

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

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In the Matter of	:	DOCKET NO. 970808-TL
	:	
Petition of BellSouth	:	
Telecommunications, Inc.	:	
to remove interLATA access	:	
subsidy received by	:	
St. Joseph Telephone &	:	
Telegraph Company.	:	



PROCEEDINGS: **PRE-PREHEARING CONFERENCE**

BEFORE: COMMISSIONER J. TERRY DEASON
Prehearing Officer

DATE: **February 16, 1998**

TIME: Commenced at 11:45 a.m.
Concluded at 2:45 p.m.

PLACE: Betty Easley Conference Center
Room 152
4075 Esplanade Way
Tallahassee, Florida

REPORTED BY: JOY KELLY, CSR, RPR
Chief, Bureau of Reporting
H. RUTHE POTAMI, CSR, RPR
Official Commission Reporters

DOCUMENT NUMBER-DATE

02501 FEB 23 88

FPSC RECORDS/REPORTING

1 **APPEARANCES:**

2 **BETH KEATING**, Florida Public Service
3 Commission, Division of Legal Services, 2540 Shumard
4 Oak Boulevard, Tallahassee, Florida 32399-0870,
5 appearing on behalf of the **Commission Staff**.

6 **DAVID B. ERWIN**, Young, van Assenderp and
7 Varnadoe, P. A., P. O. Box 1833, Tallahassee, Florida
8 32302-1833, appearing on behalf of **GTC, Inc.**

9 **NANCY B. WHITE**, c/o Nancy Sims, 150 South
10 Monroe Street, Suite 400, Tallahassee, Florida 32301,
11 appearing on behalf of **BellSouth Telecommunications,**
12 **Inc.**

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1 **P R O C E E D I N G S**

2 **(Hearing convened at 11:45.m.)**

3 **COMMISSIONER DEASON:** Call this
4 pre-prehearing to order. Do we have to give renoteice
5 and that sort of thing, or we're not that formal at
6 this stage?

7 **MS. KEATING:** Yes, sir; I think we'd best go
8 ahead and read the notice.

9 **COMMISSIONER DEASON:** Very well.

10 **MS. KEATING:** This time and place has been
11 set for a pre-prehearing conference in Docket
12 No. 970808 by notice issued February 11th, 1998. The
13 purpose is as set forth in the notice.

14 **COMMISSIONER DEASON:** Okay. Take
15 appearances.

16 **MR. ERWIN:** Commissioner Deason, my name is
17 David B. Erwin of the firm of Young, van Assenderp and
18 Varnadoe, 225 South Adams Street, Tallahassee,
19 Florida, appearing on behalf of GTC, Inc. which was
20 formerly St. Joseph Telephone & Telegraph Company.

21 **MS. WHITE:** Nancy White on behalf of
22 BellSouth Telecommunications.

23 **MS. KEATING:** And Beth Keating appearing for
24 Commission Staff.

25 **COMMISSIONER DEASON:** Ms. Keating, what is

1 the planned procedure we're going to follow today?

2 **MS. KEATING:** I would suggest that we take
3 up the disputed issues first, and I would also suggest
4 that Mr. Erwin go first since the issues that are
5 proposed are his issues, and then perhaps Ms. White
6 can provide a response.

7 **COMMISSIONER DEASON:** Very well. Mr. Erwin?

8 **MR. ERWIN:** Mr. Deason, I kind of wanted to
9 go first anyway. Nancy is probably in a state of who
10 knows what after having tried to get here from
11 Charleston this morning. I understand she has been up
12 for a long time.

13 **COMMISSIONER DEASON:** Well, we're glad to
14 have you with us.

15 **MS. WHITE:** Thank you.

16 **MR. ERWIN:** I filed a lot of things in this
17 case, but just to sort of reiterate what this thing is
18 all about, this is a petition that was filed by
19 BellSouth to terminate the subsidy, the interLATA
20 subsidy, for access that GTC, then St. Joseph
21 Telephone & Telegraph Company, gets from right now the
22 persons or companies that contribute to that subsidy.
23 As things have worked out over the years every
24 company -- well, to go back to the very beginning,
25 there were many winners and many losers when we went

1 to bill and keep of access charges.

2 BellSouth was a winner. They had an excess
3 of revenue that was produced by both the bill and keep
4 of access charges by DA and coin revenue and some
5 other incidental things; and St. Joseph
6 Telephone & Telegraph was in the negative area, or a
7 loser, in that regard and received a subsidy.

8 As the years passed, the winners of the
9 subsidy diminished and the losers of the subsidy
10 diminished until at this point there is one
11 contributor to the subsidy and one recipient, and we
12 are the two parties here today.

13 BellSouth is still contributing to the
14 subsidy, and GTC is the recipient of the subsidy to
15 the extent of \$1,223,000 a year for interLATA access
16 subsidy.

17 BellSouth filed a petition in this docket
18 asking the Commission to terminate that subsidy, and
19 we have taken issue with their right to do that at
20 this point. And we have gone as far now as to attend
21 a prehearing issues identification workshop, and then
22 there are some other issues today involving
23 interrogatories and requests for production of
24 documents; but all of these things, both the discovery
25 requests and the issues that arose at the workshop,

1 are all somewhat related I think.

