

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

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In the Matter of
Application for certificate
to provide interexchange
telecommunications service
by KTNT Communications, Inc.
d/b/a TDC Telecommunications.:

: DOCKET NO. 970109-TI
:



PROCEEDINGS: HEARING

BEFORE: COMMISSIONER J. TERRY DEASON
COMMISSIONER SUSAN F. CLARK
COMMISSIONER E. LEON JACOBS, JR.

DATE: Thursday, May 28, 1998

TIME: Commenced at 9:30 a.m.
Concluded at 11:30 a.m.

PLACE: Betty Easley Conference Center
Room 148
4075 Esplanade Way
Tallahassee, Florida

REPORTED BY: H. RUTHE POTAMI, CSR, RPR
Official Commission Reporter

DOCUMENT NUMBER - DATE

05945 JUN -28

SP-30-970109-TI-0101110

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MISCELLANEOUS

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P R O C E E D I N G S

(Hearing convened at 9:35 a.m.)

COMMISSIONER DEASON: Call the hearing to order. Counselor, could you read the notice, please?

MS. BROWN: By notice issued May 7th, 1998, this time and place was set for a hearing in Docket 970109-TI, KTNT, in re application for certificate to provide interexchange telecommunications service by KTNT Communications.

The purpose of the hearing is set out in the notice.

COMMISSIONER DEASON: Thank you. We'll take appearances.

MR. BECK: My name is Charlie Beck with the Office of Public Counsel, 111 West Madison Street, Room 812, Tallahassee, Florida 32399-1400, appearing on behalf of Florida's citizens.

MR. GROSS: Michael A. Gross, Office of the Attorney General, The Capitol, Tallahassee, Florida.

MS. BROWN: Martha Carter Brown representing the Florida Public Service Commission Staff.

MR. WIGGINS: Patrick A. Wiggins.

MS. BROWN: I'm sorry.

MR. WIGGINS: P.O. Box 1657, Tallahassee, representing KTNT, d/b/a IDC Telecommunications, "I Don't Care" and "It Doesn't Matter."

1 **COMMISSIONER DEASON:** Any preliminary
2 matters?

3 **MS. BROWN:** Just one. I apologize for
4 cutting Mr. Wiggins off.

5 There is one preliminary matter. I think
6 the prehearing officer agreed that the parties would
7 have the opportunity to present opening statements of
8 five minutes each.

9 **COMMISSIONER DEASON:** Okay. Mr. Wiggins?

10 **MR. WIGGINS:** Good morning, Commissioners.

11 To be entitled to a certificate to operate
12 as a long distance company, an entity must demonstrate
13 under 364.337(3), Florida Statutes, which is the
14 controlling statute here, that it has the technical,
15 financial, and managerial capability to provide the
16 services offered or proposed.

17 I would like to read to you this very short
18 statutory provision, because it does control. Quote:
19 "The Commission shall grant a certificate of authority
20 to provide intrastate interexchange telecommunications
21 service upon a showing that the applicant has
22 sufficient technical, financial, and managerial
23 capability to provide such service in the geographic
24 area proposed to be served."

25 It's very straightforward and unequivocal.

1 The record in this proceeding will demonstrate that
2 there is no doubt that KTNT satisfies those three
3 criteria, and this is exactly why your Staff has
4 recommended twice that KTNT be granted a certificate.

5 Now, against this very straightforward
6 application, the office of the Public Counsel and the
7 Attorney General argue that the certificate should be
8 denied because KTNT engages in a business practice so
9 obnoxious that it's managerially unfit to operate in
10 this state; and the objectionable business practice is
11 the use of the names "I Don't Care" and "It Doesn't
12 Matter."

13 Now, as I mentioned to you at Agenda about a
14 year ago, I think, this month when this first came
15 before you, there are three basic areas where a
16 service mark in the telephone industry can be used.
17 One is in the area of like 1-800 calls or 10XX
18 dial-around.

19 I don't believe anyone is suggesting that
20 there's any problem with the use of these service
21 marks in a 1-800 situation, such as call "1-800 I
22 Don't Care." The other is in the area of 1+ or
23 pre-subscribed. And as I recall the dialogue or the
24 comments at that agenda, some Commissioners were
25 concerned that with these names, there would be an

1 opportunity for slamming for unauthorized conversion
2 of PICs.

3 Given the amount of attention this
4 Commission has given to avoiding slamming, the new
5 slamming rules, your enforcement proceedings, I do not
6 believe it would be prudent or fair to assume that
7 this company will enter the 1+ market in a way
8 designed to encourage unauthorized conversions. On
9 the contrary, it will have to use its distinctive
10 service marks to distinguish itself and to make sure
11 of those informed changes.

12 But the final area -- and I think this is
13 where the argument is -- is in the area of what I call
14 "zero minus," or what is now called "operator transfer
15 service."

