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August 25, 1993

Steve Tribble, Director  
Division of Records and Reporting  
Florida Public Service Commission  
101 East Gaines Street  
Tallahassee, FL 32399-0850

ORIGINAL  
FILE COPY

Re: Docket No. 910163-TL, 920260-TL, 900960-TL & 910727-TL

Dear Mr. Tribble:

Enclosed for filing in the above-captioned proceeding on behalf of the Citizens of the State of Florida are the original and 15 copies of the Citizens' Response to Southern Bell Telephone & Telegraph Company's Motion for Review of the Order PSC-93-1136-PCO-TL Granting Public Counsel's Motion to Compel and Answers to Deposition Questions.

Please indicate the time and date of receipt on the enclosed duplicate of this letter and return it to our office.

- ACK
- AFA
- APP \_\_\_\_\_
- CAF \_\_\_\_\_
- CMU
- CTR \_\_\_\_\_
- EAG **Enclosures**
- LEG **1 w/m**
- LIN **6**
- OPD \_\_\_\_\_
- RCH **1**
- SEC **1**
- WAS \_\_\_\_\_
- OTH \_\_\_\_\_

Sincerely,

Janis Sue Richardson  
Associate Public Counsel

RECEIVED & FILED  
*JS*  
FPSC-BUREAU OF RECORDS

DOCUMENT NUMBER-DATE  
**09184 AUG 25 83**  
FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

ORIGINAL  
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In re: Investigation into the )  
Integrity of Southern Bell's )  
Repair Service Activities and )  
Reports )

Docket No. 910163-TL

Comprehensive Review of the )  
Revenue Requirements and Rate )  
Stabilization Plan of Southern )  
Bell Telephone and Telegraph )  
Company )

Docket No. 920260-TL

Show Cause Proceeding Against )  
Southern Bell Telephone and )  
Telegraph Company for Misbilling )  
Customers )

Docket No. 900960-TL

Investigation into Southern Bell )  
Telephone and Telegraph )  
Company's Compliance with Rule )  
25-4.110(2), F.A.C. )

Docket No. 910727-TL

Filed: August 25, 1993

**CITIZENS' RESPONSE TO SOUTHERN BELL TELEPHONE AND TELEGRAPH  
COMPANY'S MOTION FOR REVIEW OF THE ORDER PSC-93-1136-PCO-TL  
GRANTING PUBLIC COUNSEL'S MOTION TO COMPEL  
ANSWERS TO DEPOSITION QUESTIONS**

The Citizens of Florida ("Citizens"), by and through Jack Shreve, Public Counsel, file this response to BellSouth Telecommunications, Inc. d/b/a/ Southern Bell Telephone and Telegraph Company's ("Southern Bell") request for reconsideration of the prehearing officers' Order No. PSC-93-1136-PCO-TL, which ordered Southern Bell to permit Ms. Etta Martin, Manager-Information Systems, and Mr. Danny L. King, Assistant Vice President-Central Operations, to answer deposition questions concerning their personal involvement in the preparation of the

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1991 third quarter internal audits and a statistical analysis, which the company considers privileged.<sup>1</sup> Public Counsel questioned Ms. Martin and Mr. King about the methodology, the databases, the contents, and the specific findings of the various audits, statistical analysis, and reports they helped develop; the remedial measures taken and the reasons behind the remedial measures; and the reason various individuals were informed of the findings. Citizens request this Commission to deny Southern Bell's request for reconsideration and as grounds therefor state the following:

1. Southern Bell requests the full Commission to overturn the prehearing officer's order denying Southern Bell's claim of privilege as its basis for refusing to allow Ms. Martin and Mr. King to answer Public Counsel's deposition questions. Southern Bell Telephone and Telegraph Company's Motion for Review of the Order Granting Public Counsel's Motion to Compel, Dockets Nos. 910163-TL, 920260-TL, 900960-TL & 910727-TL (Aug. 16, 1993) [hereinafter Southern Bell's Motion].

2. Southern Bell has failed to meet the standard of review of a prehearing officer's order on reconsideration. The standard of review adopted by the Commission requires Southern Bell to demonstrate that the prehearing officer made an error in fact or law in her decision that requires that the full Commission

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<sup>1</sup> These documents have been found to be not privileged by the Commission in orders PSC-93-0292-FOF-TL and PSC-93-0517-FOF-TL, which are pending appeal in the supreme court.

reconsider that decision. See In re: Petition on Behalf of Citizens of the State of Fla. to Initiate Investigation into Integrity of Southern Bell Tel. & Tel. Co.'s Repair Service Activities and Reports, 91 F.P.S.C. 12:286, 287 (1991) (Docket No. 910163-TL, Order No. 25483, which was affirmed by the full Commission on reconsideration in Order No. PSC-92-0339-FOF-TL). The company has failed to show that the prehearing officer erred in her finding that the company's refusal to allow Ms. Martin and Mr. King to answer deposition questions was improper. As this Commission has already found the underlying audits not to be privileged, then questions concerning those audits are proper. Final Order Denying in Part and Granting in Part Southern Bell Tel. & Tel. Co.'s Motion for Review of Order No. PSC-93-0151-CFO-TL, Dockets Nos. 920260-TL, 910163-TL, 910727-TL, 900960-TL, 2 (Mar. 23, 1993) (Order No. PSC-93-0292-FOF-TL expressly notes the full Commission's rejection of Southern Bell's privilege claim for the five audits). Order Denying Motion for Review, Dockets Nos. 920260-TL, 910163-TL, 910727-TL, 900960-TL (Apr. 4, 1993) (Order No. PSC-93-0517-FOF-TL affirms the prehearing order denying Southern Bell's privilege claim for the statistical analysis).

3. Southern Bell repeats its arguments for privilege that were addressed fully and denied. Order Granting Public Counsel's Motion to Compel Answers to Deposition Questions, Dockets Nos. 920260-TL, 910163-TL, 900960-TL, 910727-TL; Order No. PSC-93-1136-PCO-TL [hereinafter Order No. 1136]. To satisfy the standard for

reconsideration, a motion must bring to the Commission's attention some matter of law or fact which the prehearing officer failed to consider or overlooked in her decision. Diamond Cab Co. of Miami v. King, 146 So. 2d 889 (Fla. 1962); Pingree v. Quaintance, 394 So. 2d 161 (Fla. 1st DCA 1981). The motion may not be used as an opportunity to reargue matters previously considered merely because the losing party disagrees with the judgment or order. Diamond Cab Co., 146 So. 2d at 891. Southern Bell has done just that by simply adopting its arguments in prior motions already disposed of by the Commission. Southern Bell's Motion at 5, ¶ 8. Southern Bell's motion must be summarily denied.

4. The prehearing officer correctly decided that the company's arguments had no merit in fact or law. She determined that since the audits and statistical analysis were not privileged under either the attorney-client privilege or the work product doctrine then questions about those audits and analysis were not privileged. Order No. 1136. No error of fact or law has been demonstrated to overturn the prehearing officer's order on reconsideration. See Grady v. Department of Prof. Reg., Bd. of Cosmetology, 402 So. 2d 438 (Fla. 1st DCA 1981) (holding that agency's interpretation of cosmetology licensing statute to include "esthetic" activities when the statutory wording did not explicitly include them was entitled to great weight and would not be overturned unless clearly erroneous), dismissed, 411 So. 2d 382

(Fla. 1981). Hence, the Commission must affirm the prehearing officer's order.

5. Even if the underlying audits had not been privileged, Public Counsel's questions as to the underlying facts would still have been proper. Upjohn Co. v. United States, 449 U.S. 383 (1981) (attorney-client privilege); United States v. Pepper's Steel & Alloys, Inc., 132 F.R.D. 695 (S.D. Fla. 1990) (work product). Under the U.S. Supreme Court's reasoning in Upjohn, only a communication between a client and an attorney is privileged, not the underlying facts communicated by the client. Id. at 395. The Court noted that the client or witness could be deposed to obtain the facts. Id. at 396. Both Ms. Martin and Mr. King have direct personal knowledge of the facts at issue in this case. Southern Bell's Motion at 6, ¶ 9. Ms. Martin and Mr. King do not have any privilege to refuse to provide answers to Public Counsel's fact-finding questions. In re Six Grand Jury Witnesses, 979 F.2d 939, 945 (2d Cir. 1992) (finding that "the underlying information or substance of the communication is not, as appellants incorrectly believe, so privileged").<sup>2</sup>

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<sup>2</sup> This case came before the second circuit court on an allegation of defrauding the U.S. government on satellite contracts by submitting expense claims containing false statements. Id. at 941. The company counsel directed its employees to investigate. Id. at 942. The company then directed its employees to assert the attorney-client and work product privileges in refusing to answer grand jury questions. Id.

6. Nor do they have a work product privilege to refuse to disclose those facts to Public Counsel in deposition. The United States District Court for the Southern District of Florida recently dealt with this issue. Id. Florida Power & Light [FP&L] deposed U.S. Fidelity and Guaranty's [USF&G] supervising examiner for its liability division. Id. at 697. As liaison to the insurance coverage counsel, the court's opinion suggests that USF&G's manager had reviewed documents prepared by counsel in preparation for litigation. Id. at 697 & 699. The district court held that the manager must answer FP&L's questions as "USF&G cannot shield itself from discovery by objecting to all questions which would require the deponent to testify regarding facts learned while reviewing documents selected by USF & G's counsel." Id. at 699.

7. Southern Bell issued similar all-inclusive privilege claims to Ms. Martin and Mr. King during Public Counsel's deposition as a basis for their refusal to testify to facts related to the work they performed. Citizens' Motion to Compel BellSouth Telecommunications' Assistant Vice-President--Central Operations, Mr. Danny L. King, and BellSouth Telecommunications' Manager, Information Systems, Ms. Etta Martin, to Answer Deposition Questions and Motion to Strike the Affidavit of Danny L. King, Dockets Nos. 920260-TL, 910163-TL, 9101727-TL, 900960-TL (Feb. 24, 1993). Citizens' motion is attached as Attachment A.<sup>3</sup> For

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<sup>3</sup> All references to attachments are designated as "Att. \_\_\_."

example, when asked the reason for the recent changes made to the company's computerized trouble report handling system, Southern Bell objected on the grounds of privilege. [Att. B: Martin/King deposition at 15-17] Excerpted pages of the Martin/King deposition are appended to this motion as Attachment B.

8. Southern Bell, like USF&G, has attempted to shield itself from discovery by an over-inclusive definition of work product and attorney-client privileges. This it may not do. To permit Southern Bell to hide the facts behind broad claims of privilege would impede this Commission's just resolution of this case and nullify its statutory authority.