2 And BellSouth and GTC are at completely
3 opposite ends of the spectrum as far as their
4 philosophy of this case and what we think the results
5 should be, of course.

6 But I went to the workshop for issue
7 identification with a set of issues that in my mind
8 helped frame the issues so that we could discuss those
9 things that I think are important from a legal and a
10 policy and a factual standpoint; and BellSouth also
11 had some issues, and the Staff had some issues.

12 And as you know, it's usually the custom at
13 these issue identification workshops to just sort of
14 try to get some kind of agreement on exactly what the
15 issues should be, and I felt that there was such a
16 disparity between the points of view of BellSouth and
17 GTC in this matter that we just simply needed to have
18 our issues considered.

19 I don't think that the broader issues that
20 were raised and agreed upon between Staff and
21 BellSouth will serve to highlight those items that we
22 think are important from a legal, policy and factual
23 standpoint.

24 Just for example, the BellSouth issues, as
25 far as GTC is concerned, assume that the Public

1 Service Commission can end this subsidy without
2 anything further, and we think that there is
3 definitely a legal issue about that.

4 **COMMISSIONER DEASON:** That's your first
5 legal issue, Mr. Erwin?

6 **MR. ERWIN:** Yes, that's one of the legal
7 issues: What is the statutory authority for BellSouth
8 Telecommunications, Inc.'s proposal to eliminate the
9 interLATA access subsidy of GTC?

10 We've got for example in the
11 Telecommunications Act of 1995, the
12 Section 364.051(1)(C) under price regulation talks
13 about the companies subject to price regulation. It
14 says "Each company subject to this section shall be
15 exempt from rate base rate of return regulation."

16 And that's something that we think needs to
17 be addressed and discussed, and discussed by all
18 parties, not just GTC in this case, because we did
19 choose price regulation and feel that as a result of
20 having done that, that we're not subject to rate of
21 return rate base regulation any longer.

22 And both the issues as framed by BellSouth
23 and also the discovery that they're seeking in this
24 case asks for us to do a lot of things so that you can
25 determine what our return would be on a rate base rate

1 of return methodology so that you can make a decision
2 as to whether or not to terminate the subsidy.

3 **COMMISSIONER DEASON:** Are there specific
4 issues raised by BellSouth which you disagree with?

5 **MR. ERWIN:** No. I don't have any objection
6 to any of the issues that are offered by the Staff and
7 BellSouth. I just think that standing alone that
8 they're willfully inadequate to bring out the crux of
9 this whole dispute and to help us and to help you to
10 try to focus on what we think are the important issues
11 in the case.

12 So all I'm asking for with regard to these
13 issues is that we be allowed to frame these issues
14 ourselves and not be limited so that we have to give
15 up, in a sense, our position on this case or our
16 philosophy or theory of the case by needing to adopt
17 some broader issues that we feel don't really bring
18 out the questions that there are in this case; and
19 that I think your own rules would permit us to do
20 that.

21 If you look at the rules on prehearing
22 statements, it's pretty much assumed, it seems to me,
23 that the parties can frame their own issues with
24 regard to what issues should be considered in a case.
25 It says under 25-22.038 that a prehearing officer may

1 issue an order requiring each party to file a
2 prehearing statement, and then in that prehearing
3 statement it tells that each party should come up with
4 issues relating to fact, policy, and law, which we
5 have done; and it just seems to me this isn't contrary
6 to your own rules that parties can submit issues.

7 There are some cut-off points after which
8 you can't submit issues, but I don't think that we've
9 reached that point. Clearly we have not.

10 And, also, just as a final word on this, GTC
11 has only proposed a few issues. There are only eight
12 issues; three factual, three legal, and two policy
13 that we have proposed, which I don't think is -- you
14 know, it's not an extraordinary number or something
15 designed to harass somebody or to cause any kind of
16 real problems for anyone other than to make them focus
17 on what we think the real issues of this case are.

18 That's really all I had, unless you have
19 some questions.

20 **COMMISSIONER DEASON:** I may have some
21 questions, but right now I'll hear from Ms. White.

22 **MS. WHITE:** Traditionally when a docket is
23 formed, the parties and Staff get together at an issue
24 ID conference and try to reach agreement on what the
25 issues are of the case.

1 If they can't agree, then it usually goes to
2 the prehearing officer to decide whether the issues
3 that are in dispute are relevant or are issues that
4 need to be in the docket or not.

5 BellSouth came to the issue ID conferences,
6 as did Staff and GTC, with a list of issues.
7 BellSouth was able to agree with the Staff on a list
8 of issues.

9 GTC is adamant that their issues as they are
10 worded go in there. BellSouth attempted to compromise
11 on the language of some of the issues, but GTC wants
12 their issues as they're written, period, and is not
13 interested in compromising on them.

14 The bottom line of this is that in 1985 this
15 Commission established the interLATA access subsidy.
16 As Mr. Erwin notes, BellSouth and formerly St. Joe are
17 the only companies left in this subsidy. St. Joe's
18 made the decision to elect price regulation, and
19 that's fine, but they want to take that risk without
20 really taking the risk, because they want BellSouth to
21 subsidize them to the tune of \$1.2 million.