16 This is when a customer walks up to a phone,
17 let's say a customer in Miami, it's a BellSouth phone,
18 and needs to make a long distance call and charge it;
19 and the long distance call is, let's say, going to
20 Tampa. The customer pushes zero, and that's it. He
21 may have, or she may have, credit cards in his
22 possession, dialing cards presubscribed to AT&T or
23 whatever, but he just pushes zero.

24 The operator comes on and says, "May I help
25 you?" He says, "Yes. I'd like to place a charge to

1 my home phone and place this to Tampa; it's the number
2 813," whatever. The operator says, "We cannot handle
3 that call for you. Do you have a preferred carrier?"

4 Now, it's not that difficult for the
5 customer to say, "Oh, yes, AT&T," MCI, Sprint, LDDS
6 WorldCom, Excel, any number of companies who have
7 spent a lot of money establishing market presence.
8 But for some reason a certain number of customers
9 routinely say, "No, I don't have a preference, just
10 give me anybody." Some will say, "It doesn't matter."

11 In that situation, the Bell operator would
12 say, "Well, we have a carrier named 'It Doesn't
13 Matter.' Is that who you wish?"

14 And the customer may say, "No, I don't want
15 that," and they'll get somebody else. Or they may
16 say, "Hey, that's pretty funny; yes, I'll take them."
17 When that happens they get the intrastate service they
18 requested at rates that do not exceed your cap. So
19 this is not a rate issue, and that's it. That's the
20 practice that the Public Counsel and Attorney General
21 believe is so obnoxious that this company should be
22 denied a certificate.

23 Now, we believe this is a clever strategy to
24 pop up this company's existence from the group of
25 other folks in this default process. The Office of

1 the Public Counsel and the Attorney General apparently
2 view this as just a very bad business practice that
3 renders the company unfit to provide service.

4 How to respond to that? Well, I started
5 listing the points to respond to, and when I got to
6 14, I figured --

7 COMMISSIONER DEASON: Mr. Wiggins, you've
8 got 30 seconds.

9 MR. WIGGINS: Okay. Thank you.

10 -- I figured I better shorten them up. So
11 let me just say very quickly, the rates are capped.
12 It's not a price issue. The customer did not have a
13 preference. The customers are not complaining.
14 Carriers are not complaining.

15 There's nothing illegal about this strategy.
16 The Commission has no rules with respect to operator
17 transfer service, no rules with respect to service
18 marks or names, and this company has complied with all
19 regulations where they've operated. There's
20 absolutely no basis to deny them a certificate, and to
21 do so would be arbitrary and capricious action by this
22 Commission and not in the public interest.

23 Thank you.

24 COMMISSIONER DEASON: Thank you. Mr. Gross?

25 MR. GROSS: Commissioner Deason, Clark,

1 Jacobs, good morning, and thank you for giving me an
2 opportunity to make a presentation, an opening
3 statement.

4 Back in April of '97 the Attorney General
5 appeared in Agenda Conference and registered its
6 objection to the use of the names proposed by KTNT,
7 and our position is essentially unchanged, and I'm
8 going to defer to Mr. Beck of the Office of Public
9 Counsel for a more in-depth presentation.

10 However, briefly, the Attorney General
11 objects to the certificate on several grounds. The
12 name is inherently misleading and deceptive. It
13 exhibits an unequivocal intent to obtain customers
14 through deception. There's no honorable motive for
15 the company choosing such a name.

16 It will adversely affect fair competition
17 and will harm other telecommunications carriers by
18 diverting business away from them through a
19 subterfuge. It will harm consumers by denying them
20 true freedom of choice; and it's my understanding that
21 at least one or more other providers are prohibited
22 from making a recommendation to influence a customer's
23 choice; and use of these types of names would be
24 inconsistent with that policy.

25 This is not a matter of specialized or

1 expert knowledge. One must simply draw on his or her
2 common sense and experience and knowledge of human
3 nature to make the correct decision to deny the use of
4 these names in this case.

5 One last concern is, granting the use of the
6 names that are suggested would set a precedent that
7 would open the floodgates to KTNT coming back and
8 requesting the use of other similar names which it is
9 already using in Texas, such as "Whoever", "Pick One",
10 "Anyone Is Okay," and there would be no limit on that.

11 And if the company allows the use of "It
12 Doesn't Matter" and "I Don't Care" then when KTNT
13 comes back -- which is inevitable -- on what basis
14 would the Commission deny the use of 10, 15 or 30 more
15 of these types of names?

16 So on that basis, the Attorney General
17 objects. And I would point out that the position of
18 Public Counsel and the Attorney General is that due to
19 lack of fitness of management for proposing such a
20 business plan, that the certificate should be denied;
21 but there's an alternative remedy that the certificate
22 be modified, if it is granted, to prohibit the use of
23 this type of name. Thank you.

24 COMMISSIONER CLARK: Prohibit the use of
25 what?

1 **MR. GROSS:** To prohibit the use of
2 misleading names. In other words, the certificate, as
3 an alternative --

4 **COMMISSIONER CLARK:** Let me just interrupt
5 you. The two names that they have, are currently
6 asking to do business, it would prohibit that also?