9. Mr. King also refused to answer questions about his sworn affidavit submitted to the Commission in support of the company's opposition to Citizens' motion to compel discovery of his statistical analysis. [Att. A at apx. C: King Affidavit] Mr. King's affidavit claims that the statistical analysis was performed at the direction of the company's legal department "to determine the veracity of the information obtained in the investigation and to quantify any significant deviation." [Att. A at apx. C] When asked to explain his statement that the company's legal department requested him to perform a statistical analysis of the way trouble reports were handled by various locations throughout Florida, Mr. King either limited his response to a very general statement [Att. B at 44-45] or refused to answer under a claim of privilege. [Att.



B at 45-47] Mr. King also refused to identify the "database" used in his analysis [Att. B at 47-48], the "various years" analyzed for his report [Att. B at 48-49], his means of determining what constituted a "significant deviation" in his analysis [Att. B at 49-50], the "various areas throughout Florida" from which he pulled data [Att. B at 57], and the basis that certain company employees had a "need to know" the information contained in his analysis as a reason for the distribution of the analysis to them. [Att. B at 61-62]

10. The attorney-client privilege and work product doctrine do not apply to affidavits, which have become matters of public record upon filing with the Commission. See International Paper Co. v. Fibreboard Corp., 63 F.R.D. 88, 92 (D. Del. 1974). Hence, Mr. King's responses to Public Counsel's questions concerning statements made in his affidavit are not privileged. Mr. King's refusal to answer these questions has impeded Public Counsel's ability to prepare its case. It also calls into question the company's assertion that Public Counsel has not shown the requisite need to overcome the company's work product claim. Without definite answers as to the scope of the analysis, the database forming the basis for it, the customer records involved, the purpose of the work the deponents performed, and the use made of it, Public Counsel is unable to refute the company's arguments raised in opposition to discovery. Furthermore, to permit the company to make factual assertions in its affidavits and then deny

Public Counsel the opportunity to uncover the basis for those assertions is manifestly unfair. See Internat'l Paper Co. v. Fibreboard Corp., 63 F.R.D. 88, 92 (D. Del. 1974).

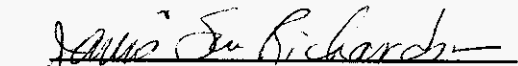
11. To the extent that the Commission on reconsideration reevaluates the parties' original arguments as to whether the underlying audits are privileged, Citizens reiterate their prior arguments and incorporate them herein. Citizens' Response and Opposition to Southern Bell Telephone and Telegraph Company's Motion for Review of Order Granting Public Counsel's Motion for In Camera Inspection of Documents and Motions to Compel, Dockets Nos. 910163-TL, 920260-TL, 900960-TL, 910727-TL (Feb. 12, 1993).

12. To the extent that the Commission on reconsideration reevaluates the parties' original arguments as to whether Ms. Martin and Mr. King may refuse to answer questions under a claim of privilege, Citizens reiterate their prior arguments and incorporate them herein. [Att. A] The prehearing officer found that since the audits and statistical analysis were not privileged, Ms. Martin and Mr. King had no privilege to refuse to answer Public Counsel's questions. Order 1136. The Commission should affirm the prehearing officer's decision.

WHEREFORE, Citizens request this Commission to deny Southern Bell's motion and compel the company to direct Ms. Martin and Mr. King to answer Public Counsel's questions.

Respectfully submitted,

JACK SHREVE  
Public Counsel

  
CHARLES J. BECK  
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Attorneys for the Citizens  
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**CERTIFICATE OF SERVICE  
DOCKET NO. 920260-TL**

I HEREBY CERTIFY that a copy of the foregoing has been furnished by U.S. Mail or hand-delivery to the following parties on this 25th day of August, 1993.

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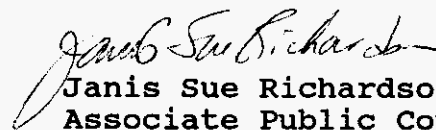
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**ATTACHMENT A: CITIZENS' MOTION TO COMPEL**

FILE COPY

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

288

In re: Investigation into the Integrity of Southern Bell's Repair Service Activities and Reports

Docket No. 910163-TL

Comprehensive Review of the Revenue Requirements and Rate Stabilization Plan of Southern Bell Telephone and Telegraph Company

Docket No. 920260-TL

Show Cause Proceeding Against Southern Bell Telephone and Telegraph Company for Misbilling Customers

Docket No. 900960-TL

Investigation into Southern Bell Telephone and Telegraph Company's Compliance with Rule 25-4.110(2), F.A.C.

Docket No. 910727-TL

February 24, 1993

CITIZENS' MOTION TO COMPEL BELLSOUTH TELECOMMUNICATIONS' ASSISTANT VICE-PRESIDENT, CENTRAL OPERATIONS MR. DANNY L. KING, AND BELLSOUTH TELECOMMUNICATIONS' MANAGER, INFORMATION SYSTEMS, MS. ETTA MARTIN TO ANSWER DEPOSITION QUESTIONS AND MOTION TO STRIKE THE AFFIDAVIT OF MR. KING

The Citizens of Florida ("Citizens"), by and through Jack Shreve, Public Counsel, request the Florida Public Service Commission ("Commission"): (1) to compel BellSouth Telecommunications, Inc., ("BellSouth") d/b/a Southern Bell Telephone and Telegraph Company to issue an order requiring BellSouth Telecommunications Assistant Vice-President, Central Operations, Mr. Danny L. King, and BellSouth Telecommunications' Manager, Information Systems, Ms. Etta Martin to answer questions asked during a deposition taken on January 12, 1993

in Birmingham, Alabama; (2) to strike the affidavit of Danny King, submitted with BellSouth's motion in opposition to Citizens' motion to compel discovery of a statistical analysis performed by Mr. King; and (3) to render an expedited decision.

1. Citizens deposed BellSouth Telecommunications Assistant Vice-President, Central Operations, Mr. Danny L. King, and BellSouth Telecommunications Manager, Information Systems, Ms. Etta Martin on January 12, 1993 at corporate headquarters in Birmingham, Alabama. During the deposition, counsel for BellSouth repeatedly directed Mr. King and Ms. Martin to refuse to answer questions. The questions generally asked about the preparation and factual contents of the company's 1991 third quarter internal audits and a statistical analysis<sup>1</sup> performed under Mr. King's direction.

2. Attachment A is a listing of each claim of privilege raised in the deposition. A single copy of the deposition accompanies this motion as Attachment B. Since the deposition extensively discusses analysis information claimed by BellSouth to contain confidential information, only one copy of the deposition is provided the Commission's Division of Records and Reporting. The Citizens expect BellSouth to soon file a line-by-line request for confidential

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<sup>1</sup> Citizens requested the production of the statistical analysis in our twenty-fourth production of documents request served on June 3, 1992. The company withheld it under a claim of privilege. Citizens moved to compel its production on July 23, 1992. Citizens' Seventh Motion to Compel and Request for In Camera Inspection of Documents, Docket No. 910163-TL (July 23, 1992).



treatment of the deposition and exhibits, at which time we will respond to that specific request.

3. Five audits were performed in the third quarter of 1991 on various aspects of the company's repair and rebate systems: LMOS (Loop Operation Maintenance System), MOOSA (Mechanized Out of Service Adjustments), KSRI (Key Service and Revenue Indicators), PSC Schedule 11, and Operational Reviews. A concurrent, but independent statistical analysis was performed under the direction of Mr. Danny L. King. The audits and the statistical analysis are claimed by BellSouth to be privileged from discovery under both the attorney-client and work product privileges.

4. BellSouth submitted an affidavit by Mr. King in support of its motion in opposition to Citizens' motion to compel production of the statistical analysis. See supra n.1. Essentially, Mr. King's affidavit claims that the statistical analysis was performed at the direction of the company's legal department "to determine the veracity of the information obtained in the investigation and to quantify any significant deviation." Affidavit, p.2, ¶ 3. [Attachment C] When asked to explain his statement that the company's legal department requested him to perform a statistical analysis of the way trouble reports were handled by various locations throughout Florida, Mr. King either limited his response to a very general statement [T44-45] or refused to answer under a claim of privilege. [T 45-47] Mr. King also refused to identify the "database" used in his analysis [T 47-48], the "various years" analyzed for his report [T 48-49], his means of determining what constituted a "significant deviation" in his analysis

[T 49-50], the "various areas throughout Florida" from which he pulled data [T 57], and the basis that certain company employees had a "need to know" the information contained in his analysis as a reason for his distribution of the analysis to them. [T 61-62].

5. BellSouth claims that the attorney-client privilege and work product doctrine allow it to not only withhold the audits and statistical analysis in their entirety, but also to refuse to answer questions concerning the factual content and structure of these reports. As the U.S. Supreme Court has stated, the attorney-client privilege protects communications not the underlying facts. Upjohn Co. v. United States, 449 U.S. 383 (1981). The audits and statistical analysis in question reviewed factual data drawn from statistical samples of customer repair records and, as such, do not comprise confidential communications. Neither the audits nor Ms. Martin's and Mr. King's possible responses to Citizens' questions regarding the factual content and structure of these reports are protected communications.

6. The prehearing officer, Commissioner Clark, found that the audits<sup>2</sup> were not privileged from discovery and ordered the company to produce these reports to Public Counsel. On reconsideration, the full Commission upheld Commissioner Clark's prehearing order at the February 18, 1993 agenda conference. The statistical analysis is a business document containing factual information. It is not

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<sup>2</sup> Order Granting Public Counsel's Motions for In Camera Inspection of Documents and Motions to Compel, Dockets Nos. 910163-TL, 920260-TL, 900960-TL, 910727-TL; Order No. PSC-93-0151-CFO-TL (Jan. 28, 1993); aff'd on reconsideration, Feb. 18, 1993 (agenda conference vote 5/0).

privileged. Public Counsel has fully briefed his arguments on this issue and incorporates those arguments by reference herein. See Citizens' Seventh Motion to Compel and Request for In Camera Inspection of Documents, Docket No. 910163-TL (July 23, 1992).

7. Clearly, neither the audits nor the statistical analysis are privileged. Therefore, BellSouth has no basis for its refusal to allow Mr. King and Ms. Martin to answer the questions posed by Public Counsel. Citizens' request the Commission to compel Ms. Martin and Mr. King to answer Public Counsel's questions related to these five audits and the statistical analysis.

8. Mr. King refused to respond to questions directed to his sworn affidavit filed by the company with the Commission. Citizens have the right to full and complete answers to questions concerning affidavits filed with the Commission by the company in support of its opposition to Citizens' motion to compel discovery.

9. The attorney-client privilege and work product doctrine do not apply to affidavits, which have become matters of public record upon filing with the Commission. Hence, Mr. King's responses to Public Counsel's questions concerning statements made in his affidavit are not privileged. Mr. King's refusal to answer these questions on the instruction of counsel has impeded Public Counsel's ability to prepare its case. It also calls into question the company's assertion that Public Counsel has not shown the requisite level of need to overcome the company's claim of work product privilege for the statistical analysis. Without definite answers as to the scope of the analysis, the database forming the basis for it, and the customer

records involved, Public Counsel is unable to refute the company's arguments raised in opposition to discovery. Citizens, therefore, request the Commission to strike Mr. King's affidavit.

