. ANTHONY: We filed general testimony

1 concerning these issues. Mr. Lacher addresses some of
2 these issues, as Ms. Richardson noted, and Ms. Ivy
3 addresses the question of the trouble-reporting docket.
4 I don't know that we have any testimony specifically
5 addressed to the rebate issue other than there were a
6 couple of issues that were identified that we
7 addressed. Beyond that, I don't think we have any
8 testimony that goes to the generic question. We tried
9 to address the issues as such and I think we did that.

10 COMMISSIONER CLARK: Would you tell her --
11 simply give to her the witness to whom any questions
12 she may have with respect to rebate can be directed so
13 she'll know which witness --

14 MR. ANTHONY: I think it would be either Mr.
15 Tubaugh or Ms. Ivy could answer those questions. And
16 if there's some issue about that, we can work that out
17 between the two of us if she doesn't think that --
18 after she tries to take discovery.

19 COMMISSIONER CLARK: Would you work with him
20 on that?

21 MS. RICHARDSON: Yes, ma'am.

22 COMMISSIONER CLARK: Before we go on, I think
23 it would be appropriate to take appearances, since some
24 of you probably have to let your clients know that you
25 were here. So start with you.

1 MR. LACKEY: Commissioner Clark, I'm Doug
2 Lackey, appearing on behalf of Southern Bell, 675 West
3 Peachtree Street, Atlanta, Georgia. Appearing with me
4 is Nancy White of the same address, and Hank Anthony,
5 who can give you his address since I don't know it.

6 MR. ANTHONY: Suite 1910, 150 West Flagler
7 Street, Miami, Florida.

8 MR. TWOMEY: Mike Twomey, Office of Attorney
9 General, PL01 The Capitol, Tallahassee, Florida.

10 MS. RICHARDSON: Sue Richardson, on behalf of
11 the Office of Public Counsel, 111 West Madison,
12 Tallahassee, Florida, 32399.

13 MR. TYE: Michael W. Tye, 106 East College
14 Avenue, Suite 1410, Tallahassee, Florida 32301,
15 appearing on behalf of AT&T Communications of the
16 Southern States, Inc.

17 MR. MELSON: Rick Melson, of the law firm
18 Hopping Boyd Green & Sams, Tallahassee, Florida,
19 appearing on behalf of MCI Telecommunications Corporation.

20 MR. HATCH: Tracy Hatch, 101 East Gaines
21 Street, Tallahassee, Florida, appearing on behalf of
22 the Commission Staff. Also appearing with me is Angela
23 Green and Jean Wilson.

24 COMMISSIONER CLARK: Okay. Ms. Richardson,
25 do you have any other questions?

1 MS. RICHARDSON: No other questions at this
2 time. Mr. Beck did file a Motion to Compel in the
3 910163 docket, and I don't know if you want to follow
4 your prior procedure of letting other parties who are
5 not interested in that docket go before we get to that
6 or wait until another --

7 COMMISSIONER CLARK: When did he file the
8 Motion to Compel?

9 MS. RICHARDSON: June 22nd, 1993. It was to
10 compel deposition testimony of Ms. Annie Bush, who is
11 an employee of Southern Bell I believe based in
12 Orlando, Florida. It was responded to by her private
13 counsel and Southern Bell also responded on behalf of
14 the corporation. But it is in the repair docket, and I
15 don't know if all the parties present really want to
16 stay for that or not, or how you want to handle it.

17 COMMISSIONER CLARK: It was the Motion to
18 Compel the deposition of Annie Bell?

19 MS. RICHARDSON: Annie Bush.

20 COMMISSIONER CLARK: Annie, what?

21 MS. RICHARDSON: Bush, B-U-S-H.

22 COMMISSIONER CLARK: And her private attorney
23 answered it, as did Southern Bell?

24 MS. RICHARDSON: Yes.

25 COMMISSIONER CLARK: When did they file their

1 answers?

2 MS. RICHARDSON: Mr. Hernandez filed his
3 answer June 22nd, 1993, and Southern Bell filed their
4 response on July 6, 1993.

