

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of

Resolution of petition(s) to
establish nondiscriminatory rates,
terms, and conditions for
interconnection involving local
exchange companies and
alternative local exchange
companies pursuant to Section
364.162, F.S.

DOCKET NO. 950985-TP

PROCEEDINGS:

PREHEARING CONFERENCE

BEFORE:

COMMISSIONER J. TERRY DEASON

DATE:

Friday, December 22, 1995

TIME:

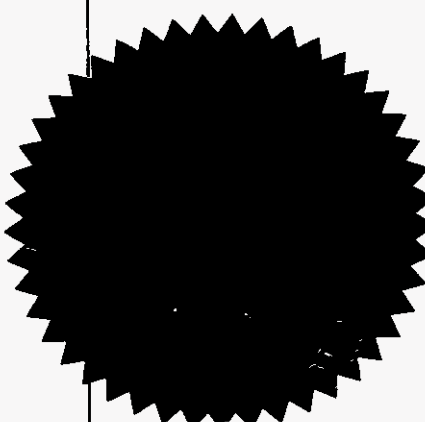
Commenced at 9:00 a.m.
Terminated at 10:23 a.m.

PLACE:

Betty Easley Conference Center
4075 Esplanade Way
Tallahassee, Florida

REPORTED BY:

SARAH B. GILROY, CP, RPR
Notary Public in and for
the State of Florida at
Large



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4 PRENTICE P. PRUITT, FPSC Office of General Counsel
5 KENNETH A. HOFFMAN, Teleport Communications Group,
6 Inc.

7 DONALD L. CROSBY, Continental Cablevision, Inc.

8 RICHARD M. RINDLER, Metropolitan Fiber Systems of
9 Florida, Inc.

10 RICHARD D. MELSON, MCI Metro Access Transmission
11 Services, Inc.

12 CHARLES W. MURPHY, Time Warner AXS of Florida
13 Limited Partnership and Digital Media Partners

14 R. DOUGLAS LACKEY, NANCY B. WHITE, BellSouth
15 Telecommunications, Inc. d/b/a Southern Bell Telephone and
16 Telegraph Company

17 MICHAEL W. TYE, AT&T Communications of the Southern
18 States, Inc.

19 LAURA L. WILSON, Florida Cable Telecommunications
20 Association, Inc.

21 FLOYD R. SELF, NORMAN H. HORTON, JR., McCaw
22 Communications of Florida, Inc. and its regional affiliates

23 C. EVERETT BOYD, JR., Sprint Communications Company
24 Limited Partnership
25

1 (Hearing convened at 9:00 a.m.)

2 COMMISSIONER DEASON: Call the prehearing
3 conference to order. We will begin by having notice
4 read please.

5 MS. CANZANO: Pursuant to notice issued November
6 22nd, 1995 a prehearing conference has been set for this
7 time and place in Docket 950985-TP.

8 COMMISSIONER DEASON: We're doing 985 first?

9 MS. CANZANO: Yes, sir. Because of the statute we
10 need to have separate proceedings. So we will start and
11 finish 985 and begin with 984.

12 COMMISSIONER DEASON: Very well. We will take
13 appearances.

14 MR. MURPHY: Charles Murphy, Pennington, Haben law
15 firm on behalf of Time Warner AXS of Florida Limited
16 Partnership and Digital Media Partners.

17 MS. WILSON: Laura Wilson on behalf of the Florida
18 Cable Telecommunications Association, 310 North Monroe
19 Street, Tallahassee, Florida, 32301.

20 MR. RINDLER: Richard Rindler on behalf of
21 Metropolitan Fiber Systems of Florida, Inc., 3000 K.
22 Street, Northwest, Washington, D.C.

23 MS. WHITE: Nancy White and Doug Lackey on behalf
24 of BellSouth Telecommunications, 675 West Peachtree
25 Street, Suite 4300, Atlanta, Georgia, 30375.

1 MR. MELSON: Richard Melson of the law firm
2 Hopping, Green, Sams & Smith, P. O. Box 6526,
3 Tallahassee, on behalf of MCI Metro Access Transmission
4 Services, Inc. With me at the hearing will be
5 Mr. Michael J. Henry of MCI in Atlanta.

6 MR. TYE: Michael W. Tye, 101 North Monroe Street,
7 Suite 700, Tallahassee, Florida, 32301, appearing on
8 behalf of AT&T Communications of Southern States, Inc.
9 Appearing with me at the hearing will be Robin D. Dunson
10 of the AT&T legal department in Atlanta.

11 MR. HORTON: Norman H. Horton Jr. and Floyd R. Self
12 of Messer, Caparello, Madsen, Goldman & Metz,
13 P. O. Box 1876, Tallahassee, on behalf of McCaw
14 Communications of Florida, Inc. and it's Florida
15 regional affiliates.

16 MR. BOYD: Everett Boyd of the Ervin, Varn, Jacobs,
17 Odom & Ervin law firm, Post Office Box 1170,
18 Tallahassee, Florida. I'm appearing on behalf of Sprint
19 Communications Company Limited Partnership.

20 MR. CROSBY: Donald Crosby, regulatory counsel for
21 Continental Cablevision, 7800 Belfort Parkway, Suite
22 270, Jacksonville, Florida.

23 MS. CANZANO: Donna Canzano, Robert Elias, Tracy
24 Hatch and Scott Edmonds appearing on behalf of the
25 Commission staff at 2540 Shumard Oak Boulevard,

1 Tallahassee, Florida.

2 MR. PRUITT: Prentice Pruitt, same address, counsel
3 to the Commissioners.

4 COMMISSIONER DEASON: Do we have any preliminary
5 matters?

6 MS. CANZANO: None that I'm aware of.

7 COMMISSIONER DEASON: Do the parties have any
8 preliminary matters?

9 MR. MURPHY: Yes. Time Warner would like to
10 withdraw its petition that was filed in this document
11 before the Commission to establish nondiscriminatory
12 rates, terms and conditions for interconnection with
13 BellSouth. There are actually two petitions: One for
14 Digital Media Partners and one for Time Warner.

15 COMMISSIONER DEASON: You're withdrawing both
16 petitions?

17 MR. MURPHY: Yes, sir.

18 COMMISSIONER DEASON: Very well. Any other
19 preliminary matters? Mr. Crosby.

20 MR. CROSBY: Commissioner, Continental Cablevision
21 is in the process this morning of filing four documents
22 with the Commission. One is the voluntary dismissal of
23 BellSouth from its petition -- from Continental's
24 petition in this docket. The other is a withdrawal of
25 all of Continental's witness, Mr. Schleiden's --

1 Schleiden's testimony in the docket and the four
2 subdockets.

3 We're filing an amended prehearing statement in
4 this docket. And we're submitting amended direct
5 testimony of Schleiden, which reflects the fact that
6 we've dismissed both GTE and BellSouth from our
7 petition.

8 We are not, however, dismissing our petition,
9 because we have continuing issues regarding United and
10 Centel. Thank you.

11 COMMISSIONER DEASON: Thank you, Mr. Crosby.
12 Staff, did you get all of that?

13 MS. CANZANO: Yes, I did.

14 MR. MELSON: Chairman Deason, could I ask a
15 question for clarification about the amended testimony
16 that Mr. Crosby referred to?

17 COMMISSIONER DEASON: Yes.

18 MR. MELSON: My question is whether that amended
19 testimony is intended to be offered at the hearings in
20 January, or whether it's intended to be offered at the
21 later hearings with respect to United and Centel, I
22 believe in March.