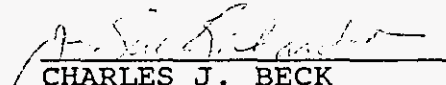
10. Upon a showing of need and an inability to reproduce the substantial equivalent without undue hardship, a party may be required to disclose the factual content of technical documents. Harris Semiconductor v. Gastaldi, 559 So. 2d 299 (Fla. 1st DCA 1990). The database and the computer system from which the statistical analysis was produced to form the factual basis for Mr. King's analysis are under the sole control of the company. BellSouth has stonewalled Citizens' assertion of need for the analysis by refusing to provide clear and complete answers to the method of statistical sampling, the database, the scope of the analysis, and the definition of significant deviations.

WHEREFORE Citizens ask this Commission to compel Ms. Martin and Mr. King to fully answer deposition questions and to strike Mr. King's

affidavit submitted with BellSouth's motion in opposition to Citizens' request for discovery of its statistical analysis.

Respectfully submitted,

JACK SHREVE  
Public Counsel

  
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Attorneys for the Citizens  
of State of Florida

**ATTACHMENT A: BELLSOUTH PRIVILEGE CLAIMS**

<u>Page/Line</u>	<u>Page/Line</u>
15--22	77-7, 23
34--9 and following	100--20
45--8	125--5
46--3	128--2
47-1, 23	138--21
49-3, 22	187--13
51--18	208--19
53-4, 17	210--22
56-11, 20	211--21
57--8	212--23
60--19	223--16
61-6, 19	226--17
65-12, 16	
73--8	
74-2, 13	
76-7, 23	

ATTACHMENT B: DEPOSITION TRANSCRIPT

ATTACHMENT C: KING AFFIDAVIT



BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition on behalf of Citizens ) Docket No. 910163-TL  
of the State of Florida to initiate )  
investigation into integrity of )  
Southern Bell Telephone and Telegraph )  
Company's repair service activities )  
and reports. )

STATE OF ALABAMA )  
COUNTY OF JEFFERSON )

AFFIDAVIT OF DANNY L. KING

BEFORE ME, the undersigned authority, personally appeared  
Danny L. King who stated that he is currently the Assistant Vice  
President, Central Office Operations Support for BellSouth  
Telecommunications, Inc., and further states the following:

1.

In May of 1991, he was requested to assist the Florida Legal  
Department in performing an internal investigation that relates  
to certain of the issues raised in this Docket. His role in the  
investigation was to assist the Legal Department in gathering and  
analyzing information necessary to render legal advice to the Company.

2.

Specifically, he was requested by the Legal  
Department to perform a statistical analysis of the manner in  
which trouble reports were handled at various locations  
throughout Florida. This process was initiated at the express  
request of the Legal Department and would not have been performed  
without the request of the Department.

3.

He was provided with specific information that was obtained by lawyers in the Florida Legal Department as part of the ongoing investigation. He then utilized a database that contained trouble histories for various years to analyze the information provided by the Legal Department. The purpose of the analysis was to determine the veracity of the information obtained in the investigation and to quantify any significant deviation. He continued the above-described efforts until the early part of 1992.

4.

During this time frame, he provided a number of reports to the Legal Department that set forth the results of the analysis. A very small number of copies of these reports exist. All have been marked and treated as privileged and attorney work product doctrine. The distribution of these reports was limited to appropriate members of the Legal Department and to certain member of the Management of Southern Bell who had a need to know the information contained therein.

FURTHER AFFIANT SAYETH NOT.

Dated this 5<sup>th</sup> day of August, 1992.

*Danny L. King*  
Danny L. King

Sworn to and subscribed  
before me this 5<sup>th</sup>  
day of August  
1992.

*Pamela B. Williams*  
Notary Public

My Commission Expires:  
Notary Public, Alabama State at Large  
My Commission Expires February 16, 1995  
Bonded by Hartford Fire Insurance Company

**CERTIFICATE OF SERVICE  
DOCKET NO. 920260-TL**

I HEREBY CERTIFY that a copy of the foregoing has been furnished by U.S. Mail or hand-delivery to the following parties on this 24th day of February, 1993.

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Janis Sue Richardson  
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**ATTACHMENT B: MARTIN/KING DEPOSITION EXCERPTS**

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BEFORE THE FLORIDA  
PUBLIC SERVICE COMMISSION

IN RE: Petition on behalf of Citizens  
of the State of Florida to Initiate  
Investigation into the Integrity of  
Southern Bell Telephone and Telegraph  
Company's Repair Service Activities and  
Reports.

Docket No. 910163-TL

Comprehensive Review of the Revenue  
Requirements and Rate Stabilization  
Plan of Southern Bell Telephone &  
Telegraph Company.

Docket No. 920260-TL

S T I P U L A T I O N

IT IS STIPULATED AND AGREED by and  
between the parties through their  
respective counsel that the depositions  
of DAN L. KING and ETTA MARTIN may be  
taken before Kerry K. Thames,

1 Commissioner, at 3535 Colonnade  
2 Parkway, Conference Room 3-B, Birming-  
3 ham, Alabama, on the 12th day of  
4 January, 1993, commencing at 9:35 a.m.

5 IT IS FURTHER STIPULATED AND  
6 AGREED that the signature to and  
7 reading of the deposition by the  
8 witness is not waived.

9 IT IS FURTHER STIPULATED AND  
10 AGREED that notice of filing of  
11 deposition by commissioner is waived.

12

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1 MS. MARTIN: What we call our  
2 primary user support group, which is a  
3 network.

4 Q. Where is that located, and  
5 who is in charge of it?

6 MS. MARTIN: The network  
7 organization that we interface with is  
8 either in Birmingham or Atlanta,  
9 there's branches of that organization,  
10 there's two -- the network organization  
11 that supports MTAS and LMOS, we have  
12 what we call by-city reporting, so the  
13 manager is in Atlanta, and some of his  
14 support staff is in Birmingham.

15 Q. And when you say his support  
16 staff, you're talking about --

17 MS. MARTIN: Gary Hall.

18 Q. Mr. Hall?

19 MS. MARTIN: Yes.

20 Q. Okay, so Mr. Hall makes  
21 requests of you, then?

22 MS. MARTIN: Yes.

23 Q. All right. Have you had



1 anything to do with modifications to  
2 MOOSA, the mechanized data service  
3 adjustment system?

4 MS. MARTIN: Yes.

5 Q. LMOS is L-M-O-S, and MTAS is  
6 M-T-A-S, okay. If you will help me  
7 with that, the court reporter, I don't  
8 think, is as familiar with the acronyms  
9 as you are and maybe not as familiar as  
10 I am.

11 MS. MARTIN: Okay.

12 Q. Well, let me ask you first,  
13 are you aware of the recent changes  
14 that have been made to LMOS and MTAS in  
15 1992?

16 MS. MARTIN: Yes.

17 Q. Were those changes made  
18 through your office?

19 MS. MARTIN: Yes.

20 Q. Was Mr. Hall responsible for  
21 asking you to make those changes, or  
22 did that information or request come  
23 from somewhere else?

1 MS. MARTIN: That would  
2 depend on exactly which change you're  
3 talking about. There are various -- we  
4 made several changes in '92 to the MTAS  
5 -- not to MTAS, but actually -- to MTAS  
6 and to LMOS, and I have to make a  
7 distinction that LMOS is actually two  
8 entities, which we call the LMOS host  
9 and the LMOS front end. I am not the  
10 primary manager responsible for  
11 changes or installations associated  
12 with that or changes for the LMOS front  
13 end, there is another manager in my  
14 department that's responsible for those  
15 changes being installed.

16 Q. And who is that?

17 MS. MARTIN: Kim, K-I-M, and  
18 Literrell, L-I-T-E-R-R-E-L-L, I think,  
19 is the spelling of his last name.

20 Q. Okay. Can you identify for  
21 me the changes that were made in the  
22 LMOS host that you were responsible for  
23 in 1992?

1 MS. MARTIN: In '92 we  
2 installed a new package from AT&T  
3 called the LMOS-G9 installation. Those  
4 were a standard release of AT&T  
5 products, so there were some enhance-  
6 ments to the software. We added a  
7 couple of new transactions to support  
8 LMOS' host application. One of the  
9 features we added was an enhancement to  
10 the DLETH transaction, actually adding  
11 some additional -- once the DLETH is  
12 displayed on line, you see some  
13 additional information that wasn't  
14 there prior to the G9 installation.

15 Q. And can you identify that  
16 information that is now displayed that  
17 wasn't displayed prior to this?

18 MS. MARTIN: That information  
19 is -- on each status line there is an  
20 entry which is the machine off time and  
21 narrative information of -- which is  
22 the ANS ID of that person that entered  
23 that intermediate status.

1 Q. I'm sorry, the AMS ID --

2 MS. MARTIN ANS.

3 Q. ANS?

4 MS. MARTIN: Yes.

5 Q. Okay, is that the access  
6 system security code identification?

7 MS. MARTIN: Yes.

8 Q. And that's for every single  
9 status line now, is what you're saying,  
10 on a dealer?

11 MS. MARTIN: That's my  
12 understanding. I would have to look at  
13 the AT&T documentation to make sure  
14 that it's every status line, but what  
15 I'm understanding is it should be every  
16 status line.

17 MR. KING: The intention was  
18 that it would be for each transaction  
19 that is completed.

20 Q. And can you tell me why this  
21 particular enhancement was made?

22 MR. CARVER: Let me stop  
23 right there. With this or with any

1 other change to the system, to the  
2 extent it was made as a result of  
3 something that came out of the  
4 privileged investigation, I'm going to  
5 ask you not to answer that. Now, if  
6 you know the reason for the change and  
7 if it's something that's unrelated to  
8 the investigation, you can answer. But  
9 if it has any relation to that, I'm  
10 going to instruct you not to answer on  
11 the basis of the attorney-client  
12 privilege.

13 MS. MARTIN: Well, I would  
14 say it would be under the basis of the  
15 attorney-client privilege, as far as I  
16 know.

17 MR. CARVER: Then I instruct  
18 you not to answer.

19 MS. MARTIN: As far as I  
20 know, the reason why we installed that  
21 feature.

22 Q. (BY MS. RICHARDSON) Just for  
23 the record, Ms. Martin, you're refusing

1 to answer my question based upon Mr.  
2 Carver's objection?

3 MS. MARTIN: Yes.

4 Q. And you have information that  
5 is responsive to my question, in other  
6 words, you could answer but for the  
7 objection?

8 MR. CARVER: In other words,  
9 you know the answer, but the answer  
10 deals with information that's come out  
11 of the investigation, and I've  
12 instructed you not to relay that  
13 information?

14 MS. MARTIN: Yes.

15 MR. CARVER: Okay.

16 Q. (BY MS. RICHARDSON) Don't  
17 let me confuse you.

18 MS. MARTIN: Okay.

19 Q. All right. If you don't  
20 understand, say I don't understand, and  
21 I'll try to rephrase it more clearly  
22 than I have just done.

