

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. :

PROCEEDING: STATUS CONFERENCE 4D

BEFORE:  COMMISSIONER SUSAN F. CLARK
Prehearing Officer

DOCUMENT NUMBER-DATE

09425 SEP-18

FPSC-RECORDS/REPORTING

1 **DATE:** **Friday, August 27, 1993**

2

3 **TIME:** **Commenced at 10:05 a.m.**
 Concluded at 10:50 a.m.

4

5 **PLACE:** **FPSC Hearing Room 106**
 Fletcher Building
6 **101 East Gaines Street**
 Tallahassee, Florida

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

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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 NANCY
5 WHITE, 675 Peachtree Street, Northwest, Suite 4300,
6 Atlanta, Georgia 30375, Telephone No. (404) 529-6361,
7 on behalf of BellSouth Telecommunications, Inc., d/b/a
8 Southern Bell Telephone and Telegraph Company.

9 MICHAEL B. TWOMEY, Assistant Attorney
10 General, Department of Legal Affairs, PL-01, The
11 Capitol, Tallahassee, Florida 32399-1050, Telephone No.
12 (904) 488-8253, on behalf of the Attorney General of
13 the State of Florida.

14 CHARLES J. BECK and SUE RICHARDSON, Office of
15 Public Counsel, c/o The Florida Legislature, 111 West
16 Madison Street, Room 812, Tallahassee, Florida
17 32399-1400, Telephone No. (904) 488-9330, on behalf of
18 the Citizens of the State of Florida.

19 ANGELA B. GREEN, TRACY HATCH and JEAN WILSON,
20 FPSC Division of Legal Services, 101 East Gaines Street,
21 Tallahassee, Florida 32399-0863, Telephone No. (904)
22 487-2740, appearing on behalf of the Commission Staff.

23 ALSO PRESENT:

24 TIM DEVLIN, Director of Auditing and
25 Financial Analysis, Florida Public Service Commission.

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I N D E X

PAGE NO.

MOTIONS

SOUTHERN BELL'S FIRST MOTION TO
COMPEL DOCUMENTS

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CERTIFICATE OF REPORTER

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P R O C E E D I N G S

(Hearing convened at 10:05 a.m.)

COMMISSIONER CLARK: Good morning. Let's call the status conference to order. Read the notice.

MR. HATCH: Pursuant to notice, this time and place have been set for the status conference in the Dockets Nos. 920260, 900960, 910163, 910727.

COMMISSIONER CLARK: Take appearances.

MR. ANTHONY: Hank Anthony, Suite 1910, 150 West Flagler Street, Miami, Florida, on behalf of Southern Bell Telephone and Telegraph Company. With me today is Nancy White from Atlanta, Georgia.

MR. TWOMEY: Mike Twomey, PL-01, The Capitol, Tallahassee, 32399-1050, appearing on behalf of the Attorney General of the State of Florida.

MR. BECK: Charlie Beck and Sue Richardson, Office of the Public Counsel, 111 West Madison Street, Room 812, Tallahassee, appearing on behalf of the Florida Citizens.

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

COMMISSIONER CLARK: Okay. My information is we need to deal with a motion to compel documents,

1 Southern Bell's first motion to compel and then the
2 citizens' response.

3 Is there anything else, Angela or Tracy?

4 MR. HATCH: There was one other motion that
5 had been discussed about taking up today, that was the
6 16th motion to compel from Public Counsel. They have some
7 additional work that they want to do before they wish to
8 argue that, so they are not prepared to argue that today.

9 COMMISSIONER CLARK: Okay. When is the next
10 status conference?

11 MS. GREEN: The next status conference --
12 this would be a good time to mention that -- has been
13 changed and a revised notice should be going out to all
14 the parties early next week. The next status
15 conference will be Monday, September 20th at 1:00 p.m.,
16 in this room. It originally was scheduled for
17 Thursday, the 23rd of September.

18 COMMISSIONER CLARK: So it will be Monday?

19 MS. GREEN: Monday, the 20th of September.

20 COMMISSIONER CLARK: Before I listen to
21 argument on Southern Bell's motion to compel, is there
22 anything else we need to take up?

23 MR. BECK: Yes, Commissioner, it will be
24 about scheduling witnesses we intend to subpoena. I
25 have discussed this with counsel, I think we have an

1 arrangement, but I wanted to bring it up and get your
2 concurrence because it deals with the scheduling of the
3 witnesses for the hearing.

4 COMMISSIONER CLARK: All right. Go ahead.

5 MR. BECK: On that --

6 COMMISSIONER CLARK: Well, all right. Let me
7 see, do you have anything, Mr. Twomey?

8 MR. TWOMEY: No, ma'am.

9 COMMISSIONER CLARK: Southern Bell?

10 MR. ANTHONY: No.

11 COMMISSIONER CLARK: Where are my auditors?
12 Tim, let me ask you a question. How is the audit going?

13 MR. DEVLIN: Very good question. It's not
14 going real well and I was wondering if we could have an
15 opportunity to talk about that. I could talk about it
16 now or I could talk about it after the motions, but
17 there are a few things I would like to bring up.