22 BellSouth filed this petition to ask the
23 Commission if we could cease paying that amount to
24 St. Joe, and we framed the issues along with Staff, we
25 thought, and attempted to get agreement by GTC as to

1 the issues that are appropriate.

2 The issues that GTC has listed, I don't
3 think -- several of them are not appropriate. Several
4 of them we might be able to live with if we could work
5 on the wording. As I said, we've offered some
6 compromise language, but GTC did not agree to that
7 compromised language.

8 BellSouth is asking in this petition that
9 the subsidy be ended. To that end, it does not seem
10 to me that the source of the subsidy is important. We
11 tried on that first factual issue to change it to what
12 the history of the subsidy was, why it was put in by
13 the Commission, what it was put in to do; but, again,
14 GTC was not interested in that.

15 There are also some -- on the policy issue,
16 I think it's the first policy issue, if the access
17 subsidy is eliminated, what can BellSouth do with the
18 money. Well, this is a petition filed by BellSouth to
19 cease paying the subsidy to St. Joe.

20 If and when this Commission determines that
21 BellSouth can cease paying that subsidy, then if
22 St. Joe wants to know what's going to happen to that
23 money, they can file a petition to ask the Commission
24 to investigate that. That is not the subject of this
25 petition and this docket. I just believe that most of

1 the issues --

2 **COMMISSIONER DEASON:** Does the Commission
3 have the authority, Ms. White, to take a petition and
4 expand upon it to review other matters?

5 **MS. WHITE:** I assume if St. Joe wanted to
6 file a petition to broaden the issues in this docket
7 they could do that, and the Commission could have that
8 authority to do that.

9 The majority of the issues that St. Joe has
10 proposed can be subsumed in the issues that BellSouth
11 and Staff have agreed to. I am willing to work on the
12 language of some of the issues that St. Joe has
13 proposed that BellSouth can't live with, but other
14 than that, I think that the issues proposed and agreed
15 to by the Staff and BellSouth are appropriate.

16 **COMMISSIONER DEASON:** What issues can you
17 not live with and which issues are you willing to
18 address the language?

19 **MS. WHITE:** On the factual issues, I think
20 that the first factual issue I could work with the
21 language on. I believe we tried to do that in the
22 issue ID. To me, that's essentially the history;
23 what's the history of the interLATA access subsidy,
24 how did it come about; what was in the Commission's
25 thought process when they put it forth.

1 Number 2, that's really part of the history,
2 so if we could put together 1 and 2, the first and
3 second factual issue.

4 The third factual issue that GTC has listed,
5 I believe, is totally irrelevant. This is a petition
6 by BellSouth to cease paying the interLATA access
7 subsidy. It has nothing to do with any other
8 subsidies, so I don't believe that that's pertinent to
9 the case at all.

10 The first legal issue really goes back to
11 the history. I'm not prepared here to talk about
12 whether it's statutory authority or Commission
13 authority. The Commission is the one who established
14 this subsidy, so I believe that could be worked into a
15 history type issue.

16 **COMMISSIONER DEASON:** Ms. White, you're not
17 suggesting that we do anything else outside our
18 statutory authority?

19 **MS. WHITE:** No, I'm not; but the Commission
20 obviously had the statutory authority to establish the
21 subsidy in the first place.

22 So I think it goes back to the history of
23 how the subsidy began; what was the Commission's
24 thought process. And if the parties want to get into
25 what the statutes that the Commission -- under which

1 the Commission has authority looked like at the time
2 in 1985 when the Commission established that subsidy
3 and what they look like now, that's fine. I don't
4 have a problem with that at all.

5 The second and third issues under the legal
6 issues, I believe that's irrelevant. We are not
7 suggesting that any changes to rates, GTC's rates, be
8 made at any time. All we're asking is that we can
9 stop paying this subsidy.

10 So I don't believe that the rates frozen as
11 a result of price regulation, we're not suggesting
12 they be increased, decreased. We're not suggesting
13 any changes at all. So I'm not quite sure why that's
14 relevant.

15 The policy question, again, unless this
16 Commission decides it wants to expand this docket to
17 include what happens to that \$1.2 million when
18 BellSouth -- if and when BellSouth ceases paying it to
19 St. Joe, that's fine, but it's not there now.

20 Is it in the public interest to eliminate
21 the subsidy, which is the second policy issue, I
22 believe that that really can be subsumed into some of
23 these other issues, really into the one that Staff and
24 BellSouth have agreed to. And I'd be pleased to try
25 to work with the language on that, which is

1 essentially what criteria; what criteria did the
2 Commission use to begin the subsidy, what criteria
3 should be looked at to end the subsidy. And public
4 policy is an issue there. I don't have a problem with
5 that.

6 So I believe that the majority of the issues
7 can be worked with. I believe that at least the third
8 factual one, the second and third legal one are truly
9 irrelevant to this proceeding, and the others, we
10 could probably work on the language.

11 **MR. ERWIN:** Commissioner Deason, the reason
12 they want to change the language and do all these
13 things is that they don't want to answer the questions
14 as posed because they bring up some uncomfortable
15 things that need to be addressed, which is exactly why
16 we phrased things as we did.

17 BellSouth in filing this petition doesn't
18 cite anything. They just simply assume that because
19 we chose price regulation that they don't have to pay
20 the subsidy anymore. That's an assumption on their
21 part.