23 MS. MARTIN: Okay.

1           these types of problems?    Have you  
2           written any software programs to pick  
3           out particular problems?

4                   MS. MARTIN:   And all of -- to  
5           my knowledge, the only programs that  
6           I've written would be under the  
7           attorney-client privilege that we've --  
8           that addressed any of these issues.

9                   MR. CARVER:   Well, then, to  
10          that extent, I'm going to ask you not  
11          to answer the question by providing  
12          that information.

13                  Q.       (BY MS. RICHARDSON)   And,  
14          just for the record, you have  
15          information but you're refusing to  
16          answer because your attorney has  
17          claimed privilege?

18                   MS. MARTIN:   Yes.

19                   MS. WILSON:   If I may jump  
20          in for a second and try to clarify  
21          something, are you saying that legal  
22          directed her as a computer programmer  
23          to write programs as part of the

1 internal investigation? I'm just  
2 trying to find out what the basis is  
3 for the claimed privilege.

4 MS. RICHARDSON: That's fine.

5 MS. MARTIN: Yes.

6 MR. CARVER: Why don't we go  
7 talk about this to find out what the  
8 circumstances were?

9 MS. RICHARDSON: We'll go off  
10 the record, then.

11 (Recess from 9:58 A.M. until  
12 10:05 A.M.)

13 (Record read).

14 MS. WILSON: Do we have a  
15 response to Ms. Richardson's ques-  
16 tion?

17 MR. CARVER: Yes, we do. The  
18 question which he just read back was  
19 fairly broad and, I think, encompasses  
20 a variety of possible MTAS or LMOS  
21 audits out there. So to the extent  
22 you're asking her about typical MTAS  
23 reviews and things done in the normal



1 course of business in a typical  
2 procedure, that's fine, she can answer  
3 that. To the extent the answer to the  
4 question would necessarily reveal  
5 reviews or analyses or input that she  
6 had into the investi- gations, that's  
7 what I'm objecting to her -- well, I'm  
8 objecting to the question, and I'm  
9 instructing her not to answer. Does  
10 that help?

11 MS. WILSON: Okay, just for  
12 the record, I would, if she does have  
13 an answer which is responsive to the  
14 question, I think she can identify,  
15 yes, I wrote this program, or, yes, I  
16 participated in this audit, and I would  
17 ask her to answer the question to that  
18 extent.

19 MR. CARVER: Well --

20 MS. WILSON: I think the fact  
21 of whether or not she wrote a program,  
22 whether or not that was under the  
23 direction of legal --

1 MR. CARVER: Well, I think  
2 we've identified five privileged  
3 audits. I mean if you want to go  
4 through, either one of you, and ask if  
5 she participated in those, that's fine,  
6 and if you want to ask her if she wrote  
7 programs for those, that's fine. In  
8 terms of what the program was or what  
9 the program did, I would have to ask  
10 her not to --

11 MS. RICHARDSON: Let's just  
12 go through each single one. We'll do  
13 all that series of questions and you  
14 can raise that privilege, and we'll get  
15 it all down on the record.

16 MR. CARVER: Okay.

17 Q. (BY MS. RICHARDSON) Ms.  
18 Martin and Mr. King, to the extent that  
19 you have knowledge or are personally  
20 aware, would you please tell me, did  
21 either one of you participate in the  
22 1991 third quarter company audit of the  
23 LMOS system? Ms. Martin?

1 MS. MARTIN: Yes.

2 MR. CARVER: I don't know --

3 MS. MARTIN: I'm not sure  
4 about the term, the third quarter  
5 audit --

6 Q. (BY MS. RICHARDSON) Well,  
7 the 1991 LMOS audit that the company  
8 performed as pursuant to this  
9 investigation, that the company  
10 conducted, this internal investigation  
11 into LMOS, did you participate in that  
12 particular audit that the company is  
13 claiming is privileged?

14 MS. MARTIN: Yes.

15 Q. Okay, Mr. King?

16 MR. KING: I did not partici-  
17 pate in the performance of the audit.

18 Q. Did you participate in any  
19 way in terms of review, supervision of  
20 staff individuals, or in any other  
21 manner?

22 MR. KING: Not that I know of  
23 in the performance of the audit.

1 Q. Okay.

2 MS. MARTIN: Maybe I should  
3 correct myself. I didn't participate  
4 actually as part of the team. I  
5 provided support for any of the audits,  
6 maybe that -- I should clarify that. I  
7 wasn't part of the audit.

8 Q. When you say provided support  
9 for part of the audit, what do you mean  
10 by provided support?

11 MS. MARTIN: If someone  
12 wanted some statistical -- wanted  
13 reports or data, the number of out of  
14 services that we had in 1990, that  
15 request would generally -- would have  
16 come to me, or my group, for us to  
17 write those programs to count the  
18 number of out of services or any of  
19 that kind of analysis.

20 Q. Okay, then, in terms of your  
21 particular support for the LMOS audit,  
22 my understanding from what you've just  
23 said is that there was reprogramming or

1 specific programs written for that  
2 particular audit, is that correct?

3 MS. MARTIN: Yes.

4 MR. CARVER: One other thing  
5 I'll just mention while you're doing  
6 that is in addition to the five  
7 privileged audits, the other category  
8 of things that may be implicated here,  
9 the privilege that would have to do  
10 with the analysis that Mr. King did,  
11 which are not audits per se, but, as  
12 you know, we've asserted the privilege  
13 for that also, and there is an  
14 affidavit that has been filed that sets  
15 forth the circumstances. So one or  
16 both of them may have done work that  
17 would relate to it, so I just want to  
18 make that sixth function clear also.

19 (Whereupon, Exhibit Number 2  
20 was marked for identification and copy  
21 of same is attached hereto).

22 MS. RICHARDSON: Let's get  
23 Exhibit 2 on the record first.

1 Q. (BY MS. RICHARDSON) Exhibit  
2 2 is an affidavit by Danny L. King.  
3 Mr. King, do you recognize this  
4 document?

5 MR. KING: Yes, I do.

6 Q. Okay, and is this a document  
7 which you wrote and signed?

8 MR. KING: Yes, it is.

9 Q. All right. And the date of  
10 this document is August 5th, 1992?

11 MR. KING: That's right.

12 Q. And do you know what this  
13 document was attached to, what its  
14 purpose was?

15 MR. KING: I understand what  
16 its contents are.

17 Q. Okay, do you recognize the  
18 purpose of this document, what it was  
19 used for? Do you know? .

20 MR. KING: Yes.

21 Q. And would you please explain?

22 MR. KING: Well --

23 MR. CARVER: Now, it's

1 attached to a legal pleading. Are you  
2 asking the purpose of the pleading or  
3 just why he did this affidavit?

4 MS. RICHARDSON: Well, I  
5 would like to know if he knows how his  
6 particular affidavit was used. If he  
7 just turned it over with his signature  
8 on it blindly to some other individual  
9 without knowing the purpose or use,  
10 then I would like to know that too.

11 Q. (BY MS. RICHARDSON) Mr.  
12 King, do you know how this document was  
13 used?

14 MR. KING: My understanding  
15 was that it was a part of the  
16 maintenance of the privilege around the  
17 investigation that I assisted in doing.

18 Q. And when you say the investi-  
19 gation, is that investigation at all  
20 tied to the five audits that the  
21 company is claiming under the  
22 privilege?

23 MR. CARVER: You're asking

1 him for a conclusion about a legal  
2 investigation. I'm going to object to  
3 that. I'm going to also object  
4 generally to the whole question of  
5 asking him the purpose for which legal  
6 pleadings were filed or what does this  
7 relate to. I mean he's not a lawyer,  
8 and that's not a matter appropriately  
9 directed to him. I mean this was  
10 attached to a pleading and you know  
11 what the pleading is, okay? If you  
12 want to ask him what the purpose of the  
13 affidavit was or what he was asked to  
14 set forth in the affidavit, that's  
15 fine, but I do have a problem with your  
16 saying, you know, what pleading was it  
17 attached to, how did it function, what  
18 was it supposed to do, because he's not  
19 a lawyer and that's not a fair ques-  
20 tion.

21 Q. (BY MS. RICHARDSON) Okay,  
22 Mr. King, paragraph two of your  
23 affidavit states that you were



1 requested by the legal department to  
2 perform a statistical analysis of the  
3 manner in which trouble reports were  
4 handled at various locations throughout  
5 Florida. Can you explain to me what  
6 you mean by perform a statistical  
7 analysis?

8 MR. CARVER: If you can  
9 explain that in a very general sense,  
10 then that's fine, but I don't want you  
11 to reveal the substance of the analysis  
12 you did. You're going to have to make  
13 the call as to whether or not you can  
14 give information without revealing the  
15 substance of the privileged informa-  
16 tion. If you can, you can answer. If  
17 not, I would instruct you not to.

18 MR. KING: Statistical  
19 analyses, as I would define them, would  
20 simply be to produce numerical informa-  
21 tion or comparisons that might be  
22 useful in determining the veracity of  
23 information developed during the

1 investigation.

2 Q. (BY MS. RICHARDSON) Okay,  
3 and when you say trouble reports, the  
4 manner in which trouble reports -- are  
5 you speaking specifically of customer  
6 trouble reports that are managed  
7 through the LMOS system?

8 MR. CARVER: Okay, this is  
9 too much into the substance. I'm going  
10 to object to this on the attorney-  
11 client privilege and instruct him not  
12 to answer, because now you're asking  
13 him about the substance of the analysis  
14 that he performed, and, as you know,  
15 the privilege has been asserted for  
16 that, so I'm not going to let him  
17 answer that.

18 Q. (BY MS. RICHARDSON) Do you  
19 have information that is responsive to  
20 my question, Mr. King, yes or no?

21 MR. KING: Yes.

22 Q. All right. Are you refusing  
23 to answer my question based upon Mr.

1 Carver's objection?

2 MR. KING: Yes.

3 MR. CARVER: Just so we'll be  
4 clear here on what I'm trying to do, I  
5 have no problem with either of you  
6 asking him questions as to the  
7 parameters of his involvement, you  
8 know, for purposes of determining the  
9 circumstances under which he was  
10 brought in, but obviously that would  
11 relate to whether the claim for  
12 privilege is legitimate, but in terms  
13 of the substance of what he did, I'm  
14 not going to let him answer any of that  
15 sort of stuff.

16 Q. (BY MS. RICHARDSON) Mr.  
17 King, I want to see if I can bifurcate  
18 that question in terms of if you can  
19 distinguish for me the procedures you  
20 used in conducting the statistical  
21 analysis rather than the substance of  
22 the results of what you found, would  
23 you respond to my question?