18 COMMISSIONER CLARK: Okay. Is there anything
19 else besides the audit we need to talk about?

20 MR. DEVLIN: Not me.

21 MR. HATCH: I don't believe there is, I'm not
22 aware of anything.

23 COMMISSIONER CLARK: All right. Then I will
24 hear oral argument on the motion to compel. And then
25 I'm going to adjourn with Tim and your auditors and

1 Southern Bell also down to 115 and we'll go over any
2 problems we may be having with the audit. Okay?

3 Go ahead, it's your motion, isn't it?

4 MS. WHITE: Yes, ma'am. Thank you.

5 Southern Bell filed some interrogatories and a
6 request for production of documents to Public Counsel
7 based on a statement made by Public Counsel at an agenda
8 meeting concerning their intent to, quote, "present
9 evidence about the hard sell of optional services by
10 Southern Bell."

11 COMMISSIONER CLARK: Just a minute. Tim, you
12 guys are going to need to go outside.

13 Go ahead. For some reason, it's become
14 difficult to hear. Maybe I'm losing my hearing, but I
15 have a real problem hearing when other people are talking.
16 Go ahead.

17 MS. WHITE: There are two bases for this motion
18 to compel. One is that on some of the interrogatories and
19 requests for production, Southern Bell received
20 nonresponsive answers. Several of them asked for the
21 identification of documents and persons having facts and
22 knowledge surrounding such a statement made by Public
23 Counsel.

24 Essentially, how Public Counsel answered was,
25 "Southern Bell, go look at everything that you've

1 provided to us through discovery in the 900960 docket
2 and the 920260 docket."

3 We don't feel that's a sufficient response.
4 It's a specially ironic response, given the specificity
5 that Public Counsel requires of Southern Bell. When
6 Southern Bell refers Public Counsel to a previous answer,
7 we specifically reference the docket number, the discovery
8 set number, and the item number. In Southern Bell's
9 interrogatories and requests for production, we
10 specifically defined the word "identify" to provide that
11 for Public Counsel to provide that kind of specific
12 information. And we feel that that response to
13 Interrogatory 6 and 9 through 12, and the Request for
14 Production of Documents 1, 2 and 3 is insufficient.

15 The second basis of our motion is the fact
16 that Public Counsel made a claim of attorney work
17 product privilege in response to several of the
18 interrogatories and production of document requests.
19 Those particular requests ask whether and under what
20 circumstances Public Counsel had had contact with
21 anyone connected with the lawsuit of Davis v. Southern
22 Bell concerning the hard sell statement made by Public
23 Counsel at the agenda meeting. We asked for the existence
24 and nature and identification of such contacts.

25 Public Counsel merely claimed attorney work

1 product privilege. They did not show any substance for
2 that claim; and under the Florida State case law, they
3 have the burden of showing the existence of the
4 privilege and we don't feel they carried that.

5 COMMISSIONER CLARK: Let me interrupt you,
6 Nancy. You said you simply asked for the nature?

7 MS. WHITE: We asked for them to list the
8 contact; whether it was oral or written; whether there
9 were any documents that showed the contact; identify
10 the documents, and if there were, to provide them;
11 whether there was any arrangement that had been entered
12 into between Public Counsel and any of parties or
13 lawyers associated with this lawsuit. It was that kind
14 of general information that Southern Bell requested.

15 COMMISSIONER CLARK: Go ahead.

16 MS. WHITE: Public Counsel has claimed many
17 times that Southern Bell should be required to provide
18 information relating to the existence and nature of
19 privileged documents. And that is all that Southern
20 Bell is asking here. It's very similar to what the
21 Staff asked Southern Bell in their Sixth Set of
22 Interrogatories in the 910163 case, where they were
23 looking into what made these documents privileged.

24 We are not asking -- Public Counsel in their
25 response claims that we are asking for opinion work-

1 product -- that is, the mental impressions, thoughts,
2 litigation strategies of Public Counsel. That is far
3 from the case. We are not asking for their mental
4 impressions and thought processes, we are strictly
5 seeking facts in the sole control of Southern Bell.
6 And, we, therefore, request an order directed to Public
7 Counsel to provide complete and responsive answers; and
8 in the alternative, we request an in camera inspection
9 of the documents and responses based on Public
10 Counsel's claim of privilege.

11 COMMISSIONER CLARK: Do you disagree that --
12 is there a work product privilege available to Public
13 Counsel as a state agency?

14 MS. WHITE: There is a very limited opinion
15 work product privilege that is provided by the Public
16 Records Act. It only applies to attorney-prepared
17 litigation files.

18 COMMISSIONER CLARK: Well, or something
19 prepared at his direction, right? His express
20 direction, which reflects a mental impression,
21 conclusion, legal strategy or legal theory, right?