23 COMMISSIONER DEASON: Mr. Crosby.

24 MR. CROSBY: Commissioner, it's intended for the
25 March hearing.

1 COMMISSIONER DEASON: Very well. Preliminary
2 matters from other parties? (no response).

3 Very well. Ms. Canzano, are we prepared now to
4 proceed into the draft prehearing order?

5 MS. CANZANO: Yes, we are.

6 COMMISSIONER DEASON: Very well. Are there any
7 parties that were included in the draft prehearing order
8 but were not present here today, do you know?

9 MS. CANZANO: Yes. Teleport and Intermedia.

10 COMMISSIONER DEASON: Teleport and Intermedia.
11 What is their status as a result of the fax that we sent
12 out earlier this week?

13 MS. CANZANO: Just one moment. Intermedia said
14 they were going to withdraw. And Tel -- and Teleport
15 also indicated that they would file a notice of
16 voluntary dismissal.

17 COMMISSIONER DEASON: So we're to assume by that
18 indication and their absence here today that they will
19 not be participating in these dockets as parties?

20 MS. CANZANO: As far as I know. My only question
21 is, I don't know if this is dismissal just of their
22 petitions or as their status as intervenors in the other
23 petitions.

24 COMMISSIONER DEASON: What did our fax indicate
25 concerning attendance at today's prehearing conference?

1 MS. CANZANO: For Teleport it indicates that they
2 have filed a notice of voluntary dismissal of its
3 petition and that it intends to maintain a party status
4 in the remaining -- in the remaining petitions.

5 COMMISSIONER DEASON: They want to maintain their
6 party status, but they're not here today, so they waive
7 all positions and issues?

8 MS. CANZANO: That's my understanding, yes.

9 COMMISSIONER DEASON: But they will be allowed to
10 participate at the hearing?

11 MS. CANZANO: Yes.

12 COMMISSIONER DEASON: Okay. That was for
13 Teleport?

14 MS. CANZANO: Teleport.

15 MR. RINDLER: Excuse me, Your Honor. What does
16 that mean with respect to the testimony that they
17 filed?

18 COMMISSIONER DEASON: The testimony these parties
19 filed?

20 MR. RINDLER: Yes.

21 COMMISSIONER DEASON: It would be my assumption
22 that that testimony would be withdrawn. But that may
23 not be what staff is interpreting, and we need to get
24 that clarified.

25 MS. CANZANO: Teleport in particular only filed

1 testimony within its own petition. So that's not an
2 issue.

3 MR. RINDLER: Thank you, Your Honor.

4 COMMISSION DEASON: What about Intermedia?

5 MS. CANZANO: They're not a petitioner. And
6 Intermedia has indicated it will withdraw as a party
7 from the above proceedings in the interconnection and
8 unbundling documents. And all it asks is that it remain
9 on the service list.

10 COMMISSIONER DEASON: So Intermedia will not be
11 participating in hearings in these dockets? Ms. Wilson,
12 do you have a question?

13 MS. WILSON: Pardon?

14 COMMISSIONER DEASON: Did you have a question?

15 MS. WILSON: No, I was just nodding my head in
16 agreement.

17 MS. CANZANO: Commissioner Deason?

18 COMMISSION DEASON: Yes.

19 MS. CANZANO: The fax says that they intend to
20 withdraw -- Intermedia intends to withdraw at the
21 prehearing conference today. So it seems to indicate
22 that they might have indicated that they would actually
23 be present at the prehearing conference. So for
24 whatever that means.

25 COMMISSIONER DEASON: Is there anyone here on

1 behalf of Intermedia? (no response).

2 I'm just assuming since given the events of this
3 week and the fax that we sent out and the preliminary
4 indication from them, that their absence today is to be
5 indicated that they are just withdrawing from this
6 proceeding. Okay.

7 MR. RINDLER: Your Honor, one other question on
8 testimony. To the extent that testimony has been
9 withdrawn from these proceedings and had been relied
10 upon in other witnesses' testimony in the same
11 proceeding, is there an opportunity to file supplemental
12 testimony?

13 COMMISSIONER DEASON: I don't anticipate any.
14 Staff, have you contemplated this question before?

15 MS. CANZANO: Well specifically what do you mean by
16 "supplemental testimony"? I anticipated that perhaps
17 some parties might want to adopt certain pages of
18 testimony filed in another petition. Perhaps you might
19 want to adopt a couple of pages of your witness's
20 testimony in the Teleport position, but since Teleport
21 withdrew. But more than that I don't know.

22 COMMISSIONER DEASON: Perhaps you can clarify your
23 question. Exactly what is it you're asking?

24 MR. RINDLER: I'm asking just what counsel said.
25 In connection with the -- our petition, the witness

1 relied in part upon the statements of others in another
2 proceeding. He was talking to a chart that was prepared
3 in that proceeding, the Teleport chart, and that's been
4 withdrawn as I understand.

5 MS. CANZANO: That's right.

6 MR. RINDLER: The question now is, for the purposes
7 of the record can we supplement the testimony so that,
8 one, it's clear, and, two, it's on the record?

9 COMMISSIONER DEASON: It seems to me you're placing
10 your own self in jeopardy. Anytime you rely upon
11 testimony of other parties in other proceedings there is
12 no guarantee that any prefiled testimony is ever going
13 to be inserted into the record. It can be withdrawn.
14 It can be objected to. There are numerous things that
15 can happen.

16 So just because that testimony has been prefiled
17 does not give you assurance that it's going to be in the
18 record for you to rely upon. And I'm reluctant at this
19 point to be authorizing the filing of supplemental
20 testimony.

21 But I'm willing to hear from staff and other
22 parties if there is a concern one way or the other
23 before I make a ruling.

24 Any parties have any comments on the suggestion of
25 allowing supplemental testimony in the case of witnesses

1 who have relied upon testimony of witnesses whose
2 testimony is being withdrawn?

3 MR. LACKEY: Mr. Chairman?

4 COMMISSION DEASON: Yes, Mr. Lackey.

5 MR. LACKEY: Doug Lackey. We certainly would have
6 no objection where a witness -- let me use my own
7 witnesses as an example so I don't get the names mixed
8 up. For Mr. Scheye, perhaps final testimony in the
9 Teleport case and addressing MFS's position he simply
10 adopted the testimony he put in the Teleport case, I
11 would expect that we and any of the parties would be
12 able to use that testimony that he had incorporated and
13 referred to -- his own testimony in another
14 proceeding -- in the remaining dockets here. I think --

15 COMMISSIONER DEASON: You're talking about a
16 situation where a witness adopts his own testimony?

17 MR. LACKEY: Yes, sir. That's right.

18 COMMISSION DEASON: Not another witness' --

19 MR. LACKEY: That's right. I think we would have
20 difficulty with adopting either another wholly unrelated
21 witness' testimony or adding supplemental testimony to
22 sort of cover the situation that, gee, I wish I had said
23 that. I think it's a little late in the ball game for
24 that.

25 But the first instance, which is what I think the

1 staff was addressing, we have no objection to.

2 MR. RINDLER: Your Honor, it's not a question of,
3 it would be nice if we said that. We just talked about
4 this exhibit in the testimony.

5 So it's not as if it's another idea. It's just
6 that now that it's not in the record through that
7 witness, we would like to make sure the record is clear
8 by putting information with -- simply with respect to
9 that exhibit into the record.