1 MR. CARVER: No, I'm not  
2 going to let him answer that either.  
3 Object, assert the attorney-client  
4 privilege.

5 Q. (BY MS. RICHARDSON) Okay,  
6 let's go back through our -- do you  
7 have information that is responsive to  
8 my question in terms of the procedures  
9 you used on statistical analysis?

10 MR. KING: Yes.

11 Q. And are you refusing to  
12 answer my question on the basis of  
13 Counsel's objection on attorney-client  
14 privilege?

15 MR. KING: Yes.

16 Q. All right. If you could turn  
17 to page two of your affidavit, Mr.  
18 King, paragraph three, it states that  
19 you used a database that contained  
20 trouble histories for various years.  
21 Would you please identify the data-  
22 base?

23 MR. CARVER: No, don't answer

1 that.

2 Q. (BY MS. RICHARDSON) We can  
3 speed this up a lot, Mr. King, if you  
4 can just sort of give me a format, I  
5 refuse to answer that question, that I  
6 have information that is responsive to  
7 your question, and I refuse to answer  
8 based upon my attorney's claiming the  
9 client- attorney privilege or something  
10 of that nature.

11 MR. CARVER: Yeah, the only  
12 thing I would add to that is if you  
13 don't know, say you don't know, if you  
14 do know, certainly I'm not -- certainly  
15 I would ask you not to answer if you  
16 say you don't know.

17 MR. KING: Okay. I refuse to  
18 answer or provide the information on  
19 the basis of Counsel's advice.

20 Q. (BY MS. RICHARDSON) All  
21 right. When it speaks about various  
22 years, would you please identify which  
23 years you looked at for this particular

1 report?

2 MR. KING: I refuse --

3 MR. CARVER: Same objection,  
4 and instruct the witness not to answer  
5 the question.

6 Q. (BY MS. RICHARDSON) And now  
7 I need you on the record, since you're  
8 the witness and Phil can't testify,  
9 which is why we go through this little  
10 rigmarole, and it takes time --

11 MR. KING: On the basis of  
12 Counsel's advice, I refuse to answer.

13 Q. Further down in paragraph  
14 three it also says that the purpose of  
15 the analysis was to determine the  
16 veracity of the information obtained in  
17 the investigation and to quantify any  
18 significant deviation. In terms of  
19 that particular statement, can you  
20 explain to me how you determine what is  
21 a significant deviation?

22 MR. CARVER: Same objection,  
23 instruct the witness not to answer the

1 question.

2 MR. KING: On the basis of  
3 Counsel's advice, I refuse to answer.

4 Q. (BY MS. RICHARDSON) Okay, it  
5 says that you continued the statistical  
6 analysis and the other information, the  
7 duties that you performed, until the  
8 early part of 1992. Can you be more  
9 specific, when in 1992 did you  
10 complete?

11 MR. CARVER: If you can  
12 answer that one, you can.

13 MR. KING: I don't recall the  
14 exact date. Early was in, I think, the  
15 January, perhaps the February time  
16 frame, but it was, in fact, early in  
17 the year.

18 Q. (BY MS. RICHARDSON) Do you  
19 know what happened -- or who did you  
20 give the results to? When you  
21 completed your report or analysis or  
22 whatever it is you did, to whom did you  
23 deliver this particular report?

1 MR. CARVER: You can answer  
2 that.

3 MR. KING: I provided it to  
4 our BellSouth legal representative  
5 and/or to counsel that they directed me  
6 to provide it to.

7 Q. (BY MS. RICHARDSON) And the  
8 BellSouth legal representative is?

9 MR. KING: In this case, it  
10 was Bob Fitzgerald and Lloyd Nault.

11 Q. Lloyd --

12 MR. KING: Lloyd Nault.

13 Q. Would you spell that, please?

14 MR. KING: N-A-U-L-T.

15 Q. N-A-U-L-T. Thank you. Do  
16 you know what use was made of the work  
17 that you had performed?

18 MR. CARVER: You can answer  
19 yes or no, but if the answer is yes,  
20 I'm going to instruct you not to  
21 provide any additional information  
22 beyond that on the basis of the  
23 attorney-client privilege.



1 MR. KING: I can't say that I  
2 know the total use that was made of it,  
3 but it's my understanding it was used  
4 to --

5 MR. CARVER: Whoa. Just yes  
6 or no.

7 MR. KING: The proper answer  
8 is I'm not sure.

9 Q. (BY MS. RICHARDSON) But you  
10 have some knowledge about its possible  
11 use?

12 MR. KING: Yes.

13 Q. Do you know if your results  
14 were used to make any changes in the  
15 repair and rebate systems for the  
16 company?

17 MR. CARVER: You mean his  
18 results --

19 MS. RICHARDSON: His find-  
20 ings.

21 MR. CARVER: Independent of  
22 the investigation or as part of the  
23 whole larger thing -- I'm just asking

1 for a clarification of the question.

2 MS. RICHARDSON: In any  
3 respect.

4 MR. CARVER: Okay, then I'm  
5 going to instruct him not to answer.

6 Q. (BY MS. RICHARDSON) Do you  
7 have that information?

8 MR. KING: On the basis of  
9 Counsel's advice, I refuse to answer.

10 Q. Okay, but you do have some  
11 information and some knowledge?

12 MR. KING: Yes.

13 Q. Are you aware of whether or  
14 not your findings were used as a basis  
15 to discipline any employee in the  
16 company?

17 MR. CARVER: I'm going to  
18 object to that one and instruct him not  
19 to answer.

20 MR. KING: On the basis of  
21 Counsel's advice, I refuse to answer.

22 Q. (BY MS. RICHARDSON) Okay,  
23 but you do have information that is

1 responsive to my question?

2 MR. KING: Some.

3 Q. Are you aware that close to  
4 one-third of the managers in Southern  
5 Bell have been disciplined as a result  
6 of the company's internal investi-  
7 gation?

8 MR. CARVER: I'm going to  
9 object -- well, I'm going to object to  
10 the form of the question, but if you  
11 want to accept her assumption and  
12 answer, that's fine.

13 MR. KING: I don't know what  
14 percentage of the employees in Southern  
15 Bell have been disciplined.

16 Q. (BY MS. RICHARDSON) But you  
17 are aware that there have been  
18 employees disciplined?

19 MR. KING: Yes.

20 Q. Do you know how many?

21 MR. KING: No.

22 Q. Do you have an approximate  
23 number?

1 MR. KING: No.

2 Q. Ms. Martin, are you aware  
3 that employees have been disciplined  
4 based upon the company's findings in  
5 their investigation?

6 MR. CARVER: Object to the  
7 form of the question, but you can  
8 answer.

9 MS. MARTIN: No.

10 Q. (BY MS. RICHARDSON) Are you  
11 aware that any employees have been  
12 disciplined?

13 MS. MARTIN: No -- no, not --  
14 formal knowledge of that, no.

15 Q. Do you have any secondhand  
16 knowledge, have you heard, are you  
17 aware of that just generally?

18 MS. MARTIN: Well, you're --  
19 I don't know how to answer this. In  
20 any organization, there is always a  
21 rumor mill that runs, so that know-  
22 ledge, I have no way of saying that  
23 that's something that I would want to

1 say that I actually know. You know,  
2 you always hear that, but I can't say  
3 that I personally know or have been  
4 told or read in a publication that  
5 disciplinary actions were taken of its  
6 employees.

7 Q. All right. Mr. King, can you  
8 describe for me the volume of documents  
9 involved in your particular analysis  
10 that was described in your affidavit?

11 MR. CARVER: I'm going to  
12 object to that one also and instruct  
13 the witness not to answer.

14 MR. KING: On the basis of  
15 Counsel's advice, I refuse to answer.

16 Q. (BY MS. RICHARDSON) All  
17 right. Were customer -- specific  
18 individual customer trouble records  
19 looked at in your analysis?

20 MR. CARVER: Object to the  
21 question and instruct the witness not  
22 to answer.

23 MR. KING: On the basis of

1 Counsel's advice, I refuse to answer.

2 Q. (BY MS. RICHARDSON) When it  
3 says that various areas throughout  
4 Florida were looked at, would you  
5 please identify which areas you looked  
6 at or which specific IMC's you pulled  
7 information from?

8 MR. CARVER: Object to the  
9 question and instruct the witness not  
10 to answer.

11 MR. KING: On the basis of  
12 Counsel's advice, I refuse to answer.

13 Q. (BY MS. RICHARDSON) Under  
14 paragraph four of your affidavit you  
15 indicate that you gave the report or  
16 the reports were limited to appropriate  
17 members of the legal department, and  
18 we've identified Mr. Nault as their  
19 representative, and to certain members  
20 of the management of Southern Bell who  
21 had a need to know. Would you please  
22 identify those individuals for me?

23 MR. CARVER: You want legal

1 department or management?

2 MS. RICHARDSON: The manage-  
3 ment of Southern Bell who had a need to  
4 know the information contained therein,  
5 quote.

6 MR. CARVER: If you know --

7 MS. RICHARDSON: Well, it's  
8 his affidavit and it's got his name on  
9 it, and he signed it as having written  
10 this statement.

11 Q. (BY MS. RICHARDSON) Did you  
12 write this statement, Mr. King?

13 MR. KING: Yes, I did.

14 Q. Would you please explain --

15 MR. CARVER: Let me back up a  
16 little bit. I mean he may not know the  
17 specific individuals that had a need  
18 to, but if he does, he can answer it.  
19 That's fine.

20 Q. (BY MS. RICHARDSON) Did you  
21 -- is this on oath? Have you sworn to  
22 this affidavit, Mr. King?

23 MR. KING: Yes, I did.

1 Q. And this is your statement?

2 MR. KING: Yes, it is.

3 Q. All right. And you did say  
4 to certain members of the management of  
5 Southern Bell who had a need to know  
6 the information contained therein?

7 MR. KING: Yes.

8 Q. Do you know, can you identify  
9 the members of management of Southern  
10 Bell?

11 MR. KING: I can identify  
12 those to whom I personally provided the  
13 information, yes.

14 Q. Okay, please do so.

15 MR. CARVER: You --

16 MR. KING: Say again?

17 MR. CARVER: That's fine, go  
18 ahead.

19 MR. KING: Okay. And this  
20 applies to only pieces of the informa-  
21 tion, not the entire amount of  
22 information.

23 Q. (BY MS. RICHARDSON) Okay.



1 MR. KING: Joe Lacher, Jerry  
2 Sanders, Duane Acker. In one very  
3 early session, Frank Skinner and Walt  
4 Sessoms.

5 Q. S-E-S --

6 A. S-O-M-S, I believe.

7 Q. And Mr. Lacher's spelling for  
8 the court reporter?

9 MR. KING: L-A-C-H-E-R.

10 Q. And you said pieces of  
11 information were given to each of these  
12 individual people that you just  
13 identified?

14 MR. KING: Yes.

15 Q. All right. When you say  
16 pieces of your statistical report, can  
17 you be more specific in terms of what  
18 pieces?