22 We would like to find out something more
23 than just an assumption before we have to give up
24 money that could impact the quality of service that
25 the company is able to give or anything else, or that

1 interferes with the scheme of regulation that was
2 devised by the Legislature which says that you're
3 going to freeze rates and the Commission isn't going
4 to permit you to raise your rates.

5 So if that's part of this compact that took
6 place with the Legislature, does the Commission have
7 the authority to interfere with the revenue streams
8 that it previously authorized that were in place at
9 the time that the rates were frozen?

10 That seems to me to be a legitimate issue
11 both from a legal standpoint and from a public policy
12 standpoint with respect to -- with GTC.

13 There's nothing tricky about any of these
14 issues. They're just straightforward things that make
15 Bell look at what this is all about.

16 There are orders. For example, I have a
17 list -- or a copy of all of the orders that have been
18 issued that I know of in this access docket from the
19 very beginning to the end which shows charts with the
20 winners and the losers and so forth. And Bell was a
21 winner and had excess moneys from the access subsidy.

22 It still has excess moneys pursuant to the
23 last order issued in this docket, and that money has
24 been given up by everybody else, but Bell simply
25 assumes that they can keep this money if they stop

1 paying us. So I think issues designed to address
2 those questions are very important in this case.

3 **MS. WHITE:** And I just have to add one
4 thing. If Bell was assuming that we could just
5 arbitrarily stop this subsidy, stop payment of this
6 subsidy, because St. Joe elected price regulation, we
7 would have stopped paying them.

8 We have not stopped paying them. We have
9 filed a petition with the Commission asking
10 permission, is price regulation -- the issue is, is
11 price regulation a criteria that needs to be
12 considered.

13 So I strongly disagree with the fact that
14 we've just made the assumption and unilaterally done
15 something, because we have not. We have come to the
16 Commission for authority to do so.

17 **COMMISSIONER DEASON:** I want to go through
18 these issues. I'm working through the proposed issues
19 that were filed on January the 30th by GTC.

20 Mr. Erwin, the first factual issue there,
21 why is it relevant for this Commission to determine,
22 if we can, what is the source of revenue that
23 basically funds or pays the interLATA access subsidy?

24 **MR. ERWIN:** It's important because Bell is
25 assuming that it's Bell's money that's paying this

1 revenue, and if you look back at all the previous
2 orders and how this whole thing got started, there was
3 a determination by the Commission that companies would
4 keep the excess revenue that they bill rather than
5 pooling things.

6 Well, when they did that with the access
7 revenue, there were some companies who had excess
8 access revenue that was then used in part to pay for
9 the access subsidy to the companies that had a loss,
10 and it's important to us to try to understand how this
11 whole thing took place and where that money came from,
12 because the money may not be Bell's at all.

13 It may very well be money from the
14 interexchange carriers that flows through Bell to
15 St. Joseph Telephone & Telegraph or to GTC, and not
16 some money that Bell thinks belongs to Bell.

17 And you can trace this through all of the
18 Commission's orders, but without our issue in here
19 you're not going to get to do that, or there's no
20 necessity for anyone to really address that kind of
21 issue.

22 **COMMISSIONER DEASON:** Ms. White?

23 **MS. WHITE:** Well, I mean, the bottom line is
24 that goes back to the history of what was the
25 interLATA access subsidy intended to accomplish.

1 I can live with an issue, as I said at the
2 issue ID, that talks about this; why was the subsidy
3 established; what was the purpose for which the
4 subsidy was to be used. That kind of issue I can live
5 with, and if he wants to talk about what the source is
6 and whether money belongs to BellSouth or to St. Joe
7 or to interexchange carriers, he can do that in that
8 issue.

9 **COMMISSIONER DEASON:** Have you submitted
10 that issue, that language to Staff?

11 **MS. WHITE:** We talked about it at the issue
12 ID, but because Mr. Erwin refused the wording, we
13 didn't really get any further than that.

14 **COMMISSIONER DEASON:** And why is it
15 insufficient, Mr. Erwin, to have basically an issue
16 which addresses the history of the situation?

17 **MR. ERWIN:** Because it allows Bell to evade
18 the real question here, which is, is this Bell's money
19 or not. I mean, they can talk about history all day
20 long, but unless you focus on where did this money
21 come from and who's getting it now and why, I mean,
22 there's history certainly involved in this, but the
23 main question isn't what's the history of this. The
24 main question is where did this money come from and
25 why. That's our thinking.

1 **COMMISSIONER DEASON:** Okay. Let's move down
2 to the legal section. Ms. White, you've indicated
3 that the second and the third legal issues are not
4 relevant for this proceeding. Could you explain to me
5 again why you think they're not relevant?

6 **MS. WHITE:** Well, the second and third
7 issue, I think what the purpose there is that -- and
8 this is just -- I'm just speculating at this point,
9 really. But it seems to me that St. Joe made the
10 election of price regulation, and now their rates are
11 frozen under the 1995 statute, and that if the subsidy
12 is removed, then they're going to have to make some
13 changes in their rates, which they can't do because
14 the rates are frozen.