10 MR. LACKEY: May I supplement, Mr. Chairman? I
11 don't want to cause a problem here. To the extent that
12 we're talking about a TCG exhibit, that chart that I
13 think was in TCG's testimony, we would not object to
14 incorporating that -- that chart, provided that, you
15 know, the MFS witnesses can properly explain it and
16 provide a basis for it during cross-examination. We
17 don't want to be difficult about this.

18 COMMISSIONER DEASON: Is that what you're referring
19 to, Mr. Rindler?

20 MR. RINDLER: Yes, Your Honor.

21 COMMISSIONER DEASON: That's the only instance
22 where you need to --

23 MR. RINDLER: Yes, Your Honor.

24 COMMISSIONER DEASON: Any other comments or
25 concerns? Mr. Hoffman, you need to make an appearance?

1 MR. HOFFMAN: Commissioner Deason, my apologies for
2 being late. I'm Kenneth A. Hoffman. I would like to
3 enter an appearance on behalf of myself and William B.
4 Willingham, as well as Jodie Donovan-May, on behalf
5 Teleport Communications, Group, Inc. and their Florida
6 affiliate, TCG South Florida.

7 COMMISSIONER DEASON: Earlier we were discussing
8 the status of Teleport in this proceeding. And we did
9 note that there was a notice of dismissal, but it was
10 your intention to participate in proceedings; is that
11 correct?

12 MR. HOFFMAN: Yes, sir.

13 COMMISSIONER DEASON: Okay. Okay. In regards to
14 Mr. Rindler's question, Staff, do you have any final
15 comments?

16 MS. CANZANO: I think that's fine.

17 COMMISSIONER DEASON: I'm assuming since there is
18 no objection to doing that, Mr. Rindler, we will allow
19 you that latitude.

20 MR. RINDLER: Thank you, Your Honor.

21 COMMISSIONER DEASON: I was under the assumption we
22 were talking about massive introductions of supplemental
23 testimony at this late date.

24 We're now ready to proceed into the draft
25 prehearing order. We will begin with Section 1, which

1 is the case background. Are there any corrections or
2 modifications to the case background?

3 Section 2 is the procedure for confidential
4 information, which is standard. Any questions or
5 concerns?

6 Section 3 addresses the prefiled testimony and
7 exhibits. Questions and concerns on Section 3?

8 Section 4 addresses the order of witnesses.

9 MS. WILSON: Commissioner?

10 COMMISSION DEASON: Yes.

11 MS. WILSON: On behalf of FCTA, we are withdrawing
12 our witnesses. Our witnesses only filed testimony in
13 the Continental, Time Warner and Teleport proceedings.

14 So on page seven we would withdraw the testimony of
15 Jeffrey Smith and Joe Cresse for direct testimony, and
16 also the rebuttal testimony of John Kern and Joe
17 Cresse.

18 MR. MURPHY: Similarly, Commissioner Deason, Time
19 Warner is withdrawing all testimony filed in this
20 proceeding. And that would be Joan McGrath's testimony,
21 direct, on page seven, and the rebuttal also referenced
22 on page seven.

23 COMMISSIONER DEASON: Very well. Mr. Crosby?

24 MR. CROSBY: Commissioner, Continental is
25 withdrawing the testimony of A.R. "Dick" Schleiden. So

1 the draft prehearing statement at pages six and seven
2 should be amended to remove the reference to
3 Mr. Schleiden as a witness in this case.

4 COMMISSIONER DEASON: Very well.

5 MS. CANZANO: And also --

6 COMMISSIONER DEASON: Mr. Lackey, did you have a
7 comment?

8 MR. LACKEY: I can't get used to the switches,
9 Mr. Chairman. We don't have any witnesses in this
10 docket to withdraw, but I do want to talk about the
11 order of witnesses when it's appropriate to do that.

12 COMMISSIONER DEASON: Okay.

13 MR. LACKEY: I'm sorry. I'm sorry. I made a
14 mistake. I got my dockets confused. We do need to
15 withdraw Mr. Varner on page seven, because he was only
16 filed and only addressed the TCG petition, which has now
17 been withdrawn.

18 COMMISSIONER DEASON: Very well.

19 MR. LACKEY: I would like to talk about the order
20 of witnesses when we get further.

21 COMMISSIONER DEASON: Before we conclude this
22 section we will address the order. Mr. Melson?

23 MR. MELSON: No changes at this time, although I
24 would also like to discuss the order of witnesses.

25 COMMISSIONER DEASON: Very well. Any other

1 concerns before we address the order of witnesses?

2 MS. CANZANO: Yes.

3 COMMISSION DEASON: Mr. Wiggins?

4 MR. WIGGINS: Yes, sir, I would like to make an
5 appearance if I could, after making an apology. I
6 apologize for being late. I misread the notice.

7 Patrick Wiggins, law firm of Wiggins & Villacorta,
8 P. O. Box 1657, Tallahassee, Florida, appearing on
9 behalf of Intermedia Communications of Florida, Inc.
10 Thank you.

11 COMMISSIONER DEASON: We discussed your status
12 earlier in this prehearing conference when you were
13 absent, not knowing you were going to be coming later.

14 MR. WIGGINS: So where am I?

15 COMMISSIONER DEASON: I'm going to have to ask you
16 to leave. I'm kidding.

17 MR. WIGGINS: You wouldn't be the first.

18 COMMISSIONER DEASON: Perhaps -- we were
19 speculating as to what your status was to be. Can you
20 enlighten us?

21 MR. WIGGINS: Boy, I wish I knew. I don't want to
22 complicate things, but I will say that in my own mind
23 I'm not sure what standing we have to stay in the
24 proceeding.

25 On the other hand it seems to me this is so

1 important that it would be -- probably be wiser for us
2 to remain in the docket as a party, although we would
3 take no position on the various positions. And I simply
4 want to do that because we are a party, we've been
5 granted party status.

6 And with the importance of this proceeding and with
7 what all is going to be coming down in the next six
8 months it seems to me appropriate for us to stay in the
9 docket in case there is something we need to bring to
10 the Commission's attention. So that would be my
11 preference, notwithstanding the letter I sent to
12 Ms. Canzano saying that we would be withdrawing.

13 COMMISSIONER DEASON: Okay. Ms. Canzano, do you
14 understand the status of Intermedia?

15 MS. CANZANO: Yes, I do.

16 COMMISSIONER DEASON: Very well.

17 MR. WIGGINS: Thank you.

18 MR. HOFFMAN: Commissioner Deason, if I may, I've
19 handed out an amended prehearing statement to all of the
20 parties which we have filed this morning on behalf of
21 Teleport Communications Group.

22 Also with respect to the order of witnesses,
23 inasmuch as Teleport has filed a voluntary dismissal of
24 its petition, and I would note that the testimony that
25 Teleport filed was filed only in Docket No. 950985 and

1 was not rolled over or adopted into the subdockets in
2 this proceeding, the point being that the direct
3 testimony of Mr. Kouroupas and the rebuttal testimony of
4 Mr. Kouroupas should be withdrawn consistent with the
5 dismissal of our petition.

6 COMMISSIONER DEASON: So you're -- on page six and
7 page seven of the draft prehearing order, you're wanting
8 the testimony of Mr. Kouroupas shown to -- to be
9 withdrawn so there would not be a listing there?