5 COMMISSIONER CLARK: When did you file?

6 MS. RICHARDSON: Well, we filed our Motion to
7 Compel on June 22nd, 1993.

8 COMMISSIONER CLARK: And Mr. Hernandez
9 answered it right away?

10 MS. RICHARDSON: It appears that way.

11 COMMISSIONER CLARK: I have not seen those.

12 MR. HATCH: Commissioner Clark, we are
13 looking at those. Mr. Hernandez' response raises some
14 unique and interesting legal questions and we are still
15 doing research to track those down to come up with a
16 recommendation to you.

17 COMMISSIONER CLARK: Okay. When do you think
18 you'll have those?

19 MR. HATCH: We have basically everything
20 intact now, I would anticipate later in the week. I
21 need to iron out a couple of questions that I have with
22 Mr. Beck regarding that motion, then we'll have the
23 stuff to you.

24 COMMISSIONER CLARK: All right. Let's hold
25 off on it for just a moment. Is there anything else?

1 MS. RICHARDSON: No, Commissioner Clark.

2 COMMISSIONER CLARK: Mr. Twomey, did you have
3 anything?

4 MR. TWOMEY: No, Commissioner.

5 COMMISSIONER CLARK: Mr. Tye?

6 MR. TYE: No.

7 MR. MELSON: No.

8 COMMISSIONER CLARK: What I'd like to do --
9 so that only leaves your Motion to Compel the
10 deposition. What I'd like to do is give Staff an
11 opportunity to look at it. And if I look at it and
12 determine I would like to hear argument on it, we'll
13 hear it at the next status conference in order to
14 provide Ms. Bush's attorney an opportunity to be here
15 if we decide to have argument on it. I don't think it
16 would be appropriate to have argument without --

17 MS. RICHARDSON: All right. That's August
18 27th, according to the prehearing order, I believe.

19 COMMISSIONER CLARK: If that's the case, it
20 will be that late. I don't know that I will feel
21 compelled to have oral argument, I may just issue an
22 order. Is there anything further?

23 MR. HATCH: Nothing else that I'm aware of
24 other than the pending motion from Southern Bell for
25 extension of time on the NARUC audit.

1 COMMISSIONER CLARK: Okay, that has to do
2 with the audit?

3 MR. HATCH: Yes, ma'am.

4 COMMISSIONER CLARK: Okay. All right. Well, I
5 want to tell all the other parties what we're going to
6 move to now is issues with respect to the audit, so if you
7 want to stay or if you want to leave, it's up to you.

8 Why don't I go ahead and hear from Mr.
9 Lackey. You filed the motion, didn't you?

10 MR. LACKEY: Yes, Commissioner, I did. And
11 Mr. Anthony is going to leave now, he said. (Laughter)

12 MR. ANTHONY: You said all parties who wanted
13 to, so.

14 MR. LACKEY: Apparently, Mr. Devlin is going
15 to leave, too. (Laughter)

16 Commissioner Clark, apparently our motion and
17 your letter crossed in the mail, regarding the
18 responses to the NARUC audit. I haven't attended the
19 prior two status conferences but Ms. White has and has
20 given me a review of what happened there; and she
21 stated that on at least two separate occasions or the
22 two past occasions, you've been concerned about the
23 response time and the responses in the NARUC audit.
24 And so we talked about it and looked at it and finally
25 concluded that the only reasonable solution that we

1 could use was to ask that you look at the thing again
2 and consider giving us an extension of the five-day
3 time period that has been imposed on us.

4 I'm here prepared to discuss every one of the
5 items listed on the Staff's list that they furnished
6 pursuant to your letter.

7 COMMISSIONER CLARK: Is that part of your
8 motion? I thought your motion was confined to the most
9 recent audit.

10 MR. LACKEY: No. That was simply -- it was
11 an illustration. What we need to do, in our opinion --
12 and I want to talk about it at some length -- is to
13 revisit this notion of us responding to these requests
14 in five days. And I believe that I can lay out a
15 scenario that hopefully would make everybody see the
16 wisdom of doing something, but if not everybody, at
17 least you.

18 The problem we have, if I can just talk about
19 it briefly, is that since we got into this -- and
20 actually the numbers have been updated since the motion
21 was filed -- we've gotten 624 requests including
22 subparts of approximately 860 total requests. The
23 thing that triggered this particular motion is we got
24 135 requests over a three- or four-day period right
25 before the Fourth of July weekend.