22 MS. WHITE: That's correct.

23 COMMISSIONER CLARK: Okay.

24 MS. WHITE: But we don't feel that what we're
25 asking for comes into the realm of that opinion work

1 product exception.

2 COMMISSIONER CLARK: Okay. (Pause)

3 Okay, Mr. Beck?

4 MR. BECK: Thank you, Commissioner. The
5 genesis of Southern Bell's interrogatory and request
6 for production of documents to it goes back to a
7 statement made by me at an issues conference we had in
8 this docket with you presiding; and it was on October
9 20th, 1992. In fact, Southern Bell's discovery to us
10 specifically references that comment as a predicate to
11 all the discovery that follows.

12 And they quote my statement that, "We intend
13 to present evidence about the hard sell of optional
14 services by Southern Bell." Of course, the purpose of
15 stating that was to raise issues regarding that.

16 So then Bell's first interrogatory to us then
17 is, "Define the term 'hard sell' as you used it in the
18 above-referenced hearing." And we responded that, "The
19 term 'hard sell' was a colloquial reference to the matters
20 contained in the prefiled testimony of Dr. Cooper."

21 What I would like to do at this time is hand
22 out the index to Dr. Cooper's testimony so that you can
23 see what it is we're referring to. The statement made
24 by me was on October 20th. We filed Dr. Cooper's
25 testimony on November 16th; and at the time we filed

1 the responses to the interrogatories, I believe that it
2 had already been filed.

3 COMMISSIONER CLARK: Charlie, I'm sorry. I
4 was looking at the index, would you just repeat what
5 you just said?

6 MR. BECK: Oh. Just the timing of it is such
7 that, at the time that we filed the response to
8 Southern Bell's discovery, we had already filed the
9 testimony of Dr. Cooper.

10 The whole gist, again, of Southern Bell's
11 discovery is apparently aimed at trying to discern what
12 I was referring to when I mentioned that we were going
13 to present evidence on the hard sell.

14 COMMISSIONER CLARK: Okay.

15 MR. BECK: Because they didn't have Dr.
16 Cooper's testimony when I first brought it up.

17 COMMISSIONER CLARK: All right.

18 MR. BECK: Now, the index, what I have here,
19 Dr. Cooper's testimony, we're still waiting for a
20 ruling on its confidentiality so I can't pass that out
21 in total. But he does have a four-paged table of
22 contents that overviews what is in his testimony, so I
23 would like to try to use that. And this is in response
24 to their question about what we mean by the hard sell.

25 You can see on the first page, II, he talks

1 about "Management's plan to oversell and overprice
2 noncompetitive services in a deregulated environment." And
3 he has subparts. Subpart A is overselling. Subpart B is
4 overpricing with a number of subparts to that.

5 Dr. Cooper then goes through how Southern
6 Bell executes the plan, and he goes through their
7 abusive sales campaign. Subparts to that are the
8 emphasis on sales and how they sell services by
9 overcoming customer resistance. Again, he goes in some
10 detail on that.

11 He asks, "Is the sales representative told to
12 plow ahead, even over resistance?" And he discusses
13 how the sales representative overcomes resistance by
14 the customer and how they misdefine the term "need."

15 Then Dr. Cooper goes into "The abuse of the
16 monopoly transaction" and how the Company leverages the
17 franchise transaction -- that is, monopoly transactions
18 -- with their desire to sell optional services.

19 The next page, he goes over the abuse in the
20 market structure and ties, again, the monopoly with the
21 sale of optional services.

22 Then he goes into enforcing the plan, how they
23 get employees to apply the sales approach and the
24 problems. Then he goes over noncontact sales; he goes
25 over the slamming in the boiler room; the manipulation of

1 inside wire, and he they makes specific recommendations to
2 the Commission. This is testimony we have filed. We are
3 sticking with it. We have told Southern Bell and the
4 Staff that we will be filing this testimony as-is in
5 this case.

6 Now, attached to Dr. Cooper's testimony -- and
7 again, I need to go through the detail that he has in his
8 testimony. He has attachments and I've got them here; I'm
9 not going to hand them out, but this is his attachments.
10 There's 45 different documents, virtually every one of
11 which is a Southern Bell document. We've got several
12 hundred pages of Southern Bell documents that he
13 painstakingly goes through in a sequential order showing
14 how the documents supports his testimony, going
15 straight through.

16 This testimony and the attachments, which
17 basically respond to Southern Bell's discovery, have been
18 available to Southern Bell now for over nine months. Ask
19 Southern Bell if they have conducted any discovery
20 whatsoever on Dr. Cooper's testimony and on the documents,
21 over 40 of which are Southern Bell documents, that he uses
22 to support his testimony.

23 And all of the time that they've had this they
24 haven't asked the slightest question about it, they
25 haven't raise a finger to ask us about the case that we're

1 representing about the hard sell. We've presented it to
2 them in great detail, we've shown them over 40 documents
3 to support it. Quite frankly, it doesn't look like
4 they're interested in the actual case they are presenting.