10 MR. HOFFMAN: Yes, sir.

11 COMMISSIONER DEASON: Very well. Now we can
12 discuss the order of the remaining witnesses. I believe
13 Mr. Melson.

14 MR. MELSON: Chairman Deason, Dr. Cornell will not
15 be available on Monday or Tuesday of the week scheduled
16 for hearing, which is the day that the unbundling
17 docket, which we haven't got to yet, is scheduled. We
18 would ask permission to take her testimony in the
19 unbundling docket on Wednesday.

20 Given the number of witnesses that have been
21 eliminated, I wonder if it might make sense to forego
22 hearings at all on Monday and begin on Tuesday with the
23 notion that we would spend two days on each docket. I
24 think given the -- I believe we're going to see the same
25 sort of reduction in witnesses in the other docket.

1 And that would both save the Commission some time
2 and help me at least partially deal with my scheduling
3 issue.

4 COMMISSIONER DEASON: There has been a
5 suggestion -- first of all let me clarify that I do not
6 have the authority to change the hearing date. That
7 would have to come from the Chairman. I can make a
8 recommendation to her to change those hearing dates, but
9 that's strictly her prerogative.

10 But I would be inclined to hear any comments from
11 any of the parties as to the suggestion of eliminating
12 Monday's hearing and having hearings just four days on
13 the two dockets.

14 MR. MURPHY: Time Warner has no objection.

15 MS. WILSON: FCTA has no objection.

16 MR. RINDLER: MFS has no objection.

17 MR. CROSBY: Continental has no objection.

18 MR. LACKEY: BellSouth has no objection either to
19 the four days or to setting Dr. Cornell at a special
20 date.

21 COMMISSION DEASON: Mr. Tye?

22 MR. TYE: AT&T has no objection.

23 MR. HORTON: McCaw has no objection.

24 MR. BOYD: No objection.

25 MR. HOFFMAN: No objection.

1 MR. WIGGINS: No objection.

2 COMMISSIONER DEASON: Staff?

3 MS. CANZANO: We have no objections -- I just have
4 one clarification. The unbundling docket was scheduled
5 only for Monday and Tuesday, and Wednesday through
6 Saturday for interconnection. So if we start on
7 Tuesday, would we also -- would we take two days for
8 unbundling beginning on Tuesday and then just push
9 everything back?

10 COMMISSIONER DEASON: Let me ask this. How did
11 staff envision these hearings to run? Did you -- was
12 there a date certain for the end and the beginning?

13 MS. CANZANO: Yes.

14 COMMISSIONER DEASON: Or were they just to run one
15 after the other regardless of when one terminated?

16 MS. CANZANO: I think the latter. But that's
17 really a function of by the time the petitions were
18 filed, because the January 10th hearing date was
19 established first, and that was established from the
20 10th through the 13th.

21 And then subsequent to that we received the
22 petitions in the unbundling docket. So we set those for
23 that Monday and Tuesday.

24 So I think that it would be okay to start, you
25 know, pushing back by one day, so long as we have a

1 clear start and stop.

2 COMMISSIONER DEASON: If the dates were pushed back
3 one day, what would be your suggestion for the
4 starting -- start dates of the second proceeding?

5 MS. CANZANO: On January 9th, Tuesday, January
6 9th.

7 COMMISSIONER DEASON: Right now the 8th and 9th is
8 set aside for resale; is that correct?

9 MS. CANZANO: That's correct.

10 COMMISSIONER DEASON: And interconnection is
11 scheduled to start at nine o'clock on Wednesday, the
12 10th?

13 MS. CANZANO: That's right.

14 COMMISSIONER DEASON: Okay. Now with this
15 suggested modification to the schedule it would be your
16 understanding then that resale would be on the 9th and
17 the 10th, and interconnection would begin at nine
18 o'clock on Thursday the 11th?

19 MS. CANZANO: Yes.

20 COMMISSIONER DEASON: Mr. Melson, that is your
21 suggestion?

22 MR. MELSON: Chairman Deason, let me -- let me make
23 two comments. First, since the witnesses are the same,
24 I think we could start one hearing after the other, or
25 even potentially combine the hearings, although I think

1 there may be a statutory issue about that.

2 In terms of presentation to the Commission, I
3 frankly think it makes more sense to do the local
4 interconnection docket first and unbundling second. The
5 bulk of the testimony in terms of volume is filed in the
6 interconnection docket, and I think there are some
7 things that are said in that docket that will help the
8 Commission's understanding when they get to unbundling.

9 My suggestion would be to commence the local
10 interconnection docket on Tuesday morning, and upon
11 completion of that docket, whenever that is, to -- to
12 move in immediately to unbundling. And that would give
13 us four days of -- to complete both hearings. And I
14 think that's very realistic.

15 COMMISSIONER DEASON: Okay. So the suggestion then
16 is to take interconnection first beginning on Tuesday
17 the 9th. And at the conclusion of that -- of
18 interconnection, then to proceed directly into the
19 unbundling under the resale docket?

20 MR. MELSON: (nodding head affirmatively).

21 COMMISSIONER DEASON: Any other comments, concerns
22 about that suggestion?

23 MR. ELIAS: I'm not so certain that this might not
24 create a notice problem. I think we've noticed the
25 interconnection hearing to start on the 10th. I'm a lot

1 more comfortable with pushing a date backwards than I am
2 advancing it a day.

3 COMMISSIONER DEASON: If all of this has been
4 noticed, what --

5 MR. ELIAS: There were two --

6 COMMISSIONER DEASON: I'm at a little bit of a
7 loss. First of all, this is the Chairman's call as to
8 the specific hearing dates. It's really outside of my
9 control. I guess if it was something that was extremely
10 important, I could make a recommendation to her, and she
11 could take that recommendation, and she could consider
12 that.

13 But then that's usually in a situation where there
14 is time to -- either notice has not been made, or there
15 is time to change the notice. I certainly don't want to
16 run into a notice problem.

17 Then that raises the question, if all of the
18 parties are here, does that constitute adequate notice
19 as a discussion at a prehearing conference? I'm not
20 really sure. I need some guidance. Mr. Pruitt, can you
21 help us out?

22 MR. PRUITT: Mr. Chairman, it's my opinion that if
23 the parties are here and agree to it, it's -- if the
24 parties are here and agree to it, it's a stipulation,
25 and they would be bound by it.

1 COMMISSIONER DEASON: So there is no official
2 notice problem?

3 MR. PRUITT: I don't think you have a notice
4 problem.

5 COMMISSIONER DEASON: Okay. Staff, my only concern
6 is, I want to get these hearings concluded. Right now
7 we've got a Saturday set aside. And that doesn't bother
8 me either. I'm certainly available on Saturday.

9 I just don't want to see ourselves in a situation
10 where we're going to be facing a time crunch. But I do
11 agree with Mr. Melson. It does appear that with the
12 elimination of a number of witnesses and with similar
13 action in the docket in the -- in the docket to follow
14 here today, that there may be ample time.

15 So, Mr. Melson, why -- first of all, is it the fact
16 that your witness is not available on Monday is the
17 reason that you would desire to begin the hearings on
18 Tuesday?

19 MR. MELSON: Frankly I just prefer to spend four
20 days in hearing rather than five. I think if we -- I
21 think we will finish in four days. I prefer it to be
22 Tuesday through Friday than Monday through Thursday.