1 Ms. Kaetz is here, as you requested in your
2 letter. But basically, I can tell you that we have Ms.
3 Kaetz, who is the coordinator receiving these requests.
4 She has three managers working directly under her and a
5 fourth that's been loaned to her. She's got three
6 clerks that are working in her group, so that's seven
7 people. We have a departmental coordinator in every
8 department we have; and I think, except the one we've
9 had a turnover in, we've got a backup in every
10 department we have.

11 And the problem we've got quite honestly is
12 that we just cannot process the requests we're getting,
13 given the scope and the number of them in the time
14 frame we're being required to. And it's just resulting
15 in incredibly inefficiencies.

16 We're having to answer responses two and
17 three times before we can get substantive information
18 to the Staff. And it's a waste of our resources, it's
19 a waste of the Staff's time to look at these things and
20 to have to worry about them. And we just think it's
21 time for an adjustment.

22 Now, what's changed since we started all this
23 -- and I know the Staff has said we've had this ruckus
24 before and they're right, we have. But, for instance,
25 I'll give you an example, and I can't be sure of this,

1 but I believe that 94 out of the 135 I just told you
2 about, 94 of the inquiries didn't come from the Staff.
3 It came from Kennedy and Associates, which is a
4 consulting firm in Atlanta that participated in an
5 audit in Louisiana -- a management audit in Louisiana,
6 and has now been retained by the Louisiana Commission
7 to assist in this audit.

8 And I think what they did was they went into
9 about 14 or 15 sets of discovery or interrogatories they
10 had down there, culled out the 94 they wanted, updated
11 them for a different time period and sent them here.

12 And so, you know, this isn't the case like
13 the rate case update audit, where the folks are sitting
14 down in the 666 building in Miami and returning and
15 asking Carrera or Lombardo -- not Lombardo, Lohman or
16 somebody, for something that's right off the shelf.
17 This is taking on dimensions that nobody even
18 considered when we talked about this before.

19 It's simply gotten to the point -- if I can
20 elaborate on the process. We get these things faxed
21 into us from the audit team. Karen gets them, she's
22 the audit coordinator. She reviews them. If there's
23 something confusing about them, she has to talk to
24 whoever sent them to her, so that takes time. If
25 they're not confusing, she's got to figure out which

1 department they go to. You know, who, in a company of,
2 you know, 100,000 employees or however many there are,
3 gets it to respond to? And we have to send them to the
4 coordinator.

5 If the coordinator is there, that's fine. If
6 the coordinator is not there, we have to go to the
7 backup coordinator. If they're both out, the Fourth of
8 July weekend or the week after the Fourth of July,
9 we're just -- you know, we're out of time.

10 COMMISSIONER CLARK: Let me ask you this. To
11 what extent has Ms. Kaetz gotten in touch with Tim
12 Devlin to work out these problems? Has she called and
13 requested that they sit down and maybe work out a
14 better means of handling the audit requests?

15 MR. LACKEY: I know I have. I have not
16 talked to Mr. Devlin, but I mean I've talked to the
17 Staff about how we were going to deal with this. The
18 the only time that -- we've had two heart attacks on this
19 NARUC audit so far; the only time that I know that they've
20 contacted Mr. Devlin directly was when the husband of the
21 secretary who is processing them had a heart attack. But
22 I think -- were there any other contacts?

23 But the point is yes, we're responding to
24 them all but we're having to say on a bunch of them,
25 "We're sorry, we just can't get it done in five days."

1 Now, presumably, you know, we'd call Mr.
2 Devlin and say, "Mr. Devlin, we can't get it done in
3 five days." Assuming it's going to work like it ought
4 to, he gives us an extension. But all that does is put
5 another step into it.

6 You know, she has to figure this out -- if I
7 can finish the process? She's got to send to it the
8 departmental coordinators, they've got to figure out
9 who can answer it. By the time it goes down that chain
10 and then back up to her and they say, "We can't get it
11 done in five days," and she's got to call Mr. Devlin, you
12 know, we've just lost more time. It's just not feasible
13 to get this all done in that short a time period.