19 MR. CARVER: No. No, he  
20 can't. I'm going to object to that and  
21 instruct him not to answer.

22 MR. KING: On the basis of  
23 Counsel's advice, I refuse to answer.

1 Q. (BY MS. RICHARDSON) Okay,  
2 and can you please tell me what Mr.  
3 Lacher's need to know that information  
4 -- on what basis he needed to know the  
5 information that you had?

6 MR. CARVER: No, I'm not  
7 going to let him answer that.

8 MR. KING: On the basis of  
9 Counsel's advice, I refuse to answer.

10 MS. RICHARDSON: And are we  
11 claiming privilege, Phil, is that it?

12 MR. CARVER: Yes.

13 Q. (BY MS. RICHARDSON) Then I'm  
14 going to ask that same question for  
15 each of these individual people. Can  
16 you tell me what Mr. Sanders' need to  
17 know was for the piece of information  
18 that you gave him?

19 MR. CARVER: Same objec-  
20 tion. Just so the record will be  
21 clear, the reason I'm objecting is  
22 because I think it would be difficult  
23 if not impossible to reveal their need

1 to know without also revealing the  
2 substance of what was told to them, so  
3 in order to preserve the privilege, I'm  
4 instructing him not to answer for that  
5 reason.

6 Q. (BY MS. RICHARDSON) Okay,  
7 and then just --

8 MR. CARVER: And it's the  
9 same objection for all five, I'm not  
10 going to let him answer for any of the  
11 five.

12 Q. (BY MS. RICHARDSON) Then one  
13 statement for all five would be fine.

14 MR. KING: On the basis of  
15 Counsel's advice, I refuse to answer.

16 Q. Okay. Did you give an oral  
17 report of your findings or a written  
18 report or both, and that's three  
19 questions, so I can break it down if  
20 you need me to?

21 MR. CARVER: You can answer  
22 that.

23 MR. KING: The -- it was

1 largely oral, but there was some  
2 written information used during these  
3 conversations.

4 Q. All right. And was that  
5 written information information that  
6 you wrote that you provided?

7 MR. KING: Yes.

8 Q. And orally, who did you  
9 present this information to?

10 MR. KING: To the parties we  
11 just cited.

12 Q. Is that Mr. Lacher, Mr.  
13 Sanders, Mr. Ackerman, Mr. Skinner, Mr.  
14 Sessoms?

15 MR. KING: Yes.

16 Q. Did that also include Mr.  
17 Nault?

18 MR. KING: No, it included  
19 Mr. Fitzgerald.

20 Q. And then, if you would, is  
21 there a title or some way that your  
22 particular written report is identified  
23 within the company? Does it have some

1 kind of form number or identification  
2 that you're aware of, or a title that  
3 you've given it, or a date or some  
4 other way to identify that particular  
5 document?

6 MR. CARVER: Is there a title  
7 or a way that you can identify it  
8 without revealing the substance of it?  
9 If there is, you can give her that. If  
10 it's titled in such a way that it's  
11 going to necessarily reveal the  
12 substance, then don't answer the  
13 question.

14 MR. KING: To my knowledge,  
15 there is no formal title.

16 Q. (BY MS. RICHARDSON) Is there  
17 a date on the document?

18 MR. KING: The -- there is  
19 not a single date on the document,  
20 because they -- the documents were  
21 dated when produced.

22 Q. All right. Is this, then, a  
23 series of reports that are lumped

1 together in one single report, is that  
2 how this is working?

3 MR. CARVER: You can answer  
4 that.

5 MR. KING: There is more than  
6 one report, and they are aggregated  
7 together.

8 Q. (BY MS. RICHARDSON) And in  
9 this series, is each individual report  
10 a different aspect or a different focus  
11 than each of the other reports, or --

12 MR. CARVER: Object.

13 Q. (BY MS. RICHARDSON) -- are  
14 they an ongoing search for the same  
15 piece of information?

16 MR. CARVER: I'm going to  
17 object to that question and instruct  
18 the witness not to answer on the basis  
19 of privilege.

20 MR. KING: On the basis of  
21 Counsel's advice, I refuse to answer.

22 Q. (BY MS. RICHARDSON) Okay, is  
23 there a summary?

1 MR. CARVER: You can answer  
2 that.

3 MR. KING: Could you clarify  
4 what you mean by summary?

5 Q. (BY MS. RICHARDSON) Was  
6 there a written summary of these -- you  
7 have a series of aggregated reports.  
8 Is there a final written summary for  
9 these that aggregates all of the  
10 information in one piece?

11 MR. KING: There is no  
12 written summary.

13 Q. But you provided an oral  
14 summary of these results to these  
15 individuals that you have identified?

16 MR. CARVER: You can answer  
17 that.

18 MR. KING: I provided oral  
19 summaries, but not to the entire  
20 universe that was previously mention-  
21 ed.

22 Q. (BY MS. RICHARDSON) Have you  
23 given one complete oral summary to any

1 individual within the company, or group  
2 of individuals?

3 MR. KING: Yes.

4 Q. And can you identify that  
5 individual for me?

6 MR. KING: Bob Fitzgerald.

7 Q. And what is Mr. Fitzgerald's  
8 title, please?

9 MR. KING: I don't know  
10 specifically, but I think it's vice  
11 president, general counsel.

12 Q. Ms. Martin, I'm going back  
13 now and asking -- we've asked about the  
14 LMOS audit. I would like to ask about  
15 the operational review audit that was  
16 conducted by the company in 1991. Did  
17 you participate in that audit?

18 MS. MARTIN: Not to my know-  
19 ledge.

20 Q. Not to your knowledge. Mr.  
21 King, did you participate at all in the  
22 operational review audit that was  
23 conducted by the company?



1 MR. KING: I did not in any  
2 way that I recall participate in the  
3 performance of the operational review  
4 audit.

5 Q. Okay, did either of you  
6 provide any kind of support services  
7 for that particular audit, you or your  
8 staffs?

9 MR. CARVER: Do you under-  
10 stand the question??

11 MS. MARTIN: I'm not clear on  
12 the operational review, the particular  
13 operational review audit that she's  
14 addressing, so I can't really say.

15 Q. (BY MS. RICHARDSON) You may  
16 have or may not have is what you're  
17 saying?

18 MS. MARTIN: Correct.

19 Q. Okay, are you familiar, do  
20 you know if you provided any support  
21 services for the operational review  
22 audit?

23 MR. KING: To my knowledge, I

1 didn't provide any support to the  
2 performance of the audit.

3 MS. WILSON: Excuse me, Sue,  
4 I'm sorry. We're confused as to which  
5 operational --

6 MS. RICHARDSON: The 1991  
7 third quarter operational review audit  
8 that was performed. In Ms. Johnson's  
9 deposition she testified that there  
10 were five audits, not the four that  
11 Southern Bell had disclosed in their  
12 attachment A to their response to our  
13 first motion to compel in 920260. When  
14 we deposed Ms. Johnson, as you  
15 remember, she had testified to a fifth  
16 audit that had been conducted, and it  
17 was of the operational review process,  
18 and that's the audit that I'm referring  
19 to.

20 MS. WILSON: Thank you. I'm  
21 sorry to interrupt you.

22 MS. RICHARDSON: No, that's  
23 fine. I want you with me on that.

1 Q. (BY MS. RICHARDSON) Okay,  
2 does that clarify it for either one of  
3 you as to which operational review  
4 audit I'm referring to, and do you need  
5 to change any of your responses on that  
6 particular question?

7 MR. KING: Do you have  
8 numbers for these audits?

9 Q. (BY MS. RICHARDSON) Unfor-  
10 tunately I do not have numbers. That  
11 was not disclosed. That's also a piece  
12 of information the company has claimed  
13 privilege for, so I don't have those  
14 numbers.

15 MS. MARTIN: We -- I can't  
16 say that I did or didn't based on the  
17 fact that I'm not -- we received  
18 requests, and you're not quite -- I may  
19 receive a request. Whether or not I  
20 was aware that that request for data  
21 was associated with an audit, I can't  
22 say, an operational review audit.

23 Q. Okay, then let me take it

1 this direction for a moment before I  
2 get on to the other three audits. Is  
3 it standard procedure, Ms. Martin, for  
4 the auditing department, Ms. Johnson or  
5 anyone who works underneath her, or Mr.  
6 Easterling, to request your assistance  
7 with audits that the company performs?

8 MS. MARTIN: If they are  
9 auditing my particular entity, yes,  
10 they will come in and actually have an  
11 interview with us to discuss what  
12 they're auditing, and if we can be of  
13 assistance to that audit, we are then  
14 requested to be of assistance to that  
15 audit.

16 Q. Okay, then I would like you  
17 to cast your memory back, if you can,  
18 both of you, from the time frame of  
19 April of 1991 to roughly October '91,  
20 November '91. During that approxi-  
21 mately seven-month period of time did  
22 Ms. Johnson or Mr. Easterling or  
23 someone working with Ms. Johnson in the

1 11:00 A.M.)

2 Q. (BY MS. RICHARDSON) I would  
3 like to look at Exhibit 1 again,  
4 Section A, Part I --

5 MR. CARVER: May I interrupt  
6 for just a one second --

7 MS. RICHARDSON: Sure.

8 MR. CARVER: -- I just want  
9 to say during the break Mr. King  
10 thought of a couple of things that were  
11 responsive to earlier questions that he  
12 didn't remember at the time that he's  
13 recollected, so he and I think that it  
14 would be a good idea to clear up those  
15 answers.

16 MS. RICHARDSON: That will be  
17 fine.

18 MR. KING: There were two  
19 amendments. One of them was the list  
20 of people with whom I had discussions  
21 about at least some part of my  
22 investigation. Charlie Cuthbertson was  
23 in that list, and I did not remember

1 him earlier. The second amendment  
2 would be to the number of reports that  
3 have been added. There is one other  
4 that I recall that is called the  
5 backdate report.

6 Q. (BY MS. RICHARDSON) Can you  
7 describe the backdate report?

8 MR. KING: The backdate  
9 report produces a list of troubles  
10 where the time that the troubles are  
11 entered is different from the time --  
12 the receipt time entered on the report.

13 Q. Can you describe the excluded  
14 reports, the standard MTAS report?

15 MR. KING: The exclusion  
16 report is simply a sample of excluded  
17 reports.

18 Q. All right. Are those the  
19 excluded reports that are CX'd in the  
20 subsequent report process, or are those  
21 reports that are final statused as an X  
22 on the final status for the close-out?

23 MR. KING: These are troubles

1 Q. You have no knowledge of the  
2 final analysis of these audits, is that  
3 correct?

4 MS. MARTIN: That's correct.

5 Q. Have you seen a summary of  
6 any of these five audits?

7 MS. MARTIN: No.

8 Q. Have you heard a summary of  
9 any of these five audits?

10 MS. MARTIN: No.

11 Q. Has anyone informed you in  
12 any manner as to the findings of these  
13 five audits?

14 MS. MARTIN: Is the MOOSA --

15 Q. MOOSA was one of those, yes.

16 MS. MARTIN: Yes.

17 Q. Okay, did you assist in the  
18 programmatic changes to MOOSA that were  
19 made after the conclusion of that  
20 particular audit?