5 What they have done is they're very interested
6 in the conversations that I have had with other attorneys
7 about the case. And let me go through, because you asked
8 Ms. White about what they've asked us. Don't be mistaken
9 about that they're just asking general information. When
10 you get into a series of questions where they start asking
11 about the contacts Public Counsel has had with other
12 attorneys discussing matters in the case, it starts at
13 Interrogatory 19. Question: "Have you had any contact
14 whatsoever either oral or written with attorneys or
15 paralegals representing the Plaintiffs in the Davis case?
16 Including but not limited to, attorneys or parallels
17 employed with or affiliated with law firms?" And then
18 they name a couple of others concerning the hard sale.

19 COMMISSIONER CLARK: Let me stop you on that.
20 What is wrong disclosing with whom you've had
21 conversations?

22 MR. BECK: To ask the attorney? Now, again,
23 we're the attorneys representing the Citizens. This isn't
24 discovery geared toward a witness, this is geared towards
25 what conversations attorneys have had with other

1 attorneys. That's work product.

2 COMMISSIONER CLARK: Well, they're not asking
3 you the content of that --

4 MR. BECK: Oh, they do. You go to the next
5 interrogatory and they ask, "List each contact, show us
6 the contents," and they ask for, "Provide a complete
7 detailed description of the conversation." That's
8 Interrogatory 21.

9 COMMISSIONER CLARK: Let me go back to the
10 prior interrogatory. Have you answered who you've had
11 discussions with?

12 MR. BECK: No.

13 COMMISSIONER CLARK: All right.

14 MR. BECK: No. They're not entitled to know
15 who I have talked to. They didn't ask me --

16 COMMISSIONER CLARK: Wait a minute, wait a
17 minute. I feel like I'm limited by what's in the statute,
18 that basically I'm going to look to the public records and
19 what's protected; because without that, you have no
20 attorney client privilege or work product privilege,
21 because all this could have been gotten by the
22 public records.

23 MR. BECK: No, not the oral conversations. The
24 public record would apply to any documents we've received.

25 COMMISSIONER CLARK: Right. I would agree.

1 MR. BECK: In fact, we have offered that to
2 Southern Bell.

3 COMMISSIONER CLARK: Okay.

4 MR. BECK: Whenever they feel like coming over,
5 which they haven't done yet, we will supply them those
6 documents and we've told them so.

7 COMMISSIONER CLARK: Well, tell me why you
8 shouldn't be required to tell them who you've talked with.

9 MR. BECK: Okay. Let me go back to Surf Drugs;
10 you know, we've gone through that case a number of times
11 in connection with motions for Southern Bell. And they
12 discuss what work product is.

13 COMMISSIONER CLARK: Well, wait a minute. The
14 statute describes what, for purposes of the public record,
15 what's to be considered work product.

16 MR. BECK: We're not talking public records,
17 they can have our documents. They're asking us to produce
18 something to answer questions, answer interrogatories and
19 create documents, entirely different. They are entitled
20 to any letters I've gotten from law firms and so forth and
21 we've made them available to Southern Bell.

22 That's not the issue here. The issue is whether
23 they can force me to write down and tell them every
24 conversation I've had with a lawyer in this case.

25 COMMISSIONER CLARK: No, no, no, skip the

1 conversations, Charlie. I just want to know can they
2 compel you to tell them whom you've talked to? In other
3 words, just list the attorneys?

4 MR. BECK: No.

5 COMMISSIONER CLARK: And you say that because --

6 MR. BECK: There is no public record of that.

7 COMMISSIONER CLARK: All right. I got you.

8 MR. BECK: We have offered them the
9 documents, so I would have to create something to
10 answer that.

11 COMMISSIONER CLARK: Go ahead. Now I'm with
12 you.

13 MR. BECK: Again, Surf Drugs discusses what
14 work product is, at least it's persuasive to what the
15 statute is. And they go back to the Supreme Court
16 case, U.S. Supreme Court, Hickman v. Taylor. It says,
17 "It is essential that a lawyer work with a certain
18 degree of privacy free from unnecessary intrusion by
19 opposing parties and their counsel. Proper preparation
20 of a client's case demands that he assemble
21 information, sift what he considers to be relevant from
22 the irrelevant facts, prepares legal theories and plans
23 his strategy without undue or needless interference."
24 And that's precisely what they're doing.

25 Let me raise also an objection that's not in

1 our objections to Southern Bell's response. And the
2 reason I'm raising it now is that the evidence for the
3 basis for this objection is their action and lack of
4 action since filing their discovery. And that is,
5 they've had our case for nine months and they haven't done
6 a thing with it. They haven't lifted a finger. It's
7 obvious they're not actually interested in the case,
8 they're interested in what conversations we've had.

9 I submit to you that there is a very
10 reasonable inference from that, that this discovery
11 here is meant to harass and it's a bit of a sham.
12 Because if they were actually interested in our case
13 about what a hard sell is, they would be doing
14 discovery on the evidence we've presented. But they're
15 not doing that. They simply want to know the
16 conversations we've had with other counsel.