14 COMMISSIONER CLARK: What is a feasible time
15 period?

16 MR. LACKEY: What is a feasible time period?
17 If I had my way, we'd start treating this just like
18 what I think it is, and that's discovery.

19 COMMISSIONER CLARK: Well, I can tell you,
20 Mr. Lackey, --

21 MR. LACKEY: I'm not going to get my way.

22 COMMISSIONER CLARK: -- I don't believe it's
23 discovery, and you're not going to get your way on that.

24 MR. LACKEY: If we could have 15 days, we
25 could solve a lot of the problems that are going on

1 here. You know, we've gotten to the point, except for
2 the materials that are on appeal to the Supreme Court,
3 you know, we've basically just sort of walked away from
4 the rest of our objections to try to get through this.
5 So if we could have time, we could produce meaningful
6 answers that the Staff would probably find beneficial.

7 Now, I guarantee you if we could go through
8 these 80- some questions, there are going to be some
9 where no matter what we do the answer is not going to
10 be satisfactory and, no matter how long or short a time
11 we take, we're going to have a problem. But we could
12 avoid a lot of the problems if we didn't have this
13 five-day turnaround that we're looking at right now.

14 And I don't think it would prejudice the
15 Staff, quite frankly. Because, you know, first of all,
16 we've got the Supreme Court appeal that's sitting out
17 there; and we don't know whether it's going to be heard
18 in September or whether it's going to be heard in
19 November now, but that's sitting out there. So that's
20 obviously delayed some portion of this.

21 And the rest of this, you know, 15 days isn't
22 going to make a bit of difference in most instances to
23 the pursuit of the audit. I can't believe it will,
24 anyway. We've got 50-some of these that we've objected
25 to that haven't been pursued. So I just can't believe

1 that a reasonable time period like 15 days to respond
2 to them, you know, would be objectionable and wouldn't
3 be beneficial, quite frankly, to everybody. We'd be
4 better off because we could give better answers. The
5 Staff would be better off because they could get better
6 answers, and we wouldn't have so many of these hassles.

7 COMMISSIONER CLARK: So what specifically are
8 you asking for in your audit? You're asking for a
9 larger time period to respond to your motion and a
10 larger time period to respond to the requests, 15 days?

11 MR. LACKEY: Well, I'd like 30; but since
12 you're not going to give me 30, we'll split the
13 difference.

14 COMMISSIONER CLARK: What else, what other
15 objections do you continue to maintain in that motion?

16 MR. LACKEY: In that motion? That's all this
17 motion is for is to extend time.

18 COMMISSIONER CLARK: Okay. And your purpose
19 in pointing out that audit information requests were
20 identical to interrogatories and documents in the South
21 Central Bell case -- I mean, to me that's not the test.
22 The test is does it relate to the audit being
23 conducted? If it is, then you need to respond.

24 MR. LACKEY: No. That wasn't an objection.
25 I'm sorry. Let me make clear what that reference was

1 for. In Louisiana, we had 12 to 42 days to respond to
2 these for Louisiana.

3 COMMISSIONER CLARK: You were making that
4 comparison.

5 MR. LACKEY: Right. Here we ended up with 12
6 days to respond for a different time period and
7 presumably cut across nine states, and not just one.
8 It was simply for the purpose of comparison, it was not
9 an objection.

10 COMMISSIONER CLARK: Staff?

11 MR. HATCH: The question that I have at least
12 initially is, what would we get in 15 days that we're
13 not getting in five days in terms of, are you talking
14 about the substantive response in terms of the actual
15 information asked for, or is it just more time to get
16 it up the chain and down the chain so that we'd get an
17 answer that says, "45 days from now we can get you the
18 documents you're looking for"?

19 MR. LACKEY: There are two points there, if I
20 can answer that question.

21 First of all, we waste an incredible amount
22 of time passing it up and down the chain, which we have
23 to do twice. I'm not sure I can give you percentages
24 about how many we answered in five versus 14 days
25 versus 20 days or whatever the right number is, But it

1 really was and is our goal to answer them within five
2 days, we're just not making it because of all the
3 limitations I talked about.

4 Hopefully, if we went to 15 working days, we
5 could give more substantive answers up front and we
6 wouldn't have waste everybody's time with one of these
7 reports that say, you know, "Gee, you gave us this on
8 such-and-such a date, it's due today, we don't have it,
9 we'll get back to you in a couple of weeks." That's
10 what we're trying to avoid.