23 My witness is not available until Wednesday. She
24 is returning from a vacation that she's just left on and
25 will be in the air about 30 hours on Monday. And I'm

1 hoping to have her sane by Wednesday morning.

2 COMMISSION DEASON: Okay. Any other -- before we
3 make any decisions, are there any other concerns with
4 the schedule and the scheduled appearance of witnesses?
5 Get everything out on the table at one time.

6 MR. LACKEY: I have one order of witness I would
7 like to discuss. I would like to begin by saying
8 BellSouth concurs with Mr. Melson's suggestion regarding
9 starting on Tuesday and simply running the hearings
10 together. We would support that.

11 With regard to the order of witnesses, the only
12 problem that I have with the order of witnesses is, as I
13 understand it now, the way it reads, Mr. Devine will go
14 first, followed by Mr. Price, followed by Dr. Cornell,
15 assuming we reach her on Wednesday or whatever.

16 Then you've got the BellSouth witnesses, Scheye and
17 Banerjee, followed by Mr. Guedel. We believe that
18 Mr. Guedel's testimony ought to be presented before our
19 testimony, since he is clearly adverse to our position
20 and in support of MCI Metro and MFS's position.

21 We think it would make more sense to present all of
22 that testimony together than sandwiching us by breaking
23 it up.

24 MR. TYE: We will agree to that change,
25 Commissioner Deason.

1 COMMISSIONER DEASON: Any other comments? Any
2 objection to changing the order of appearance? Hearing
3 none, Mr. Guedel will be before the BellSouth witnesses.

4 THE REPORTER: Please turn on your mic.

5 COMMISSIONER DEASON: Thank you. I'm sorry.

6 MR. TYE: He will go after Dr. Cornell; is that
7 correct, Commissioner?

8 COMMISSIONER DEASON: I thought the concern was
9 that he just appear before the appearance of the
10 BellSouth witnesses.

11 MR. TYE: It's okay --

12 COMMISSIONER DEASON: I have no problem if you want
13 Mr. Guedel to appear before Dr. Cornell, I have no
14 objection.

15 MR. TYE: You mean after Dr. Cornell. Since we're
16 the intervenor, I assume it would be better if MCI and
17 MFS put their witnesses on first and then Mr. Guedel and
18 then BellSouth's.

19 COMMISSIONER DEASON: I think that would be the
20 most logical sequence. Mr. Guedel then would be
21 appearing after Dr. Cornell and before the BellSouth
22 witnesses.

23 Okay. Any other concerns with the order of witness
24 appearances?

25 That brings us back to Mr. Melson's suggestion

1 concerning the actual hearing dates and which proceeding
2 would be heard first. Staff, do you have a concern with
3 having the interconnection proceeding heard before the
4 resale proceeding?

5 MR. ELIAS: Only from the perspective of making
6 sure that the notice that's given is consistent with the
7 requirements of Chapter 120 and the Sunshine Law.

8 COMMISSIONER DEASON: Given that Mr. Pruitt's
9 opinion is that all parties are present here today --
10 and if anyone objects -- in a moment I'm going to ask
11 all parties if there is any objection. If there is any
12 objection we probably will not do -- make this change,
13 because there could be a notice problem.

14 But if all parties accept, agree, then staff has no
15 logistical concern?

16 MR. ELIAS: That's correct.

17 COMMISSIONER DEASON: Okay. BellSouth has already
18 indicated they agree with the suggestion. I'm going to
19 ask if there -- the proverbial, if you have a problem
20 speak now or forever hold your peace type situation.

21 Are there any problems with the suggestion by
22 Mr. Melson that first of all we hear interconnection
23 first and begin at 9:00 a.m. on Tuesday, and at the
24 conclusion of interconnection we would proceed directly
25 into the resell docket? Is there any objection by any

1 party concerning that schedule? Mr. Tye.

2 MR. TYE: Commissioner Deason, I hate to be the
3 grinch. I don't know Mr. Gillan's schedule. He -- I
4 know he has set aside the 8th and the 9th for unbundling
5 and resale in which he is a witness.

6 That's the only problem that I have with agreeing
7 to put interconnection first. And I don't know that I
8 can reach him today to resolve that problem. I'm
9 sorry. If we went -- if unbundling went first, I know
10 he is scheduled to be here on the 8th and the 9th.

11 And to the extent he's not available after the 9th,
12 I guess we would get him on the stand early if need be.

13 COMMISSIONER DEASON: Now you're saying he is
14 available. What days do you know for sure he is
15 available?

16 MR. TYE: He is available on the 8th and the 9th.
17 I asked him to be available both of those days, because
18 those were the originally-scheduled days for Docket
19 950984.

20 COMMISSIONER DEASON: Right. The resale. But
21 we're discussing the interconnection docket now.

22 MR. TYE: He's not a witness in the interconnection
23 docket. The problem I've got is if we put the
24 interconnection docket first --

25 COMMISSIONER DEASON: Mr. Guedel is not a witness

1 in the interconnection --

2 MR. TYE: No, I'm sorry, Mr. Gillan testifying for
3 AT&T in the unbundling and resale. I know it's
4 complicated. I get headaches over it myself. But the
5 problem is that he has committed to me to be available
6 on the 8th and the 9th for the unbundling and resale
7 docket.

8 If we start with the interconnection docket, I
9 don't know if he's available later in the week. That's
10 the problem that I have.

11 COMMISSIONER DEASON: He is scheduled to be the
12 last witness.

13 MR. TYE: He is scheduled to be the last witness in
14 that docket. That's why I told him to be available both
15 days. If we could take a 10-minute recess I will go try
16 to call him and see if he is available and see if we can
17 agree to the rescheduling.

18 COMMISSIONER DEASON: Okay. Well we will do that.
19 And if you're unable to reach him, well then I'm kind of
20 reluctant to make this change. But if it can be
21 accommodated we will see what we can do.

22 MR. TYE: I think we can agree to Mr. Melson's
23 suggestion to the extent that the hearings would begin
24 on Tuesday. I think what the -- as long as we began
25 with the unbundling and resale case rather than the

1 interconnection case, and with the agreement of the
2 parties that if Mr. Gillan is not available after
3 Tuesday, we would get him on the stand on Tuesday.

4 But I can run and see if I can track him down.
5 He's real hard to catch, but I will see if we can track
6 him down if we can take about a ten-minute recess.

7 COMMISSIONER DEASON: We will go ahead and take a
8 recess at this time then and reconvene at 9:55.

9 MR. TYE: Thank you, sir.

10 (short recess).

11 COMMISSIONER DEASON: Call the prehearing
12 conference back to order. Mr. Tye?

13 MR. TYE: Yes. Commissioner Deason, I was able to
14 get in touch with Mr. Gillan. He will be available on
15 Thursday and Friday of the week in question, which I
16 think is the 11th and 12th of January, to deliver his
17 testimony in the unbundling and resale docket.

18 So we can agree to the schedule change with the
19 understanding that if for some odd reason Mr. Gillan
20 came up before Thursday, we would need the cooperation
21 of the Commission and the parties to get him on on
22 Thursday or Friday.

23 COMMISSIONER DEASON: Okay. Is that understood by
24 all parties? (no response). Okay. So just to make
25 sure that everyone understands -- by the way, we have

1 been in contact with the Chairman's office, and there is
2 no objection on their part to making this change.

3 Their concern was that all five commissioners be
4 available for a block of time, and we're not altering
5 that. This hearing would be during that block of time
6 when all five commissioners are available. So they have
7 no concern with changing the order and the start time
8 within that block of time.