15 But BellSouth is not suggesting that they
16 make any changes in their rates. All we're asking is
17 whether we have to continue paying the subsidy. I
18 mean, it really goes back to, I think, the issue of is
19 price regulation a criteria that can be looked at by
20 this Commission in determining whether the subsidy
21 should be terminated.

22 I believe GTC's argument will be you can't,
23 because that's what we based our decision to go to
24 price regulation on is that we'd have this money, but
25 if we're not going to have this money, then we're

1 going to have to do something with rates. So it may
2 be an issue for them, but it's not for BellSouth.

3 If they want to argue that price regulation
4 is not a criteria because of the consequences of
5 taking this money away, then that's fine. But, again,
6 I think it goes back to what criteria do you look at
7 when you determine whether to leave the subsidy in
8 place or end it.

9 **COMMISSIONER DEASON:** Okay. And then to the
10 policy. Ms. White, you've indicated that the second
11 policy issue is subsumed within other issues that have
12 already been agreed to; is that correct?

13 **MS. WHITE:** Again, that I think that it's a
14 criteria issue. To me, when you look at what criteria
15 should the Commission use to determine whether the
16 subsidy should be continued or terminated, it runs the
17 gamut.

18 Now, traditionally in looking at these
19 subsidies, the Commission has looked at earnings, but
20 I don't think that the Commission is constrained to
21 just looking at earnings. They can look at public
22 policy. They can look at price regulation, and they
23 can look at anything they want to look at that they
24 think is an important criteria.

25 And if GTC wants to make the argument that

1 as a public policy matter it is not the time or the
2 place or the right thing to do to end that subsidy,
3 they can do that in an issue about criteria, which I
4 believe is really, the first issue; which goes into --
5 well, the history would be the first issue, and then
6 what criteria do you look at to end the subsidy or to
7 continue the subsidy would be an issue for that.

8 **COMMISSIONER DEASON:** Mr. Erwin, do you have
9 any last thing you wish to add?

10 **MR. ERWIN:** No, not really. I guess the
11 only thing is that I think a lot of emphasis needs to
12 be placed on the 1995 Telecommunications Act passed by
13 the Legislature and what kinds of things were intended
14 by the Legislature in that act as far as the kinds of
15 regulation that the Commission does.

16 In other words, when prices are frozen by
17 companies, does that affect the public policy if the
18 Commission can indiscriminately look at the revenue
19 components that made up proper earnings when a company
20 chose price regulation, for example.

21 It just seems to me that we need to focus on
22 that act and on the public policy of what it is that
23 the Commission is doing. Certainly we're not looking
24 to increase our rates. I mean, we know we can't do
25 that. That's the problem.

1 What we want everyone else to focus on is
2 the fact that the Legislature must not have had in
3 mind the fact that you could alter the revenue streams
4 that made this up without some basis for that. That's
5 all I have. Thank you.

6 **COMMISSIONER DEASON:** Thank you. We're
7 going to move now to the Motion to Compel. Ms. White,
8 that's your motion. I'll give you an opportunity to
9 argue that.

10 **MS. WHITE:** Yes, and I'll be very brief.
11 BellSouth filed some interrogatories and requests for
12 production of documents on St. Joseph Telephone.
13 St. Joseph has filed some objections, the first of
14 which they were absolutely correct on.

15 We're not used to filing discovery on
16 anybody else. We're used to answering it. So we did
17 file more than 100. As I said in my response, we
18 refiled the correct number of interrogatories or we
19 said in our petition they could either answer the
20 first 100. It's up to them. I'm fine with it.

21 Their main objection, though, is that all of
22 the interrogatories and production of document
23 requests go to earnings and rate of return. They're
24 absolutely correct. The reason they do that is
25 because the Commission traditionally when they look at

1 ending the subsidy has looked at earnings. So that's
2 what BellSouth was trying to get information on.

3 We are not interested in, as I said,
4 anything to do with their rates. We're interested in
5 looking at their earnings, and strictly from the
6 standpoint of that that's the main criteria the
7 Commission has used to determine whether a subsidy
8 should be ended for the last 13, 14 years. And that's
9 all I have.

10 **COMMISSIONER DEASON:** Mr. Erwin, you have
11 filed a response, and you may argue that.

12 **MR. ERWIN:** Thank you very much,
13 Commissioner. It's true that BellSouth wants us to
14 basically give them enough information to do a rate
15 case on a rate base rate of return basis so that they
16 can then point out to you what our level of earnings
17 are on a rate base rate of return basis.

18 And what we have attempted to point out in
19 our framing of the issues and what we're saying right
20 here is that this Commission doesn't have the
21 authority anymore to regulate this company on the
22 basis of rate of return rate base regulation.

23 We are now regulated pursuant to price
24 regulation. And, consequently, any kinds of
25 interrogatories or documents that BellSouth wants to

1 see with regard to this issue is irrelevant because it
2 cannot produce the kind of evidence that's going to be
3 helpful to the Commission, because the Commission
4 doesn't regulate us any longer on a rate of return
5 basis, pursuant to the statute, which clearly
6 enunciates that.

7 So we just think that they've not considered
8 what the law is when they asked these interrogatories.
9 Now, that's the primary objection that I have. But
10 there are some other objections that I mentioned in my
11 written response, and that is the curious way that
12 these interrogatories were framed.