11 That takes time and coordinating effort,
12 because Karen has got to talk to the coordinator, the
13 coordinator has got to talk to her, we've got to
14 generate the paperwork. We're trying to take that step
15 out.

16 The things that can't be done for more than
17 15 days are still going to be like that. There's one
18 out there right now that -- I'll hunt up the number --
19 where it asked for some backup data from DATASERVE.
20 And DATASERVE said, "We'll get it, but it's going to
21 take us a while to pull it together." I mean we can't
22 affect that.

23 The important thing is, though, that I need
24 to make clear is, we're not sitting on our hands on
25 this stuff. I mean, I've got Karen right here and she

1 can tell you what they do with it. But I mean, they've
2 got seven people working full-time on this thing trying
3 to manage the flow of information and it's not easy.

4 Some of it -- and again, we can go through
5 all of them, we can do it now, we can do it later. You
6 know, some of the questions require an inordinate
7 amount of work. There's one in here that asks for the
8 backup information for 133 transaction entries out of
9 the transaction journal. You know, some of them are
10 vouchers, some of them are payroll records, some of
11 them go across four or five departments and it just
12 takes time to get it done. And it's going to take time
13 whether it's five days or 15, but it eats up those
14 people's time when they could be doing substantive work
15 when we have to go through a form response to tell you
16 that we can't make it on time.

17 MR. DEVLIN: Commissioner, a couple of
18 points. First of all, I was sympathetic with the large
19 requests that we had in early July, and therefore, I
20 believe we gave the Company ten working days, which
21 would be 14 regular days.

22 From my viewpoint I would be tickled pink if
23 we could get a complete and accurate response within 15
24 days. Even though we've had the five-day requirement
25 out there since February 2nd, it's been, I think, very

1 rare that we've gotten a complete and accurate response
2 within five days. Usually, we give some indication
3 when the Company thinks they can respond. So we've
4 tried to tighten up on that.

5 Again, we can't do a whole lot about what has
6 transpired in the last three or four months; but from
7 my view, if we could get a good commitment that we get
8 a complete and accurate response and we don't have to
9 the same question ten different ways to get what we're
10 looking for. And that just takes some judgment.

11 If there's some ambiguity there, maybe pick
12 up the phone and call us up.

13 COMMISSIONER CLARK: I think that's the real
14 problem, is there hasn't been as much communications
15 between, frankly, from Southern Bell to the Commission
16 Staff on these things. I have talked to Staff about
17 whether phone calls are being returned and whether your
18 staff is being responsive to our Staff, and that was
19 one of the reasons I requested Ms. Kaetz come here
20 today. And in a few minutes, we'll adjourn and we'll
21 go down to 115 and we're going to go through that list
22 of things that haven't been produced and we're just
23 going to resolve what will be produced and when.

24 MR. LACKEY: Well, I don't dispute. I think
25 it's going to be a surprising exercise, quite frankly.

1 Because I think we have let maybe a half dozen of those
2 requests go inappropriately; and the rest of them, we
3 don't believe that's the case. So, I mean, I don't
4 think this is going to be, you know, a whipping in the
5 woodshed. At least, I hope it's not if I'm going to be
6 there. I don't want to get whipped.

7 COMMISSIONER CLARK: Well, Mr. Lackey, my
8 purpose was to hear both sides of what's going on here
9 and to facilitate the information so we can be done
10 with this audit and you all can go about your business
11 and we can go about ours.

12 MR. LACKEY: And we would like nothing better
13 than that.

14 I mean, we have basically, again, other than
15 the piece that's in the Supreme Court, I mean, we've
16 walked away from every objection we could walk away
17 from to try to get through this thing. And the
18 problems we're having now is one of logistics, not a
19 willingness to answer.

20 But, I mean, you know, this operation's like
21 an aircraft carrier. I mean, it's hard to turn. You
22 know, one of the things we'll talk about are the
23 Heathrow projects that started back in 1984. I mean
24 it's hard to find people who can answer some of these
25 questions, it takes time. And you know, we just need

1 to work those problems out without having the time
2 pressures that are eating up so much of our effort
3 administratively rather than substantively. That's what
4 we'd like.