9 So what I'm going to announce then is that the --
10 according to Mr. Melson's suggestion -- and this is with
11 the concurrence of staff. Please don't be shy. If
12 there is any problem, let me know -- the interconnection
13 docket will take place before the resale docket.

14 The interconnection docket will begin at nine
15 o'clock on Tuesday, January the 9th. And at its
16 conclusion then we will proceed into the resale docket.
17 And the intent is that both dockets will be completed by
18 the close of business on Friday, the 12th.

19 However, since the Chairman's office has already
20 set aside Saturday, the 13th, if that time is needed we
21 will meet on Saturday, the 13th. But hopefully that
22 time will not be needed.

23 That is the way we will proceed. And since no
24 party has raised any objection to that, I assume that
25 all parties have received adequate notice, and this is

1 the way we will proceed. Very well.

2 Continuing on in the draft prehearing order, we
3 will address Section 5, basic positions. Are there
4 changes or corrections to the basic positions as
5 stated?

6 MR. MURPHY: Commissioner, Time Warner has
7 distributed amended petitions in light of events in the
8 docket. They've been given to staff. And the basic
9 position is changed as have individual petitions
10 throughout -- positions throughout.

11 COMMISSIONER DEASON: This has been given to all
12 parties here today?

13 MR. MURPHY: Unless they've come late. And we will
14 make that available if they have.

15 COMMISSIONER DEASON: I'm not concerned about
16 people who come late. I'm just kidding. Staff, you
17 have this, and this can be incorporated into the order?

18 MR. ELIAS: Yes, sir, we do.

19 COMMISSIONER DEASON: Very well. And you have your
20 basic position and all of the positions on all of the
21 remaining issues; is that correct?

22 MR. MURPHY: Yes, sir.

23 COMMISSIONER DEASON: Very well. Basic positions,
24 any changes, corrections? Ms. Wilson.

25 MS. WILSON: Commissioner, likewise FCTA has also

1 revised its basic position and has amended positions on
2 two issues. I've distributed this to the staff and the
3 parties. I have not yet given you a copy for which I
4 apologize for. We will also provide this to staff on a
5 diskette.

6 COMMISSIONER DEASON: Very well. Mr. Rindler?

7 MR. RINDLER: I have no changes, Your Honor.

8 COMMISSIONER DEASON: Very well.

9 MR. CROSBY: Mr. Deason, Continental has similarly
10 changed all of its positions, including on the basic
11 position. And we have -- we are in the process of
12 filing now an amended prehearing statement. And we've
13 handed out to the parties that prehearing statement and
14 to staff. And we have provided with our filing a
15 diskette.

16 COMMISSIONER DEASON: Very well. Mr. Lackey?

17 MR. LACKEY: Mr. Chairman, we don't think -- we
18 don't have any changes in our prehearing statement. We
19 would like to just look over the draft. If we find
20 anything out of line, we would like to be able to submit
21 it to the staff.

22 COMMISSIONER DEASON: Obviously since we all have
23 been operating under a short time schedule in these
24 dockets, if there are minor changes which need to be
25 made, please give those to staff. I'm sure they will be

1 happy to incorporate those. We don't have to utilize
2 time here today to make sure that all of the I's are
3 dotted, T's are crossed. Mr. Melson?

4 MR. MELSON: We've got no changes.

5 COMMISSION DEASON: Mr. Tye.

6 MR. TYE: I have no changes.

7 COMMISSION DEASON: Mr. Horton.

8 MR. HORTON: No changes.

9 COMMISSION DEASON: Mr. Boyd.

10 MR. BOYD: No changes.

11 COMMISSION DEASON: Mr. Hoffman.

12 MR. HOFFMAN: Commissioner, we've filed and served
13 to all of the parties this morning our amended
14 prehearing statement which reflects revisions to our
15 basic position and our position on every issue except
16 Issues 2 and 12.

17 COMMISSIONER DEASON: Very well. Mr. Wiggins?

18 MR. WIGGINS: Commissioner, Intermedia is a
19 signatory to the stipulation and agreement. And because
20 of that we wish to change our position. I wish to take
21 no position on the basic position and every other
22 position at this point.

23 So it would be no position as to what the terms of
24 the agreement should be between the parties that are
25 still in dispute.

1 COMMISSIONER DEASON: Staff has that for
2 Intermedia?

3 MS. CANZANO: Yes.

4 COMMISSIONER DEASON: Okay. All right. We will
5 proceed then into the specific issues and positions.

6 And what I want to do is, I understand that a
7 number of parties have changed their positions
8 consistent with previous actions that were taken this
9 week and have filed or are in the process of filing
10 those changed positions.

11 Given that's the situation, you do not have to
12 advise me each and every time that you're changing your
13 position. If it's already been incorporated into a
14 filing, or you presently will be filing that and be
15 giving it to staff, I want to try to get through this as
16 quickly as possible.

17 So given that, we will proceed then to Issue 1.
18 Changes or corrections, other than those that have
19 already been indicated for Issue 1.

20 MS. CANZANO: Staff has a change in position. We
21 just want to -- in our position, instead of saying at
22 the end of the sentence, "other LEC's today," we would
23 like to say "other local telecommunications providers"
24 today.

25 COMMISSIONER DEASON: Oh, at the very end of your

1 position?

2 MS. CANZANO: Yes.

3 MS. WHITE: I'm sorry. Donna, would you repeat
4 that?

5 MS. CANZANO: Delete the words "LEC's today" at the
6 end of the sentence and substitute "local
7 telecommunications providers."

8 COMMISSIONER DEASON: Okay. Issue 2. Changes or
9 corrections other than those indicated for Issue 2?
10 Staff has no changes?

11 MS. CANZANO: No.

12 COMMISSIONER DEASON: Issue 3?

13 MR. TYE: I've got a minor one, Commissioner
14 Deason. I will get it to the staff in a separate memo.

15 COMMISSIONER DEASON: Very well. Issue 4? Issue
16 5A? Issue 5B? Issue 6? Is there a problem with Issue
17 6? Issue 7? Issue 8? Issue 9? Issue 10? Issue 11?
18 Issue 12? Issue 13? Issue 14? Ms. Canzano.

19 MS. CANZANO: For those parties who are going to
20 make changes, if they haven't already done so, I would
21 like to receive those changes by noon on Wednesday.

22 COMMISSIONER DEASON: Any problem with a noon
23 Wednesday deadline for incorporating last changes into
24 issue positions? Mr. Rindler?

25 MR. RINDLER: Your Honor, I have no problem with

1 that. The only thing I would say is that we were handed
2 a number of these changes just now. It is possible that
3 in light of that there may have to be a change in a
4 position and withdrawal of all of the other parties.

5 But I would certainly agree with that date. And
6 any changes I need to make I would make by then.

7 COMMISSIONER DEASON: Very well. Okay. Wednesday
8 noon deadline for changes to be submitted to staff.

9 That concludes the issues. Any last concerns
10 concerning the issues before we proceed into Section 7?

11 Hearing none, Section 7 is the exhibit list. I
12 realize that a number of witnesses' testimony has been
13 withdrawn. Obviously exhibits attached to that
14 testimony likewise would be withdrawn. Staff will make
15 those changes.

16 Are there any other concerns with the exhibit
17 list? Hearing none, we will proceed then into the
18 Section 8, proposed stipulations. Staff?