21 MS. MARTIN: Yes.

22 Q. Is it your understanding that  
23 the changes to MOOSA were an outgrowth

1 of the findings of that audit?

2 MR. CARVER: Okay, I'm going  
3 to object to that one and instruct you  
4 not to answer on the basis of  
5 privilege.

6 MS. MARTIN: Based on Coun-  
7 sel, I'm not answering that question.

8 Q. (BY MS. RICHARDSON) Can you  
9 identify the changes that you assisted  
10 in performing or correcting in MOOSA?

11 MR. CARVER: You can answer  
12 that.

13 MS. MARTIN: Okay, the  
14 changes, and this may not be an all  
15 inclusive list, we added a -- what we  
16 call a tracking number to each MOOSA  
17 record that we identified -- yeah, we  
18 added tracking records, what we call a  
19 header and trailer, to the file that I  
20 send to CRIS, and that's C-R-I-S,  
21 Customer Record Information System, I  
22 think, is the acronym --

23 Q. (BY MS. RICHARDSON) Thank



1       you.

2                       MS. MARTIN:   -- header and  
3       trailer, and that trailer actually had  
4       a counter that told the total number of  
5       records that I was receiving -- that I  
6       was sending so that we would be able to  
7       do a check and balance, really, was the  
8       way of saying I was supposed to send  
9       you ten records, and I've actually sent  
10      you ten records, tracking records.

11      Prior to the investigation, LMOS was  
12      identifying certain records as, in  
13      quotes, manual records, that were, by  
14      that definition, manual -- multi-line  
15      accounts, accounts that had more than  
16      one line associated with them, not a  
17      single line residence account or a  
18      single line business account.

19                       We were looking in our  
20      database saying that that was a  
21      multi-line account and flagging that  
22      and sending it to customer service.  
23      The enhancement we made was that we

1 stopped making that analysis  
2 process. We allowed -- we passed  
3 everything that met the MOOSA criteria  
4 over to CRIS and allowed them to do the  
5 analysis of whether or not that record  
6 was multi-lined or not. I think those  
7 are the big major changes.

8 We also -- however, we made  
9 some enhancements that we -- at one  
10 time we were looking at the receipt to  
11 clear time to make the analysis of  
12 whether that was that outer -- that  
13 record met the MOOSA criteria over  
14 twenty-four hours, and we've changed it  
15 so that we now look at the T time,  
16 which is a machine time and not a time  
17 that a technician can actually enter on  
18 the trouble. So we used the receipt to  
19 FST time to determine whether he was  
20 over twenty-four hours or not. We  
21 looked at some of the dispositions that  
22 we were using in our analysis to  
23 determine whether or not a trouble was

1 a candidate for the MOOSA selection  
2 criteria and made some enhancements to  
3 those, maybe reduced -- I'm not -- to  
4 tell you that I know I reduced them or  
5 added, I'm not quite sure at this  
6 moment in time. And there may be some  
7 other things, but I think I've listed  
8 some of them in an interrogatory that  
9 may help --

10 Q. Yeah, let me see if I've got  
11 something here.

12 MS. MARTIN: Yeah.

13 Q. I think I've got one thing  
14 here that may have been it, and I think  
15 what we'll do, probably, if this is  
16 already summarized, what you've done,  
17 then that's sufficient.

18 MS. MARTIN: Okay.

19 Q. If you need to look at this  
20 to add, then we'll use it to add. I  
21 should have handed it to you to begin  
22 with.

23 (Whereupon, Exhibit Number 5

1 MS. MARTIN: No, it was still  
2 the verbal, and the OM that made the  
3 call to me -- I mean that we talked to  
4 was Doug Harkness. I do remember that  
5 name also.

6 Q. H-A-R-K-N-E-S-S?

7 MS. MARTIN: Yes., H-A-R-K-  
8 N-E-S-S, yes.

9 Q. Okay.

10 MS. MARTIN: But, no --

11 Q. Do you know if that was a  
12 result of what the company found in the  
13 internal audits?

14 MS. MARTIN: I'm not sure. I  
15 just got the verbal call that said we  
16 should remove bulk dispatch as part of  
17 the selection criteria.

18 Q. All right. Mr. King, I'm not  
19 sure I'm clear on your role in  
20 performing the statistical analysis and  
21 why you did that. Was that within your  
22 routine responsibilities and job duties  
23 for the company, doing that statistical

1 analysis?

2 MR. KING: No.

3 Q. Do you know why you were  
4 selected to do it, then, if it was not  
5 part of your normal job duties?

6 MR. KING: Yes, I think so.

7 Q. Would you please explain?

8 MR. KING: The -- I was --

9 MR. CARVER: Well, can you  
10 explain it without getting into the  
11 substance of what you did?

12 MR. KING: I think so.

13 MR. CARVER: Okay.

14 MR. KING: I was selected  
15 because I wasn't -- to do the analyses,  
16 to assist legal in their investigation,  
17 partly because of my skill, my back-  
18 ground. I had had some experience in  
19 this arena, and I think because I was  
20 sufficiently distant from the investi-  
21 gation that I could do it -- do the  
22 investigation objectively.

23 Q. (BY MS. RICHARDSON) Was your

1 investigation independent and coinci-  
2 dent to -- or complementary to the  
3 audits that were performed, in other  
4 words, were you sort of a validation of  
5 what they were finding in the audits,  
6 is that what I hear you saying, an  
7 independent check?

8 MR. KING: It was -- the  
9 intention was not necessarily to  
10 validate the findings of the audit.

11 Q. Okay.

12 MR. KING: But, rather, to  
13 determine the veracity of the findings  
14 of the investigation that legal had  
15 conducted, a part of which, I guess,  
16 would include the audits.

17 Q. And part of which would  
18 include the employee statements that  
19 legal had taken, then?

20 MR. KING: Part of which --

21 MR. CARVER: Well, at this  
22 point we're starting to get into too  
23 many specifics. I'm going to instruct

1 him not to go any further than that.

2 MR. KING: Okay, on the basis  
3 of Counsel's advice, I refuse to  
4 answer.

5 Q. (BY MS. RICHARDSON) Okay.

6 (Whereupon, Exhibit Numbers 6  
7 through 8 were marked for identifica-  
8 tion and copies of same are attached  
9 hereto).

10 Q. (BY MS. RICHARDSON) Okay, I  
11 am distributing three exhibits.

12 Exhibit 6 is Citizens' 21st Interroga-  
13 tory, Item Number 6. The next one is  
14 Exhibit 7, which is Citizens' 13th  
15 Interrogatory, Item Number Seven. And  
16 Exhibit 8 is a Late Filed Exhibit,  
17 Number Sixteen, from the May 21st  
18 panel.

19 Okay, and this is addressed  
20 to both of you, still, Ms. Martin, Mr.  
21 King. Are either one of you or both  
22 familiar with the no access codes,  
23 status codes, used in trouble reports?

1 MS. MARTIN: Are you saying  
2 your fields are blank?

3 MR. GREER: I think so. I'll  
4 check and see, but as long as I know  
5 that's your understanding of what had  
6 been used, that will be fine.

7 MS. RICHARDSON: Stan, is  
8 that all for now on that?

9 MR. GREER: Yes.

10 (Whereupon, Exhibit Number 10  
11 was marked for identification and copy  
12 of same is attached hereto).

13 Q. (BY MS. RICHARDSON) Okay,  
14 Exhibit 10 is Citizens' Third  
15 Interrogatory, Item Six, from Docket  
16 727, and Exhibit 11 is two graphs  
17 produced by the Office of Public  
18 Counsel.

19 (Whereupon, Exhibit Number 11  
20 was marked for identification and copy  
21 of same is attached hereto).

22 Q. (BY MS. RICHARDSON) Ms.  
23 Martin, on Exhibit 10, the company



1 response provided by Mr. Hall to the  
2 graphs that you see on Exhibit 11, now,  
3 there was a series of graphs that were  
4 submitted as Exhibit 28 in the panel  
5 deposition done this past summer, and  
6 these are just graphs number four and  
7 ten, and I just really want to ask one  
8 or two short questions on the spikes  
9 that we see on the graphs on January  
10 31, 1992. Mr. Hall's response to that  
11 indicates that there may have been some  
12 historical rebating activity occurring.  
13 Do you know anything about that? Were  
14 you involved in any way?

15 MS. MARTIN: Yes.

16 Q. Okay, and what can you tell  
17 me about that?

18 MS. MARTIN: I'm not quite  
19 sure of the cutoff -- between -- we had  
20 discovered that there were -- between  
21 August of '90 and May of '91 that there  
22 were situations whereby customers  
23 should have been rebated, but for a --

1 various reasons they were not rebated.  
2 We were given the charge to go back and  
3 try to see if we could quantify --  
4 actually identify those customers that  
5 we had missed in those -- in that  
6 process, so what we did was -- what I  
7 did -- what we actually -- was  
8 performed was we looked at all of the  
9 records that we had sent to CRIS -- on  
10 my side we looked at all of our records  
11 we had sent to CRIS for that period of  
12 time, actually looking at those five  
13 hundred byte records and selecting from  
14 offices, these are the guides that --  
15 I'm going to say it was maybe August  
16 that we were running, August of '91, we  
17 looked up everybody that should have  
18 been a candidate for a rebate. We then  
19 requested CRIS to give us a file of  
20 those customers that actually -- that  
21 they thought had actually had a rebate  
22 posted to their account. We compared  
23 those two files. If there was a match,

1 we threw that record away. If there  
2 was not a match, that meant that I had  
3 a record that CRIS did not have, and I  
4 then created a file to send to CRIS of  
5 that actual outage, and we passed that  
6 data to them sometime in '91, but I  
7 think it was probably in the January,  
8 February time frame that they actually  
9 posted it against that, the day it  
10 actually got posted to the customer's  
11 account.

12 Q. Okay, did you have to go back  
13 and look at the actual DLETH's to do  
14 that?

15 MS. MARTIN: No, we used the  
16 five hundred byte record we've been  
17 talking about.

18 Q. What criteria, what offsets,  
19 or what fields, I'm not sure of the  
20 terminology, did you look at?

21 MS. MARTIN: We used the same  
22 -- we took the current MOOSA programs  
23 that we had in place in that time frame

1 and ran those five hundred byte records  
2 back through and if they came out  
3 saying that he met the MOOSA criteria,  
4 he was a candidate for being rebated.

5 Q. So no attempt, then, was made  
6 for that particular set to change that  
7 MOOSA criteria, for example, the bulk  
8 dispatch out, which is no longer  
9 recognized as appropriate for MOOSA,  
10 was not removed at that point from the  
11 criteria?