5 COMMISSIONER CLARK: Tim, you would be --
6 have some measure of guarantee that you would get the
7 complete information within 15 days; is that
8 satisfactory to you?

9 MR. DEVLIN: I would have been tickled pink
10 all throughout this process if we were able to achieve
11 that, yes.

12 COMMISSIONER CLARK: Then, do you believe
13 it's appropriate to amend the order and give 15 days
14 with the understanding that the information will be
15 completely responsive, and to the extent it's not that
16 -- well, frankly, that someone at Southern Bell call
17 Tim and explain why it's not going to be produced. And
18 then you all can agree on a time frame that those items
19 can be produced. Is that satisfactory?

20 MR. DEVLIN: That's satisfactory. And we
21 probably want to make note that this is sort of an
22 exception because of the complexity of the audit. I
23 mean, our normal audit process does demand a quicker
24 turnaround, But I am somewhat sympathetic with the
25 inner workings of the Company in this particular

1 instance. Normally, we get a three-day turnaround.

2 COMMISSIONER CLARK: I'm aware of that. And
3 I concur that, you know, this isn't going to be the way
4 we'll do audits in the future. But this is a NARUC
5 audit, it's a little bit different; and to that extent,
6 we'll allow the 15 days, but with the understanding
7 that you have to make a good faith effort to get that
8 information and to get it out. To the extent that you
9 can't, get on the phone and talk to Tim. I assume it
10 needs to go through you.

11 MR. DEVLIN: It doesn't necessarily have to
12 be me. If there's a particular question, I identify
13 who the sponsor of every question is and, you know, I
14 don't have any problem with communications going
15 directly to that particular auditor. That may
16 facilitate the process. And that happens sometimes.

17 MR. LACKEY: That's 15 working days?

18 COMMISSIONER CLARK: No, 15 days, not 15
19 working days.

20 MR. LACKEY: Not 15 working?

21 MR. DEVLIN: I don't know, that's a judgment
22 call.

23 MR. LACKEY: If it's a judgment call, why
24 don't we make it 15 working days?

25 COMMISSIONER CLARK: You're getting close to

1 your 30, aren't you?

2 MR. LACKEY: No, I'm not. I said I'd split
3 the difference. I had five working days, I wanted 30
4 working days.

5 COMMISSIONER CLARK: Well, discovery is not
6 30 working days.

7 MR. LACKEY: I know, I know, I'm just -- I
8 need 15 working days.

9 MR. HATCH: That's three weeks. As long as
10 everybody is on board with what's going on.

11 MR. LACKEY: Yep.

12 MR. HATCH: It would seem like they could get
13 it up and down the chain of command to get some sort of
14 a response and an idea of what they're going to provide
15 and when in 15 calendar days.

16 MR. LACKEY: You know, normally, I would
17 agree with you. But, I mean, again, the problem we've
18 got, like this Heathrow thing where there's an
19 interview set for Wednesday, I mean it took us forever
20 to find somebody who knew anything about the thing back
21 at the time point they were talking about.

22 MR. DEVLIN: There are some questions that
23 will require more time. The bulk of them shouldn't
24 require, really, only a week. I mean if there is some
25 information that's readily available, we really do

1 expect that quick turnaround. There are some
2 exceptions to every rule and it may take 30 or 45 days
3 in some cases.

4 MR. LACKEY: We tried to look at the number
5 of requests that just call for off-the-shelf items,
6 something that somebody ought to just be able to reach
7 in a folder and gets. And there aren't -- I don't
8 remember the exact numbers, but there is a substantial
9 number of them that aren't like that. And the point
10 again is that the 15 days will give them some breathing
11 time administratively so that they can perform their
12 function without having to run flat out all the time
13 and making mistakes.

14 COMMISSIONER CLARK: Mr. Lackey, I'm going to
15 leave it 15 days. That way it will be easy to tell
16 them that, "Here's the date you got it, you have 15
17 days from that date to get it." And again, if it
18 cannot be produced by that date, get on the phone and
19 indicate when it's going to be produced and the
20 justification for the extra time.