17 COMMISSIONER CLARK: Okay.

18 MR. ANTHONY: Commissioner Clark, can we
19 respond to that, if Mr. Beck is finished?

20 COMMISSIONER CLARK: If he's done. Are you
21 done, Charlie?

22 MR. BECK: Just briefly more.

23 I don't think we've ever had a case where
24 counsel for one's party has asked, not the witnesses,
25 but asked counsel for the other to talk about counsel's

1 conversation with other counsel. It's something you
2 have trouble finding any case law because it's so
3 incredibly out of the park for one party to seek
4 discovery of counsel's communications with another
5 other counsel about that, that it's, I think, just so
6 obviously work product you'll have trouble finding
7 anything on point on it.

8 With respect to our referring to documents
9 that Southern Bell has produced, we have told them that
10 at the time we answered these responses that the only
11 documents we had were the ones they've provided to us.
12 And, of course, we've given them over 40 of their own
13 documents back in the case.

14 COMMISSIONER CLARK: Well, let me ask you on
15 that. It does seem to me that you might be more
16 specific in the documents that you're relying on. And
17 are you representing to me now the stuff you attached
18 to Mr. Cooper's testimony is basically your case on
19 this issue?

20 MR. BECK: Absolutely it is.

21 COMMISSIONER CLARK: Okay.

22 MR. BECK: It is also proper to answer an
23 interrogatory when it be burdensome to do so by
24 referring the party to documents. That's in the rules
25 of civil procedure. And, of course, this one's unusual

1 because we're simply referring them to their own
2 documents, because that's what our case is.

3 That's all I have.

4 COMMISSIONER CLARK: Let me ask you about a
5 case you signed on Page 5. It says, "The Supreme Court
6 has stated that not all trial preparation materials are
7 public records." What was at issue in that case?

8 MR. BECK: I'm sorry. Which case is this?

9 COMMISSIONER CLARK: State v. Kokal, Page 5
10 of your motion. (Pause)

11 MR. BECK: I think we go in and state --
12 there's the reference to State v. Kokal and then it
13 talks about the types of trial preparation materials
14 that are referred to there.

15 COMMISSIONER CLARK: Right. The rough
16 outlines?

17 MR. BECK: Yes.

18 COMMISSIONER CLARK: Those are the things
19 listed? Okay, it just wasn't clear to me. So they
20 held that rough outlines of evidence, deposition
21 questions, proposed trial outlines, handwritten notes
22 for personal use.

23 MR. BECK: Yes.

24 COMMISSIONER CLARK: Okay. But when they
25 were formalized, typewritten and passed to somebody

1 else, then they would become public records; is that
2 what I can glean from that case?

3 MS. RICHARDSON: If it is to be used.

4 MR. BECK: If it is to be used in the case,
5 it would be. I'm not sure, to be honest.

6 COMMISSIONER CLARK: Okay. All right. I
7 should just -- you're citing it for the proposition
8 that these are your conversations and the attorneys
9 you've talked to, you haven't reduced them to writing
10 and there's no public record --

11 MR. BECK: No, there isn't any. We would
12 have to create something. Now, I have certain cover
13 letters from the attorneys that we've offered to make
14 available to Bell. We're not claiming that that's
15 covered by work product.

16 COMMISSIONER CLARK: Okay. Mr. Anthony, do
17 you want to give a brief response?

18 MR. ANTHONY: Yes, ma'am. First of all, I
19 think to argue that whether or not Southern Bell has
20 engaged in other discovery with respect to Dr. Cooper's
21 testimony somehow limits its right to file a motion to
22 compel that was filed promptly after the response to
23 our discovery is itself a sham. And that's one of the
24 more unique arguments that I've heard recently, and
25 I've heard some unique ones in this case.

1 Southern Bell filed its motion to compel
2 promptly upon response of Public Counsel to its
3 discovery. That was after Dr. Cooper's testimony had
4 been filed; just by the dates alone, it would have had
5 to have been. If Public Counsel had wanted to provide
6 a responsive answer at that time, it simply could have
7 said, "See the documents attached to Dr. Cooper's
8 testimony." That's not what Public Counsel did.

9 COMMISSIONER CLARK: Let me ask -- just a
10 minute. Is that your response now that those document,
11 instead of saying, "See the documents in this docket," you
12 are now representing that the documents are those that are
13 attached to Mr. Cooper's testimony, or Dr. Cooper's?

14 MR. BECK: There are thousands of pages of
15 documents that relate to that. Our case that we're
16 presenting are the documents attached to Dr. Cooper's
17 testimony; but that's not to say that the thousands
18 upon thousands upon thousands of pages we've looked at
19 are not also relevant to that, because they are. But
20 this is our case. This the entire case we're
21 presenting on that issue.