13 Initially there were lots of them, 142, with
14 many, many subparts. Now, they said we could either
15 answer the first 100 basically, or the 69 that they
16 had chosen outside of the 142. Well, any way you look
17 at it there are going to be a lot of things they asked
18 for before that they don't seem to really need; and
19 that's puzzling.

20 And I suggest that the main thing that
21 they're trying to do is to make us do a lot of work in
22 this case so we can virtually do a rate case so they
23 can come to you with information that analyzes our
24 operations on a rate of return basis. And I've
25 already made the legal arguments about that before.

1 **COMMISSIONER DEASON:** Mr. Erwin, of the 69
2 that have been refiled, have you indicated which ones
3 of those specifically you consider to be burdensome or
4 harassment?

5 **MR. ERWIN:** Well, no, I haven't done that.
6 I don't know which ones I would do, whether we would
7 do the first hundred or the 69. I mean, either way
8 there are many, many interrogatories that we would
9 have to answer.

10 I did a little calculation, and concluded
11 that even if we answered the 69 interrogatories, if
12 you counted all the subparts, we would be doing some
13 over 200 interrogatories. So I'm not sure that we
14 even have really resolved the issue of how extensive
15 this is to be.

16 Now, I will say that I've done some research
17 to try to determine what subparts means, and I can't
18 find much. But it seems to me if you ask somebody to
19 do something for all of 1995 all of 1996, all of 1997,
20 that you've got three separate things; that one of
21 those is not subsumed in the other or independent --
22 it's independent of each other. So that you've got in
23 essence three interrogatories.

24 When they ask you to do, you know, to
25 perform an income statement for the year 1995, then

1 for the year 1996 and then for the year 1997, it seems
2 to me that that's three interrogatories, not just one.
3 And if you count all of the subparts, then even with
4 the 69 interrogatories they're asking us to do a great
5 deal of work.

6 And they're also asking a lot of information
7 about affiliates, and Bell doesn't even like to answer
8 information about affiliates itself when it's asked by
9 the Staff. So I quoted something from one of their
10 responses which led me to say that they shouldn't
11 argue things depending on whose ox is being gored in
12 this case. So I don't think even Bell would want to
13 answer things about affiliates, but certainly we don't
14 either and feel that that's irrelevant and immaterial
15 to the outcome of this proceeding.

16 One thing I'd like to say and that is that
17 Bell keeps saying that this subsidy was temporary, and
18 I don't disagree with that. It was temporary. I just
19 disagree with the way that they think it should be
20 terminated and the timing of that termination.

21 **COMMISSIONER DEASON:** Ms. White, do you have
22 any concluding thoughts?

23 **MS. WHITE:** Well, Mr. Erwin is exactly
24 right. These are exactly the kind of interrogatories
25 Bell does not like to get. But the bottom line is

1 that the basis for every termination of an interLATA
2 access subsidy over the last 13, 14, 15 years has been
3 earnings. Therefore, BellSouth took that as we need
4 to figure out what that is in order to determine -- to
5 give the Commission information on which they have
6 traditionally based a decision.

7 I guess I find it odd to the extent of they
8 don't want to talk about earnings because they're
9 price regulated, but you can't terminate the subsidy
10 because they're price regulated. So it seems a case
11 of trying to have the cake and eat it, too, and I
12 don't think that's right either.

13 So, again we're not saying these are easy
14 interrogatories, we're not saying they're fun ones,
15 but we're saying that the information that would be
16 provided by GTC in response to them is the kind of
17 information that this Commission has traditionally
18 based a termination or continuation of the subsidy
19 amount on. And that's all I have.

20 **COMMISSIONER DEASON:** Okay. I do notice
21 that we're operating under a time schedule here where
22 there needs to be a time frame for the filing of
23 discovery, and then of course we have time frames for
24 testimony, rebuttal testimony, and then of course we
25 have a hearing date, that right now we're trying to

1 keep that hearing date.

2 What I plan to do is we're going to take a
3 recess at this point. I will consider what has been
4 said here today. I will confer with Staff. I will
5 make a decision. We will reconvene at 1:30. I will
6 announce that decision. That probably will be
7 followed by an order. But I want the parties on
8 notice as to what the decision is and try to make a
9 determination as to whether we can live within the
10 time schedule, make changes to that, and see if we can
11 accommodate the current hearing schedule or whether
12 that has to be delayed. So I would want some input
13 from the parties after I announce the decision.

14 So we will stand in recess until 1:30.

15 (Recess.)

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17 **COMMISSIONER DEASON:** Call the
18 pre-prehearing conference to order. Welcome everyone
19 to join us. Our ranks have grown.

20 During the recess, I had the opportunity to
21 consider the argument and questions that I posed
22 earlier, and I discussed this matter with Staff. I'm
23 going to make some rulings at this point, and I hope
24 that it will speed this process along and be of some
25 aid to the parties as they go about in this docket.

1 First, I want to cover the proposed issues
2 that were raised by GTC. And, once again, I'm looking
3 at the list that was filed on January 30th.