21 Is there anything else with respect to that
22 motion?

23 What I'd like to do now is just to adjourn
24 this status conference and then our audit staff and your
25 audit staff can reconvene down in 115 and we'll begin to

1 go through the lists of audit requests provided to me to
2 find out what the status of these requests.

3 MS. GREEN: Commissioner, just one item
4 occurred to me during the discussion that had taken
5 place regarding this particular motion.

6 I was reviewing documents from this case
7 about a week ago; and from the March 5th prehearing
8 conference, one of the five prehearing conferences --
9 well, no, it was the motion hearing is what it was,
10 where this hearing was postponed until January of next
11 year? I saw in there that Southern Bell had agreed to
12 request the Supreme Court to expedite the decision on
13 its appeal, and I have not seen where a request to
14 expedite that decision has been filed. And I don't
15 mean to surprise anyone because I had intended to call
16 and ask about this; but since it was just brought up
17 that the court hasn't ruled, I was wondering what had
18 happened with that.

19 MR. ANTHONY: I thought that the question of
20 expediting appeals related to the privilege, and I
21 thought the request had been made from the Bench that
22 the parties expedite it. And honestly, I expected,
23 since it was the Commission that was seeking that it be
24 expedited, that the Commission Staff would be the ones
25 who were doing it.

1 We certainly don't have any objections to
2 seeking expedited treatment of any of the three
3 appeals. In fact, I think it would be best for all the
4 parties. I don't want to see the rate case postponed
5 again.

6 COMMISSIONER CLARK: Is there any objection
7 to requesting that it be expedited?

8 MS. RICHARDSON: I believe that I have
9 discussed this with Commission attorneys -- not on the
10 NARUC audit, but on the privilege audits -- and right
11 now I think what we're doing is waiting for the court
12 to determine whether or not they're going to set an
13 early or a later date. And at that point, there is a
14 five-day period to request an expedited proceeding from
15 the court. That's my understanding.

16 And so I have again, like Mr. Anthony, I have
17 no objection to a request for an expedited hearing from
18 the court. I believe it's proper coming from the
19 Commission to do that, so I have no objection to that.
20 And it certainly would be in, I think, everyone's
21 benefit to have the court expedite the proceeding.

22 COMMISSIONER CLARK: I'm sorry, I didn't
23 understand what you said. You were waiting for the
24 court to set something?

25 MS. RICHARDSON: The court, on the appeals

1 for the attorney-client privilege matters, the audits
2 and the statements, has not yet determined whether or not
3 they're going to set oral argument. That's the first
4 thing. Whether or not they're going to consolidate those
5 two, that's the second thing. And that right now is taken
6 under consideration by the court and I'm waiting to see
7 what the court decides about those two matters.

8 COMMISSIONER CLARK: But a motion to expedite
9 does not have to wait until they decide to do that. I
10 mean, they basically can say, "Whatever you decide to
11 do, do it quickly."

12 MS. RICHARDSON: Yes, Commissioner. And like
13 Mr. Anthony, I agree that during our discussion on this
14 I felt that you had requested from the Bench that this
15 proceeding be expedited. And I also agree with Mr.
16 Anthony that I think it would be proper for Staff to
17 seek that expedited procedure for the Commission
18 hearing to occur on time, and I would concur on that.

19 COMMISSIONER CLARK: Are all the briefs in in
20 both those cases -- in all the cases?

21 MS. RICHARDSON: Yes.

22 COMMISSIONER CLARK: Are there four
23 altogether?

24 MR. ANTHONY: In the privilege issue there
25 are three appeals, the first two are relating to the two

1 privilege issues, basically the audits and the statements,
2 those are fully-briefed. The other case is --

3 MS. RICHARDSON: Is waiting for a reply, I
4 believe.

5 MR. LACKEY: The other case has already been
6 set for oral argument.

7 MR. ANTHONY: The NARUC audit is set for
8 November 1st for oral argument. I think that's
9 probably is what prompted everybody's surprise it was
10 that far out.