22 COMMISSIONER CLARK: Okay. Go ahead,
23 Mr. Anthony.

24 MR. ANTHONY: Southern Bell didn't ask for
25 all documents that might be relevant to this issue,

1 Southern Bell asked for the documents upon which Public
2 Counsel is relying. If I understand Mr. Beck, and he's
3 saying the documents upon which they are relying are
4 those attached to Dr. Cooper's testimony, is my
5 understanding correct?

6 MR. BECK: Yes, your understanding is correct
7 and that's what we've told you repeatedly in our
8 answers, "Refer to Dr. Cooper's testimony."

9 MR. ANTHONY: No, no. Well, I don't want to
10 argue directly, but that's not what Public Counsel's
11 response said. It said, "Look at all the documents you
12 provided to us," and that's why we filed the motion to
13 compel on that matter.

14 I think, given Mr. Beck's representations, we
15 can withdraw the motion because it sounds that it's
16 moot with regard to that issue. But if we had gotten a
17 responsive answer in the first place, we wouldn't have
18 to be wasting everybody's time on this issue.

19 With respect to the question of trying to
20 obtain information that Public Counsel may have
21 received from other parties, other counsel, Southern
22 Bell is entitled to get whatever documents that Public
23 Counsel has pursuant to the statute. Mr. Beck said
24 here today that he's willing to provide cover letters.
25 I assume cover letters mean that there are documents

1 attached to those cover letters; we don't know what
2 those are, what those documents are, and I don't think
3 that's a fully responsive response.

4 COMMISSIONER CLARK: Hang on.

5 MR. ANTHONY: If that's all he has, that's fine.
6 But we think we're entitled to all those documents.

7 With respect to conversations that Mr. Beck
8 has had with counsel for other parties, I respect Mr.
9 Beck's attorney work product doctrine privilege. I wish
10 it worked both ways. But I do. And if these
11 conversations relate to matters that are part of this
12 case, then he has that privilege. I don't dispute that.

13 To the extent, however, that it relates to
14 other issues that are unrelated to Mr. Beck's
15 representation of a party in this matter, then I don't
16 think it is work product and we're entitled to that.

17 COMMISSIONER CLARK: Hang on. What other
18 things could be relevant for me to rule on?

19 MR. ANTHONY: Well, I don't know. And that's
20 what we're asking for is to have some sort of list of
21 the -- a general list of the types of issues so that we
22 can argue that. We don't even know that.

23 I have no idea whether he talked about
24 Hurricane Andrew or he talked about this case or he
25 talked about some other issue that might lead to our

1 obtaining relevant discovery. But until I have that
2 list, I can't tell you; and that's what we're here
3 requesting today.

4 COMMISSIONER CLARK: Let me ask you this
5 question. He has represented that he has had
6 conversations with attorneys. And his point is he's
7 not reduced it to writing, he has created no public
8 document for him to produce to you.

9 MR. ANTHONY: That's my understanding.

10 COMMISSIONER CLARK: Now, do you think you're
11 entitled to have him reduce to writing the contact and
12 the contents of his conversation with those attorneys?

13 MR. ANTHONY: No, ma'am. And I'm not asking
14 for him to do that. What I'm asking for is, as Public
15 Counsel asks in his instructions to us in every set of
16 discovery we receive, he says, "If we're going to have
17 a claim of privilege, please give me enough to describe
18 what it is I'm asserting as privilege so I can make a fair
19 assessment as to whether or not to file a motion to
20 compel." I'm simply asking the same thing in return.

21 COMMISSIONER CLARK: Well, no. I see it as a
22 little different. There isn't any document here at
23 issue, it's whether or not he has to reduce his oral
24 conversations and who he's had those conversations with
25 to writing and turn it over to you.

1 MR. ANTHONY: I'm not asking him to provide
2 me with the substance of those conversations at this
3 point.

4 COMMISSIONER CLARK: Are you asking him to
5 identify with whom he had conversations?

6 MR. ANTHONY: Yes, ma'am.

7 COMMISSIONER CLARK: Why does he have to do
8 that?

9 MR. ANTHONY: Because, without that
10 knowledge, I don't know if he's improperly asserting
11 his claim of privilege. And if he provides it to you in
12 camera, perhaps that would serve the problem. Just as we
13 provided you with documents for you --

14 COMMISSIONER CLARK: There's no discoverable
15 document here.

16 MR. ANTHONY: Well, then, I've filed an
17 interrogatory, I've asked for information. Public
18 Counsel has asserted that he's not going to answer
19 anything at all. If you take the position that there's
20 no document, that he's not even required to set down
21 enough for you to inspect in camera -- not the
22 substance of the conversation; again, that's not what
23 I'm asking for. What I'm asking for is who he talked
24 to and what the general subject matter was about.

25 COMMISSIONER CLARK: Okay.

1 MR. ANTHONY: And if I can't do that, then I
2 have no way of knowing whether his assertion of
3 privilege --

4 COMMISSIONER CLARK: But you're asking --
5 see, it seems to me that this is sort of a convoluted
6 argument. You're asking him to produce a document to be
7 inspected of conversations that are not -- there's not
8 evidence there. You want him to create this evidence;
9 then I can inspect and say, "Yes, this is evidence."