4 As to the first two factual issues listed
5 there, I'm not going to allow those issues as worded.
6 However, I'm going to direct my Staff to determine
7 wording for what I would refer to as a history issue,
8 for lack of a better term. I invite both parties to
9 participate with Staff, and if there can be an
10 agreement on language, fine; if not, Staff will be
11 devising that language and submitting it to me.

12 What I want to accomplish by this so-called
13 history issue is to make sure that the Commission is
14 fully informed of the entire origin of the interLATA
15 access subsidy process, how it originated, why it
16 originated, and the evolution to where we are at this
17 point.

18 Mr. Erwin, I know you raised some other
19 specific issues concerning the source of the subsidy.
20 I'm not making a ruling as to the question of the
21 source of subsidy is irrelevant. If you want to
22 address that within the so-called history issue, I'm
23 going to leave that up to you. It will be your
24 opportunity, if there's an objection at the hearing,
25 obviously you'll have to show it to the presiding

1 officer at that time why that particular information
2 is relevant, consistent with this issue.

3 I'm striking the third factual issue.

4 The legal issues, the first legal issue, I'm
5 making one modification, very slight modification. In
6 place of the term "statutory," I'm inserting the term
7 "legal," and with that one change that issue will be
8 included.

9 As to the second and third legal issues,
10 Staff has proposed language that addresses the --
11 these two issues, combines them into one issue. I've
12 reviewed that language and I find it acceptable.
13 Staff will provide that language to the parties today.

14 The first policy issue has been incorporated
15 by Staff in their list of issues as Issue No. 5 and
16 will, therefore, be allowed, and the second policy
17 issue is not being included as it is worded. I think
18 it is unnecessary. I think the concept which that
19 legal issue addresses can be covered within Staff's
20 Issue No. 4.

21 I think that disposes of the issues. As to
22 the Motion to Compel and the response thereto, I'm
23 going to make a policy ruling in that I'm going to
24 find that discovery pertaining to the earnings of GTC
25 is allowable. I do note that the standard is

1 discovery that may lead to admissible information;
2 therefore, I'm going to allow the discovery to take
3 place.

4 However, I'm concerned about the number of
5 interrogatories and whether there's any duplication.
6 I'm not making any determination on that. I will
7 leave that up to Mr. Erwin to make a separate
8 objection if there's any duplication or if there is a
9 burdensome nature associated with any of those
10 specific interrogatories and PODs.

11 I would encourage the parties to work
12 together in this discovery process. Weed out the
13 unnecessary. Get to the point. There's no need to
14 make unnecessary work on any party.

15 As to the question of affiliates, here again
16 I'm going to ask the parties to work on this
17 situation. I am going to make a ruling that there
18 should be information provided only so far as to
19 affiliates that receive from or provide services
20 directly to GTC.

21 Here again I think this is an area, though,
22 where the parties can work together to get to what is
23 determined to be relevant information.

24 And there's one other slight modification.
25 On Interrogatory No. 42, there's no limitation, dollar

1 limitation, on the information sought on cost cutting
2 measures. I'm going to make a limitation that that
3 only applies to cost cutting measures that generate
4 savings of \$5,000 or more.

5 I believe that addresses the Motion to
6 Compel, the response thereto, and the dispute
7 concerning the proposed issues.

8 Staff is there anything further?

9 **MS. KEATING:** I think we need to take a look
10 at some of the filing dates. BellSouth's testimony
11 was due today, as a matter of fact. I would suggest
12 moving direct testimony for the petitioner to
13 March 9th.

14 **COMMISSIONER DEASON:** First of all, I think
15 before we start addressing direct testimony, we need
16 to determine the date for the responses to discovery.
17 Obviously, testimony --

18 **MS. KEATING:** I suggest that they be
19 provided on an expedited basis. I would suggest two
20 weeks, but I'd like to hear from Mr. Erwin as to
21 whether he thinks a response can be provided within
22 that length of time.

23 **COMMISSIONER DEASON:** Mr. Erwin?

24 **MR. ERWIN:** Well, I think that preparing
25 what amounts to a rate case in two weeks is highly

1 unlikely and would create an enormous burden on the
2 company, if it could be done at all. I don't see how
3 you could approach this discovery in anything less
4 than about six months, not two weeks.

5 **COMMISSIONER DEASON:** Ms. White?

6 **MS. WHITE:** If Mr. Erwin is willing to --
7 BellSouth would be willing to work with GTC.
8 Obviously we're interested in earning information. If
9 he's saying that he will abide by your ruling and not
10 appeal it, then we'll be glad to work with them on
11 getting specific earning information that may be more
12 readily available than maybe some of the specific
13 things asked for. So, I mean, I'd be glad to work
14 with them on that if he's willing to reciprocate.

15 **COMMISSIONER DEASON:** Mr. Erwin?

16 **MR. ERWIN:** I'm not prepared to say that we
17 would not either take issue with your ruling today or
18 ultimately appeal that, depending on what the
19 Commission, of course, did, so I really can't indicate
20 what the response to that is.

21 **COMMISSIONER DEASON:** Well, I think that it
22 may be incentive for BellSouth to work with GTC to try
23 to get to the very relevant nature of the earnings
24 information so that we can abide by a schedule which
25 allows us to take this to hearing on the date that has

1 been set aside. It's my understanding if we don't
2 meet that hearing date, we're looking at a hearing
3 sometime late summer or early fall.