19 MS. CANZANO: That's just the proposed --

20 COMMISSIONER DEASON: Just acknowledging that --
21 the stipulation and the acceptance; is that correct?

22 MS. CANZANO: That's correct.

23 COMMISSIONER DEASON: I understand there are no
24 pending motions?

25 MS. CANZANO: None that I'm aware.

1 COMMISSION DEASON: Mr. Lackey?

2 MR. LACKEY: Mr. Chairman, we don't have a pending
3 motion. But MFS and BellSouth had a discovery issue
4 that we believe the staff mentioned to you. We think
5 we've worked it out.

6 And I would like just to put it on the record what
7 that is since we won't have another opportunity to meet
8 before the --

9 COMMISSIONER DEASON: Okay. Please proceed.

10 MR. LACKEY: MFS contacted us on Wednesday and
11 asked to be able to depose Dr. Banerjee and Mr. Scheye,
12 our two witnesses in this proceeding. After some
13 discussions then and this morning BellSouth is agreeable
14 and will not object -- our issue was that
15 Mr. Scheye has been deposed twice already.

16 But what we've agreed to with MFS is that we will
17 depose Mr. Banerjee and Mr. Scheye on the 5th of
18 January, that the depositions will be limited to two
19 hours apiece, and that we will be -- that BellSouth will
20 be allowed to depose Mr. Devine on that same day,
21 subject to that same time restriction.

22 We will -- I don't think we talked about noticing
23 them. We will notice them for the appropriate dates.
24 And we agreed that Mr. Devine's and Mr. Scheye's
25 deposition would be limited to matters that they had

1 already not -- that they had not already been asked
2 about in the earlier depositions.

3 I think I got that right; didn't I, Mr. Rindler?

4 MR. RINDLER: Yes, Your Honor, that's correct.

5 MR. MELSON: Chairman Deason, if Dr. Banerjee will
6 be deposed, we will participate in that deposition. We
7 would try to live by that total two-hour time limit.
8 But I believe we've got a right to participate, and we
9 likely will have some questions for Dr. Banerjee.

10 COMMISSIONER DEASON: Mr. Lackey?

11 MR. LACKEY: The other thing is that we will
12 probably like to try to do these by telephone, since
13 this these witnesses are scattered all over the place.

14 COMMISSIONER DEASON: Obviously this is a noticed
15 deposition by Mr. Rindler. And, Mr. Melson, you're free
16 to participate. But I do understand there is a time
17 constraint. I will just leave it to the parties to work
18 within those constraints.

19 MR. MELSON: I think we will be able to work things
20 out.

21 COMMISSIONER DEASON: Okay. Any other matters to
22 come before the prehearing officer? Mr. Melson?

23 MR. MELSON: Chairman Deason, now that we have a
24 number of parties in local interconnection that my
25 understanding have settled their local interconnection

1 issues with Southern Bell in a settlement that's been
2 approved by the Commission, they have withdrawn their
3 testimony from this proceeding.

4 I have a concern as to whether they are any longer
5 proper participants in the proceeding. They were
6 granted intervention at a time when the Commission's
7 action in this docket could have affected their
8 substantial interests.

9 Now that that situation has changed, I have not
10 completely analyzed it, but it seems unlikely to me
11 there is anything the Commission could do in this docket
12 that would affect their substantial interests. And I
13 was hoping to get perhaps some clarification from those
14 parties as to what they thought the nature and scope of
15 their participation might be, frankly to help me decide
16 whether to file a motion to dismiss them for lack of
17 standing.

18 MR. RINDLER: I would concur in that, Your Honor.

19 COMMISSIONER DEASON: Very well. There has been an
20 inquiry as to the extended participation by those
21 parties who have reached agreement. And I will leave it
22 to those parties to offer us that explanation at this
23 time.

24 MR. MURPHY: Commissioner Deason, as you know,
25 these proceedings sometimes take unforeseen turns. And

1 you can tell from our positions that we are here merely
2 to preserve and protect our rights in the event that
3 such an eventuality occurs and that something does
4 happen that affects us in a competitive or
5 discriminatory -- something that could perhaps be beyond
6 the scope of the agreement that could affect us.

7 COMMISSIONER DEASON: Ms. Wilson?

8 MS. WILSON: I would concur on behalf of FCTA in
9 those comments. We would like to reserve basically our
10 right to file a posthearing brief. The record is not
11 closed in this case. We would like to support the terms
12 of the stipulation and agreement.

13 And also we would like to make sure that the terms
14 and conditions that are established are
15 nondiscriminatory.

16 MR. CROSBY: Continental would concur in those
17 remarks and would vigorously oppose any motions to
18 dismiss Continental from this proceeding. We still have
19 the belief that our substantial interests will be
20 affected by the outcome of this in ways that we are not
21 now able to foresee.

22 And that is the assistance that we wish to provide
23 to the Commission in determining how that might or might
24 not occur. Thank you.

25 COMMISSIONER DEASON: Mr. Lackey?

1 MR. LACKEY: Mr. Chairman, I was looking forward to
2 having the cable people on my side for a change, and I
3 would like to support their position that they be
4 allowed to remain in the case.

5 COMMISSIONER DEASON: Mr. Melson?

6 MR. MELSON: Based on what I've heard so far,
7 Mr. Chairman, at this point I don't believe Southern
8 Bell has offered any testimony or exhibits that bring in
9 the scope of that stipulation. I'm not sure they would
10 have that ability.

11 My concern frankly is, we will see some what I will
12 call friendly cross of Southern Bell's witness at
13 attempts to get into the record matters that might not
14 be appropriate if the participation in this proceeding
15 were limited to those whose substantial interests are
16 affected.

17 That's part of my concern. I'm still trying to
18 understand at this point so that I can make an
19 intelligent decision on whether we should file
20 something.

21 COMMISSIONER DEASON: Any other comments with regard
22 to this?

23 MR. HOFFMAN: Commissioner Deason, I would adopt
24 the statements of Mr. Murphy and Ms. Wilson with respect
25 to Teleport's substantial interests. In terms of really

1 the issue at hand, let me advise you that my intent
2 would be to request to be excused once appearances are
3 taken during the interconnection hearing and to reserve
4 our right to participate in the remainder of the process
5 for the purpose of filing a posthearing brief on any
6 motion for reconsideration or on any appeal which may
7 arise as a result of the final order.

8 COMMISSIONER DEASON: Mr. Wiggins?

9 MR. WIGGINS: It's so difficult agreeing with no
10 one and always having my own perspective on this. I
11 actually agree with Mr. Melson, which is why if this
12 were a classic case, if this was a classic APA type
13 case -- I think when I started this morning I said I had
14 concerns about what standing I had to stay in this
15 case. But if this is anything but a classic APA case,
16 because of the new statute, the complexity of the
17 issues, the unforeseeability of events and the potential
18 need for Intermedia to brief the Commission in an
19 appropriate way without having to reintervene if
20 something should come up where the Commission needs that
21 information from Intermedia.

22 Having said that my -- we've taken no position on
23 what the interconnection arrangement should be between
24 Mr. Melson's client and Southern Bell. And like
25 Mr. Hoffman, my intention at this point is to make an

1 appearance at the hearing and then ask to be excused.

2 MR. RINDLER: Your Honor? I'm sorry.

3 COMMISSIONER DEASON: Staff, do you have any
4 comments?

5 MR. ELIAS: We take no position at this time
6 pending whatever arguments might be forthcoming
7 concerning any party's standing to participate in either
8 of these proceedings.