10 MR. ANTHONY: Well, the only alternative that
11 I see, and I don't want to do this, is for me to -- if
12 I have to, is to notice the deposition of an opposing
13 counsel. I don't think anybody wants that. And then
14 we have motions to compel and we have the same sort of
15 situation that we've had previously.

16 And that's not my -- I'm not to invade any
17 work product or attorney-client privilege here. I've
18 fought long and hard enough to try to protect what I
19 think is the work product and the attorney-client
20 privilege of Southern Bell. All I'm trying to do is
21 ascertain if there's anything else out there besides a
22 privileged matter that I would be entitled to. That's
23 all we're trying to accomplish here.

24 COMMISSIONER CLARK: Okay.

25 MR. ANTHONY: That's our response.

1 COMMISSIONER CLARK: Okay. Tracy, who is
2 working on -- who will be working on an order for this?
3 That doesn't go over to the Appeals Section, does it?

4 MR. HATCH: Ms. Wilson.

5 COMMISSIONER CLARK: Okay. Good.

6 MR. HATCH: To the extent that you conduct an
7 in camera inspection of documents, if you reach that
8 point, that would be handled under the procedure we've
9 created where I believe Mr. Bellak or someone from
10 Appeals would do that inspection where we keep that
11 function separate.

12 COMMISSIONER CLARK: All right. We'll try
13 and have an order out before the end of next week.
14 Anything else?

15 MR. BECK: Just a matter of the scheduling.

16 COMMISSIONER CLARK: All right. Let's do that.

17 MR. BECK: First of all, right now, we've had
18 18 subpoenas issued, mostly for Southern Bell
19 employees, some not. I've talked to counsel for
20 Southern Bell and to the Staff regarding these 18
21 subpoenas. And I've got the subpoenas in my office,
22 they're ready to go, the checks are cut. We've talked
23 about there is a three-day period February 2 through 4
24 -- again, this is, just to try to put it in
25 perspective, there's one week before that where there

1 is an entire week Monday through Friday. And then the
2 week after that -- this is January 30 --

3 COMMISSIONER CLARK: There generally is a
4 week before that Monday through Friday. What are you
5 talking about? (Laughter)

6 MR. BECK: We have one week where it's Southern
7 Bell presenting its case. And then after that, there's a
8 Monday where we have for a hearing and then there's
9 Tuesday no hearing because of an agenda conference.

10 COMMISSIONER CLARK: All right.

11 MR. BECK: What I intend to do is to subpoena
12 the 18 people for February 2nd with the idea --

13 COMMISSIONER CLARK: Thursday and Friday.

14 MR. BECK: Wednesday, Thursday, Friday, with
15 the idea being that we can get those 18 people up in
16 that three-day period. We also intend to subpoena
17 approximately 32 other witnesses, all of whom have
18 taken the Fifth Amendment at depositions. The Staff is
19 working toward getting immunity, or transactional
20 immunity, for these witnesses' testimony. What I would
21 -- I've talked to counsel about this, about a time
22 period for that; and it would seem to me that the next
23 week, starting February 7, would be an appropriate week
24 for that.

25 My first thought would just be to subpoena

1 them all for Monday. Counsel for Southern Bell
2 suggested maybe we would want to spread it out a little
3 bit so people aren't all here at once. My idea on
4 doing it all the first day is so they're all available;
5 and if it goes quickly, we'll just go through them all.
6 I have been wanting to present that to you for your
7 direction on that.

8 COMMISSIONER CLARK: Advance notice?

9 MR. BECK: Well, scheduling is a problem on
10 this.

11 COMMISSIONER CLARK: Okay. Do you have any
12 response?

13 MR. ANTHONY: We don't have any objection.
14 Mr. Beck and I have discussed this, and I don't have
15 any objection to these people being properly subpoenaed
16 and appearing. The 18 witnesses on the second week of
17 the hearings, I expect, will be substantive cross
18 examination; they're not the witnesses who have claimed
19 Fifth Amendment so far. And it was primarily with respect
20 to those that I asked that we try to spread them out a
21 little bit because it doesn't make sense to have 18 people
22 here Wednesday morning, if that's the day.

23 With respect to the second week of the 32,
24 Mr. Beck makes a good point. If these people still
25 want to assert the Fifth Amendment, then it may make

1 sense to call them all at one time. Because it won't
2 take very long and it doesn't make sense to interrupt
3 the hearings each day. I have no idea what these
4 witnesses will assert.

5 COMMISSIONER CLARK: Are you still going to
6 call them if they -- what, are we going to troop them
7 all up here, let them say, "I take the Fifth
8 Amendment," and they all go?

9 MR. BECK: That's what they've done in the
10 depositions so far. Again, I'm hopeful that we're
11 going to have immunity for these folks and we may get
12 answers from them.