4 In order to meet the current hearing date,
5 I'm going to rule that the responses are due on March
6 the 2nd. I realize that is highly expedited.

7 Mr. Erwin, you're still allowed to object to any of
8 the interrogatories as to the burdensome nature,
9 especially considering it's on such an expedited
10 basis. Hopefully BellSouth will work with you to
11 accommodate getting information that is absolutely
12 necessary so it can be filed by that due date.

13 That is your suggested due date, Staff,
14 March the 2nd?

15 **MS. KEATING:** Yes, Commissioner.

16 **COMMISSIONER DEASON:** Now, the testimony due
17 dates.

18 **MS. KEATING:** Staff would suggest moving out
19 petitioner's direct testimony to March 9th,
20 respondent's direct testimony to March 20th, and then
21 having rebuttal testimony filed by all parties on
22 April 13th. That would still allow us to meet the
23 current hearing day.

24 **COMMISSIONER DEASON:** And that hearing date
25 is what?

1 **MS. KEATING:** May the 20th.

2 **COMMISSIONER DEASON:** Any comments from the
3 parties to Staff's proposed testimony due dates?

4 **MS. WHITE:** BellSouth can live with those
5 due dates, and we will also commit to get to Mr. Erwin
6 by no later than, hopefully, the middle of this week
7 the specific interrogatory and PODs that we feel are
8 absolutely necessary to delineate those.

9 **COMMISSIONER DEASON:** Mr. Erwin?

10 **MR. ERWIN:** Well, I'd just like to indicate
11 that the interrogatories that BellSouth filed were
12 patterned specifically after interrogatories submitted
13 to BellSouth by the Public Counsel in their earnings
14 docket in 920260. I'd like to find out from BellSouth
15 if they were able to do those interrogatories in two
16 weeks.

17 **COMMISSIONER DEASON:** Ms. White?

18 **MS. WHITE:** Actually I believe they were,
19 because we were on an expedited discovery basis in
20 that docket. It was between two and four weeks I
21 know.

22 **COMMISSIONER DEASON:** Let me just
23 reemphasize something here, Mr. Erwin. It is my
24 intent to have this go to hearing on the scheduled
25 date, but at the same time I don't want to put any

1 unreasonable burden on GTC. Therefore, if the
2 information demanded by BellSouth consistent with my
3 previous ruling is burdensome and cannot be provided
4 in the time period, file whatever is necessary and we
5 will then explore moving the hearing date to August or
6 September, whenever it has to be.

7 **MR. ERWIN:** In all candor, I can indicate
8 that I don't see how we can meet the hearing date at
9 this point.

10 **COMMISSIONER DEASON:** BellSouth may be very
11 willing to be very obliging to meet this hearing
12 schedule, so I'm going to leave that to the parties to
13 work out. If it cannot be worked out, I'm sure you
14 will not hesitate to inform Staff, and they will
15 inform me, and they will take whatever necessary steps
16 need to be taken at that time.

17 **MR. ERWIN:** Can we expect an order that
18 embodies what you have said here today? I would
19 assume that we can; is that correct?

20 **MS. KEATING:** I think so.

21 **COMMISSIONER DEASON:** That is my desire as
22 well, and I'm sure Staff will expedite that order as
23 quickly as possible.

24 **MR. ERWIN:** And we will consider that when
25 we get it and determine whether the company wishes to

1 file any petitions for reconsideration of that order
2 or not.

3 **COMMISSIONER DEASON:** That certainly is your
4 right.

5 **MR. ERWIN:** All right. Thank you very much.

6 **COMMISSIONER DEASON:** Anything further at
7 this point?

8 **MS. KEATING:** I think that's it.

9 **COMMISSIONER DEASON:** Okay. Thank you all.
10 This pre-prehearing is adjourned.

11 (Thereupon, the hearing concluded at 2:45
12 p.m.)

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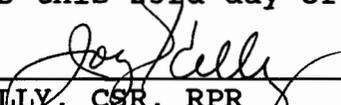
1 STATE OF FLORIDA)
 2 : CERTIFICATE OF REPORTERS
 3 COUNTY OF LEON)

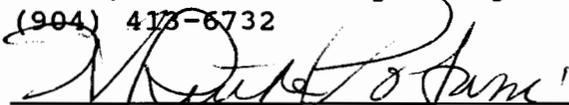
4 We, JOY KELLY, CSR, RPR, Chief, Bureau of
 5 Reporting H. RUTHE POTAMI, CSR, RPR, Official
 6 Commission Reporters,
 7

8 DO HEREBY CERTIFY that the Pre-prehearing
 9 Conference in Docket No. 970808-TL was heard by the
 10 Prehearing Officer at the time and place herein
 11 stated; it is further

12 CERTIFIED that we stenographically reported
 13 the said proceedings; that the same has been
 14 transcribed under our direct supervision; and that
 15 this transcript, consisting of 38 pages constitutes a
 16 true transcription of our notes of said proceedings.

17 DATED this 23rd day of February, 1998.

18 
 19 _____
 20 JOY KELLY, CSR, RPR
 21 Chief, Bureau of Reporting
 22 (904) 413-6732

23 
 24 _____
 25 H. RUTHE POTAMI, CSR, RPR
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