11 MS. GREEN: Yes, it was.

12 MS. RICHARDSON: I believe there's a reply
13 still due, isn't there, Hank, on that?

14 MR. ANTHONY: I think so.

15 COMMISSIONER CLARK: There is a reply due on
16 the --

17 MR. ANTHONY: On the NARUC audit.

18 MS. RICHARDSON: I believe there is still a
19 reply due on the audit.

20 MR. ANTHONY: And that's being prepared.

21 COMMISSIONER CLARK: Okay. And the privilege
22 ones are right for decision but --

23 MS. RICHARDSON: They are.

24 COMMISSIONER CLARK: But the court has not --

25 MS. RICHARDSON: And the court can decide

1 those without oral argument. They can go ahead and
2 issue a decision or they can just deny the petition. I
3 mean, that's still a possibility at this point. I
4 don't know that it's a probability, but it's a
5 possibility that they could deal with it that way.

6 COMMISSIONER CLARK: Okay. Let me ask one
7 other question. In the three cases having to do with
8 privilege, was oral argument requested?

9 MR. ANTHONY: Oral argument was requested in
10 all three cases that I recall. Two were relating to
11 privilege, one to the NARUC audit; there are only three
12 altogether.

13 COMMISSIONER CLARK: Okay. There are three
14 cases on appeal altogether?

15 MR. ANTHONY: Right. But I have to tell you
16 that there was a recent order that was issued by you
17 relating to deposition questions of Sanders,
18 Cuthbertson and Ward, where we've asked for review by
19 the full Commission; and in keeping with the principle
20 here, we're going to have to take that up on appeal. And
21 we would try to get that done and, if we can, given the
22 timing of it, try to consolidate the two cases that are
23 already pending so that we don't postpone any other
24 proceedings.

25 COMMISSIONER CLARK: Won't the outcome of the

1 two cases that are pending dictate a result in all
2 likelihood?

3 MR. ANTHONY: I think it probably would.
4 Which is why it would make sense, if we can, just to
5 throw it in there; if not, it may dictate the result,
6 as you say.

7 COMMISSIONER CLARK: Can I ask Staff, who is
8 it, Mr. Bellak that's handling the appeals? Well, I'd
9 like to request that Mr. Bellak and Rob Vandiver come
10 down and see me and we'll see about filing a request
11 for expedited treatment. Because I certainly think if
12 they set a November 1st oral argument we may be able to
13 ask them to set it for September.

14 MR. ANTHONY: Commissioner, I think Mr.
15 Bellak has had conversations with William Deem of the
16 Mahoney Adams firm and we've, I think, told them we would
17 be agreeable to trying to get it on an expedited basis.

18 COMMISSIONER CLARK: We're certainly not
19 going to get it done in August, though.

20 MR. ANTHONY: No. Since they don't hear
21 arguments then.

22 MS. RICHARDSON: Now, he discussed it with me
23 and I told him that we would certainly concur in a
24 motion to expedite, you know, we would certainly agree
25 with that. And I believe he also discussed it with the

1 Attorney General.

2 COMMISSIONER CLARK: Good. All right. Well,
3 I'll follow up on that with Richard and Rob. Is there
4 anything else to be taken up at this status conference?
5 If not, we'll adjourn this and meet in -- how about 10
6 minutes down in 115.

7 (Thereupon, the hearing adjourned at 1:43
8 p.m.)

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

CERTIFICATE OF REPORTER

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

6 DO HEREBY CERTIFY that Status Conference 4-c
7 in this cause, Docket Nos. 920260-TL, 900960-TL,
8 910163-TL, and 910727-TL, was heard by the Florida
9 Public Service Commission at the time and place herein
10 stated; it is further

11 CERTIFIED that I stenographically reported
12 the said proceedings; that the same has been
13 transcribed under my direct supervision, and that this
14 transcript, consisting of 40 pages, inclusive,
15 constitutes a true transcription of my notes of said
16 proceedings.

17 DATED this 21st day of July, A. D., 1993.

Sydney C. Silva

SYDNEY C. SILVA, CSR, RPR
Official Commission Reporter
(904) 488-5981

18 STATE OF FLORIDA)
19 :
20 COUNTY OF LEON)

21 The foregoing certificate was acknowledged
22 before me this 21st day of July, 1993, by SYDNEY C.
23 SILVA, who is personally known to me.

Evelyn L. Borschel

EVELYN BORSCHEL
Notary Public - State of Florida



EVELYN L. BORSCHEL
MY COMMISSION # CC289285 EXPIRES
May 25, 1997
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