12 MS. MARTIN: Yes, it was,  
13 because it was after May, and I think I  
14 said I removed the bulk dispatch in May  
15 of '91.

16 Q. All right. Was anything else  
17 changed in that MOOSA selection  
18 criteria?

19 MS. MARTIN: Anything in the  
20 other interrogatories that we said we  
21 had made as changes prior to -- like  
22 all of the things that are on that  
23 exhibit that were made in August.

1 Q. I'm trying to find it,  
2 Exhibit 5?

3 MS. MARTIN: Yes, Exhibit 5  
4 because it was using the current MOOSA  
5 criteria at the time that we made the  
6 selection criteria.

7 Q. Okay.

8 MS. MARTIN: So if we had at  
9 that point decided that this disposi-  
10 tion should have been excluded, or this  
11 bulk dispatch, it was also part of the  
12 new selection criteria. So technical-  
13 ly, if a customer, in '90, because we  
14 didn't have -- we were still excluding  
15 that customer because of bulk dispatch,  
16 when I looked at that customer in '90,  
17 late '91, then that customer would have  
18 been a candidate for rebating.

19 Q. Do you know approximately how  
20 many customers were rebated through  
21 that?

22 MS. MARTIN: No.

23 Q. You don't. Do you know if

1 that was completed, that all of the  
2 rebates that you identified were  
3 actually given?

4 MS. MARTIN: I don't have  
5 that knowledge.

6 Q. Okay.

7 MS. MARTIN: I can't tell you  
8 that every customer -- at the point  
9 when I passed that file over to the  
10 CRIS system, I lose assurance or  
11 anything -- I'm not sure how they  
12 process that after I pass the file to  
13 CRIS.

14 Q. In looking at the graph,  
15 which is Exhibit 11, just number four  
16 there, and these are the MOOSA records  
17 processed in Jacksonville, one of the  
18 three regional accounting offices, I  
19 see one point three thousand for  
20 January 31, or approximately, to that,  
21 on graph ten, which is a Ft. Lauderdale  
22 RAO, somewhere around two point five  
23 thousand on that particular spike, does

1 this seem to be an excessive number of  
2 records to you that MOOSA missed?

3 MR. CARVER: Object to the  
4 form of the question as -- well, you  
5 can answer.

6 MS. MARTIN: Based on  
7 Counsel's objection --

8 MR. CARVER: No, you can  
9 answer it. I'm just objecting to her  
10 use of the word excessive --

11 Q. (BY MS. RICHARDSON) He  
12 doesn't like the way I asked the  
13 question, but you can answer.

14 MR. CARVER: It's not  
15 privileged.

16 MS. MARTIN: Okay.

17 Q. (BY MS. RICHARDSON) I know  
18 it's confusing. I get confused too.  
19 That's all right. You're doing great.

20 MS. MARTIN: I'm not sure. I  
21 don't look at it on a daily basis, you  
22 know, I can't tell you that in any --  
23 on an average day am I sending a

1 thousand or am I sending two thousand  
2 rebates over, I'm not sure. I've never  
3 really gotten to the point of actually  
4 doing that kind of analysis on it, on  
5 the rebates.

6 Q. Okay.

7 MS. MARTIN: So I can't tell  
8 you that, yes, that looks excessive to  
9 me.

10 Q. Were the historical rebates  
11 that were done in any way a result of  
12 or a spur to or tied into the MOOSA  
13 audit that was done in '91?

14 MR. CARVER: Okay, I'm going  
15 to object to that. You're asking is  
16 this spike a result of --

17 MS. RICHARDSON: No, I'm  
18 asking the historical rebates that Ms.  
19 Martin assisted in performing in  
20 January and identifying, the ones that  
21 were done in January, she indicated  
22 that they were done about that time  
23 period, based upon the work that she



1 had done, going back and using the  
2 MOOSA criteria, running it back through  
3 that time frame of August of '90  
4 through something in '91, May of '91,  
5 if at all that was tied into the MOOSA  
6 audit.

7 MS. MARTIN: It was -- it was  
8 part of the MOOSA task force and our  
9 discovery that when we -- it was  
10 identified because of the --

11 MR. CARVER: Well, let me  
12 stop you there. If it was fixing a  
13 problem that came to light as a result  
14 of the investigation and that  
15 investigative material was provided to  
16 you, then I don't want you to say what  
17 the problem was. If you want to say,  
18 yes, this was to fix something that,  
19 you know, came out of that, if this was  
20 a remedial measure that related to  
21 that, you can say that much, but don't  
22 go into specifically what came out of  
23 the investigation. And if you need to

1 talk off the record a little bit about  
2 where the line is, we can do that  
3 too.

4 Q. (BY MS. RICHARDSON) I know  
5 it's a lot, but you've got to make the  
6 decision.

7 MR. CARVER: Do you want to  
8 take a break?

9 MS. MARTIN: Yes.

10 (Recess from 1:30 P.M. until  
11 1:35 P.M.)

12 (Record read).

13 MR. CARVER: Okay, I'm going  
14 to instruct her not to answer that.

15 MS. RICHARDSON: Based on?

16 MR. CARVER: Attorney-client  
17 privilege.

18 MR. POUCHER: She already has  
19 answered, she said it was part of the  
20 MOOSA task force.

21 MR. CARVER: I don't believe  
22 that answer is really responsive.

23 MS. RICHARDSON: So you're

1 directing her not to further answer  
2 besides that, not to clarify how it was  
3 part of the MOOSA task force?

4 MR. CARVER: Okay. Let me  
5 see if I can clarify this. To the  
6 extent the MOOSA task force was dealing  
7 with information that came from the  
8 privileged audit, I will instruct her  
9 not to reveal any of the substance of  
10 that information coming out of the  
11 privileged audit, okay. Now, the MOOSA  
12 task force may well have worked with  
13 other information from other sources  
14 that's not privileged, and she can talk  
15 about that, so I have no problem with  
16 her revealing that the MOOSA task force  
17 was related to this. I have no problem  
18 with her talking about anything that  
19 the MOOSA task force did except in  
20 those instances where it was based on  
21 information that specifically came from  
22 a privileged audit.

23 Q. (BY MS. RICHARDSON) Okay, do

1       you have enough that you can answer  
2       now?

3                   MR. CARVER:    And I think the  
4       question, as I understand it, was  
5       basically was this related specifically  
6       to the findings of that privileged  
7       audit, and if that's the question, then  
8       that's why I'm instructing her not to  
9       answer on the basis of the attorney-  
10      client privilege, because I don't think  
11      she can answer it without revealing the  
12      substance of the privileged audit.

13                Q.       (BY MS. RICHARDSON)   I need  
14      something for the record from you, if  
15      you will.

16                   MS. MARTIN:   Based on  
17      attorney's --

18                Q.       Counsel's objection --

19                   MS. MARTIN:   Counsel's  
20      objection, I can't answer that  
21      question.

22                Q.       Several changes to MOOSA were  
23      made in 1992.   I believe you said that

1 tracker ID number and some other  
2 changes were made. Were those changes  
3 made to solve this particular problem  
4 from all of these historical rebates  
5 that you had to clean up?

6 MS. MARTIN: No.

7 Q. Okay. Are you satisfied that  
8 the company has addressed whatever  
9 problem created the need for historical  
10 rebates?

11 MS. MARTIN: Would you --

12 Q. The historical rebates were  
13 reports that were missed the first time  
14 around, is that accurate?

15 MS. MARTIN: Yes.

16 Q. All right. So there must  
17 have been a problem since they were  
18 missed the first time around, is that a  
19 safe assumption for me to make?

20 MS. MARTIN: Yes.

21 Q. Has the company addressed  
22 whatever that problem was so that it  
23 doesn't happen again?

1 MR. CARVER: Okay, I'm going  
2 to object to the form of the question,  
3 but she can answer. I mean if you have  
4 an opinion about that, if you have  
5 enough information to give an opinion,  
6 then you need to answer the question.

7 MS. MARTIN: Would you repeat  
8 it one more time so I can make sure of  
9 the answer?

10 Q. (BY MS. RICHARDSON) No,  
11 that's fine. Part of what we're having  
12 to deal with here is not being able to  
13 get specific because you're not allowed  
14 to answer my questions specifically, so  
15 we're having to talk in general terms  
16 and that's creating some confusion, and  
17 I can appreciate that.

18 MS. MARTIN: Yeah.

19 Q. There were identified  
20 problems, you said, that were reasons  
21 for particular reports not being  
22 rebated initially that ended up being  
23 rebated in a lump pool in January of

1 '92. Now, those problems that  
2 initially kept those reports from being  
3 rebated, have those problems been  
4 addressed by the company and corrected?

5 MS. MARTIN: Yes.

6 Q. All right. When were those  
7 corrections made?

8 MS. MARTIN: The problems --  
9 the ones that I'm aware of were  
10 corrected in the latter part of '91.

11 Q. The latter part of '93?

12 MS. MARTIN: 1.

13 Q. '91, the latter part of  
14 '91. Has any validation been done to  
15 -- or any follow-up been done to  
16 validate that the corrections actually  
17 are correcting the problem?

18 MS. MARTIN: Since all of the  
19 corrections go across a lot of depart-  
20 ments in this organization, I couldn't  
21 answer that to the point that it goes  
22 beyond my department or my area of  
23 expertise.

1 Q. Okay.

2 MS. MARTIN: And then the  
3 control numbers, the tracking and  
4 control numbers were the things that we  
5 implemented to correct our problems.

6 Q. All right. Then corrections  
7 were made in LMOS, is that correct?

8 MS. MARTIN: Correct.

9 Q. Corrections were made in  
10 changing from LMOS Job 2 to MTAS?

11 MS. MARTIN: Yes.

12 Q. Corrections were made in  
13 CRIS?

14 MS. MARTIN: Yes.

15 Q. Corrections were made in  
16 MOOSA?

17 MS. MARTIN: MOOSA -- when we  
18 talk about LMOS and the way we are  
19 responding, yes, MOOSA.

20 Q. Okay, in terms of LMOS, were  
21 corrections made to front end and host?

22 MS. MARTIN: Yes.

23 Q. So, in other words, these



1 were system-wide changes in the way the  
2 company handles its rebate and repair  
3 process, is that correct?

4 MS. MARTIN: Yes.

5 Q. Were any other systems  
6 involved than those that I have named?

7 MS. MARTIN: No -- if you use  
8 -- when you use CRIS, if you would also  
9 use CRIS and BOCRIS, which is the  
10 avenue in which a customer service  
11 person is able to review a customer's  
12 record.

13 Q. That's B-O-C-R-I-S, Business  
14 Office CRIS?

15 MS. MARTIN: Yes.

16 Q. Okay.

17 MS. RICHARDSON: I'm going to  
18 try one more short one here. This is  
19 going to be Exhibit 12.

20 (Whereupon, Exhibit Number 12  
21 was marked for identification and copy  
22 of same is attached hereto).

23 Q. (BY MS. RICHARDSON) Exhibit