9 COMMISSIONER DEASON: Mr. Rindler?

10 MR. RINDLER: Your Honor, with respect to the
11 stipulation in other cases, I'm not sure -- maybe
12 Mr. Melson can speak to it -- that there has been any
13 testimony on that in these cases that are left. And
14 there has been no discovery with respect to that.

15 If that's going to be part of the positions of the
16 parties who have settled and withdrawn their cases, we
17 may need to do further discovery.

18 I would agree with Mr. Melson and Mr. Wiggins
19 actually, except I would say this is a classic case in
20 the sense that the APA is the APA. It doesn't matter
21 what --

22 COMMISSIONER DEASON: Let me say this. We're not
23 going to be trying the stipulation at this hearing.
24 That's not the subject of this hearing. That
25 stipulation has been filed, and it's been accepted by

1 this Commission.

2 So I don't think there is going to be any need for
3 there to be any supplemental testimony addressing the
4 stipulation. I assume that's the position of the
5 parties. If I'm incorrect, somebody needs to tell me
6 right now, because we've got serious discussions to do.
7 Very well.

8 Mr. Melson, obviously you're free to file a motion
9 to have parties dismissed at any time. If you file that
10 obviously it will be entertained.

11 I just put you on notice I'm hesitant at this time
12 to eliminate participation of any party which has
13 already been granted intervenor status. I think that
14 would be fairly unprecedented in a Commission action.

15 However, I do want to put parties on notice that
16 the Commission probably would frown upon utilization of
17 your intervenor status to incur in classic examples of
18 friendly cross-examination.

19 I've gotten some preliminary indications that some
20 parties may even be asked to be excused from the
21 proceeding, but they want to retain their right to file
22 a brief and to participate in appeals and
23 reconsideration and other matters which may be coming
24 before the Commission.

25 I also would be extremely reluctant to dismiss any

1 party, given the fact that this is a new statute. The
2 legislature intended for parties to negotiate these
3 issues.

4 And it could be considered by having a party enter
5 into a negotiation and then being thrown out of a
6 Commission proceeding, that that would have a severe
7 effect upon future attempts to enter into some type of a
8 negotiated settlement. And I certainly do not want to
9 be in a position of limiting or hindering future
10 negotiations as the need may arise.

11 Given that situation, that's where we're going --
12 we're going to proceed. And hopefully we will not be
13 having this hearing -- hearing time taken up by
14 unnecessary cross-examination, particularly by parties
15 whose interest may have been limited by actions taken
16 previous this week.

17 MR. LACKEY: Mr. Chairman, I'm sorry, I don't want
18 to raise the issue again. I do need to point something
19 out to you.

20 The stipulation that we were discussing a moment
21 ago is an exhibit in this proceeding. And I didn't know
22 if you were aware of that. But I didn't want to let
23 this matter go without at least mentioning that to you.

24 COMMISSIONER DEASON: I wasn't aware of it as an
25 exhibit. I guess my comments were to the fact that I

1 would be concerned that we're going to try at the last
2 minute to, on a wholesale basis, try to retry the
3 stipulation.

4 And the stipulation doesn't need to be tried,
5 because it's already been filed and been approved. And
6 it will apply to those parties which have agreed to it.
7 It will not apply to those parties who have not agreed
8 to it.

9 MR. LACKEY: We did not offer it for the purpose of
10 retrying it. It was simply mentioned in the testimony
11 that -- attached to the testimony and mentioned in the
12 testimony to demonstrate our compliance or attempt to
13 comply with the statute regarding negotiations, if I
14 recall correctly.

15 MR. MELSON: Chairman Deason, my recollection was
16 that the only stipulation that's been filed as an
17 exhibit to testimony was the earlier TCG stipulation
18 which has been superceded.

19 COMMISSION DEASON: That was my understanding too.

20 MR. MELSON: I believe -- I could be wrong about
21 this. But I thought that the prehearing order shows
22 that BellSouth's Exhibit RCS-7 is the FCTA, Time Warner
23 stipulation and agreement. I'm sorry, it's page 54 of
24 the prehearing order.

25 COMMISSIONER DEASON: That is what is listed

1 there. This was prefiled; is that correct?

2 MR. LACKEY: Yes, sir. I mean I don't have the
3 testimony right here in front of me, but that's what the
4 prehearing statement says.

5 And I think indeed that both the TCG stipulation
6 and this stipulation have been filed. I think the TCG
7 stipulation was filed as an earlier exhibit before we
8 got the second -- just a moment, we will take a look and
9 confirm that.

10 MR. HOFFMAN: Commissioner Deason, subject to
11 check, my recollection is that the most recent
12 stipulation approved by the Commission was attached as
13 an exhibit to Mr. Scheye's rebuttal testimony in the
14 subdocket assigned to, excuse me, MCI Metro.

15 MR. LACKEY: And, Mr. Chairman, the other
16 stipulation is Mr. Scheye's Exhibit RCS-3. So both of
17 them are exhibits attached to testimony at this instant
18 anyway.

19 COMMISSIONER DEASON: I appreciate you advising me
20 of that. And obviously it's there. And we will deal
21 with it at an appropriate time. To the extent any party
22 has an objection to the introduction of those
23 stipulations, it will be addressed by the Commission at
24 that time. Okay. Anything further in Docket 85?

25 MS. WHITE: Mr. Chairman, one more thing.

1 BellSouth has issued discovery and has discovery
2 outstanding to all of the parties in Docket 985. With
3 regard to the parties who have withdrawn from the case,
4 Time Warner, Continental Cablevision, Intermedia and
5 Teleport, BellSouth will withdraw that discovery in this
6 docket.

7 COMMISSIONER DEASON: Very well. Show that
8 discovery withdrawn.

9 MS. CANZANO: Staff has the same problem with
10 outstanding discovery with regards to parties that
11 signed the stipulation.

12 COMMISSIONER DEASON: Staff is withdrawing that
13 discovery?

14 MS. CANZANO: Yes, with regard to those parties.

15 COMMISSIONER DEASON: Very well. Does this
16 conclude the 985 docket? Anything further? Hearing
17 nothing then this prehearing conference for 985 is
18 concluded.

19 Do we need to take a recess before we begin the 85
20 docket or are you ready --

21 MS. CANZANO: Only if you want to.

22 (The proceedings were concluded at 10:23 a.m.)
23
24
25

1 STATE OF FLORIDA)
2 COUNTY OF LEON)

CERTIFICATE OF REPORTER

3 I, SARAH B. GILROY, CP, RPR,

4 DO HEREBY CERTIFY that the Prehearing conference in
5 Docket No. 950985-TP was heard by Commissioner P. Terry Deason
at the time and place herein stated; it is further

6 CERTIFIED that I stenographically reported the said
7 proceedings; that the same has been transcribed under my direct
8 supervision; and that this transcript, consisting of 51 pages,
constitutes a true transcription of my notes of said
proceedings.

9 DATED this 26th day of December, 1995

10 
11 _____
SARAH B. GILROY

12
13 STATE OF FLORIDA)
14 COUNTY OF LEON)

15
16 The foregoing certificate was acknowledged before
17 me this 26th day of December, 1995, by SARAH B. GILROY, who
produced a Florida driver's license as identification.

18
19 _____
Notary Public - State of Florida
20 My Commission No.
21
22
23
24
25