13 COMMISSIONER CLARK: And in which case it
14 will extend the time, probably.

15 MR. BECK: I don't know what they're going to
16 say. Yes. The balancing act here, sometimes the
17 Commission wants to go, you know, and I have all the
18 people up and ready to go one after another.

19 COMMISSIONER CLARK: But these are not
20 Company or Public Counsel's witnesses, these are
21 generally private citizens, right?

22 MR. BECK: Most of these are all Southern
23 Bell employees.

24 COMMISSIONER CLARK: Okay.

25 MR. BECK: So the question is, do you want us

1 to have them all here at once so if the Commission
2 wants to get it all over with, we can do that. If we
3 don't, of course, if we spread them out, there are
4 times when the Commission doesn't want to come back day
5 after day. It really makes no difference to us.

6 MR. ANTHONY: Can I make a suggestion? As
7 Mr. Beck noted, it's my understanding that Staff is
8 trying to get grants of some sort of immunity for these
9 32 people. If they do, I don't know, but I assume they
10 will then be deposed at that time. And if so, it may
11 solve a lot of this. They may have information if they
12 do get the immunity that they testify to that it means
13 that nobody wants to call them as a witness. It may
14 mean that everybody wants to call them as a witness.

15 And it may be that if the subpoenas are
16 issued, then if we leave the question of timing open
17 for the time being and see what happens, then that may
18 be the way to resolve the issue. Knowing that the
19 subpoenas are properly issued and just leave the
20 question of when they appear as an open matter.

21 COMMISSIONER CLARK: You have to put a time
22 on the subpoena, don't you?

23 MR. ANTHONY: Yes.

24 MR. BECK: Now, again, the majority are
25 Southern Bell employees; and I'm sure if events unfold

1 like Mr. Anthony is saying, we'll be able to work that
2 out with Southern Bell. There won't be any problem.

3 MR. ANTHONY: Right. So that's what I suggest.

4 COMMISSIONER CLARK: So we should notice them
5 for the 2nd, and then -- 2nd of February, I'm talking
6 about the 18 witnesses.

7 MR. BECK: And then to the extent they're
8 Southern Bell witnesses, we can work it out with them
9 the specific days. I'm sure on that. And then for the
10 32, the question is whether you want me to subpoena
11 them all for one day and then --

12 COMMISSIONER CLARK: The following Monday, huh?

13 MR. BECK: Yeah. That's kind of my thought.
14 And then they're all available; and if the Commission
15 wants to go forward and do a lot in one day, they'll be
16 here.

17 COMMISSIONER CLARK: I think that makes sense
18 from the standpoint we will already have broken for
19 agenda on Tuesday and you might as well schedule those
20 people when we've already taken a break from whatever
21 is going on. And likewise, on the weekend I would
22 assume we -- I hope we will have a break and then we
23 can start up Monday.

24 So I guess I concur in your recommendation
25 that we notice the 18 for the 2nd of February with the

1 understanding that, if we need to, we'll work it out so
2 they don't have to all show up if you think that's the
3 way it's going to go.

4 MR. BECK: Okay.

5 MR. ANTHONY: That's fine.

6 COMMISSIONER CLARK: And the same for the 32?
7 Does that sound all right to you all?

8 MR. HATCH: That's fine as far as we know.
9 Yeah. I don't see any problem with that at all.

10 COMMISSIONER CLARK: Well, I guess we'll have
11 plenty more status conferences where this can come up
12 and we can deal with it.

13 MR. ANTHONY: That was my only concern was
14 the timing, that we didn't have a lot of people waiting
15 at one time. But that's reasonable to me.

16 COMMISSIONER CLARK: Anything else?

17 MR. BECK: No, ma'am.

18 COMMISSIONER CLARK: I would like to ask if,
19 Hank, you and Nancy will come on down and we'll talk
20 with Tim and see if there are any problems we can work
21 out. We'll adjourn this status conference. Thank you.

22 (Thereupon, conference adjourned at 10:50 a.m.)

23

24

25

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 the Status Conference
7 4D in this cause, Docket No. 920260-TL, 900960-TL,
8 910163-TL, 910727-TL, was heard by the Florida Public
9 Service Commission at the time and place herein stated;
10 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 36 pages, constitutes a true
15 transcription of my notes of said proceedings.

16 DATED this 30th day of August A. D., 1993.

17 *Sydney C. Silva*
18 _____
19 SYDNEY C. SILVA, CSR, RPR
20 Official Commission Reporter
21 (904) 488-5981

22 STATE OF FLORIDA)
23 :
24 COUNTY OF LEON)

25 The foregoing certificate was acknowledged
before me this 30th day of August, 1993, by SYDNEY C.
SILVA, who is personally known to me.

26 *Evelyn L. Borschel*
27 _____
28 Evelyn L. Borschel
29 Notary Public - State of Florida



EVELYN L. BORSCHEL
MY COMMISSION # 00289265 EXPIRES
May 25, 1997
BONDED THRU TROY FAIR INSURANCE INC.