7 **MR. GROSS:** Yes. It would prohibit the use
8 of those two names even in the event that the
9 certificate is granted.

10 **COMMISSIONER CLARK:** Thank you.

11 **COMMISSIONER DEASON:** Mr. Beck?

12 **MR. BECK:** Thank you, Commissioners.

13 Last week Governor Chiles had occasion to
14 veto a bill that came before him, and in his message
15 describing the reasons for the veto, he said he
16 applied a test that he called the "Straight Face
17 Test."

18 And without getting into the bill or what
19 that involved, I think that that type of test would be
20 particularly appropriate to keep in mind as KTNT
21 presents its case today.

22 They claim that their fictitious names are
23 clever, creative, amusing, innovative, unusual,
24 attention grabbers. But these kind of sugarcoated
25 descriptions of what they're doing do nothing to

1 change the fundamental business plan of this company.

2 Their business is focused on the zero minus
3 traffic where typically a customer goes to a pay phone
4 and dials zero and wishes to complete a call. They
5 are trying to deceive customers into having their
6 company be named when, in fact, the intent of the
7 customer is to simply say they have no preference.

8 This deceives customers. It's also
9 anticompetitive to other companies that participate in
10 this market. The business practice in Florida is that
11 there's a list of companies that choose to participate
12 in this market, and there's a rotation; and the use of
13 "I Don't Care" and "It Doesn't Matter" is an attempt
14 to get their more than a fair share, be more equal
15 than all the others on the rotation. So they both
16 have deception and anticompetitive qualities to their
17 business plan.

18 There's nothing innovative or clever in the
19 use of deception as a basis for their business plan.
20 There have always been companies ready to make a
21 dollar by deception and trickery, and this company
22 wants you to give them a certificate to engage in
23 these practices.

24 Their lack of any marketing of any
25 significance, I think, should be a telling sign to you

1 as you hear the evidence. This company did a million
2 dollars of business last year, yet they did less than
3 a thousand dollars in marketing. I will tell you that
4 their business practice is based upon deception and
5 not upon a fundamental and real business plan.

6 We've asked you, as Mr. Gross has said, to
7 deny their certificate or, alternatively, to modify
8 their certificate.

9 Mr. Wiggins pointed out Section 364.337, but
10 there's also another statute that applies as well, and
11 that's 364.335; and that states that the Commission
12 may grant a certificate with modifications in the
13 public interest or it may deny a certificate. And
14 that would apply here as well, that you could modify
15 their certificate in the public interest because of
16 their business practices.

17 Thank you.

18 COMMISSIONER DEASON: Thank you, Mr. Beck.
19 Any other preliminary matters?

20 COMMISSIONER CLARK: Mr. Chairman, I do have
21 a question. I understood that the PAA as issued had a
22 condition in it which said that KTNT had to come back
23 to us before they used any other names.

24 MR. WIGGINS: Yes, ma'am.

25 COMMISSIONER CLARK: Is there any

1 disagreement over that, that that should continue to
2 be part of any grant of the certificate?

3 MR. WIGGINS: No, ma'am. The procedure of
4 this -- the whole complexion of the case has changed.
5 We submitted that application in an attempt to avoid a
6 hearing.

7 The Public Counsel protested the PAA
8 notwithstanding that on the grounds, I think,
9 Mr. Beck, that in the future we would come, and it was
10 important to resolve this issue now.

11 Since we've been forced to hearing, we have
12 renewed our request that we be allowed to use the
13 original names on the application, which is KTNT,
14 d/b/a "I Don't Care" as well as "It Doesn't Matter."

15 COMMISSIONER CLARK: Okay. But my question
16 is, is there still in dispute the notion of the
17 condition that you have to come back to us for any
18 other names?

19 MR. WIGGINS: Oh, of course not.

20 COMMISSIONER CLARK: Okay. Let me ask
21 Staff. Is that a condition we put on other grants,
22 that they come back in before they use any other name?

23 MS. BROWN: I'm not aware of any.

24 COMMISSIONER CLARK: They have to tell us
25 they're using another name.

1 MS. BROWN: Yes. Yes, and anytime they
2 would use an additional name, they need to come to the
3 Commission to request approval for a name change.

4 COMMISSIONER CLARK: All right. Thank you.

5 MS. BROWN: Commissioner Deason, Staff is
6 not aware of any other preliminary matters.

7 COMMISSIONER DEASON: Do the parties have
8 any other preliminary matters? (No response.)

9 Very well. I'll ask all witnesses who are
10 present to please stand and raise your right hand.

11 (Witness collectively sworn.)

12 COMMISSIONER DEASON: Mr. Wiggins, you may
13 call your witness.

14 MR. WIGGINS: I call Mr. Dennis Dees to the
15 stand.

16 - - - - -

17 DENNIS DEES

18 was called as a witness on behalf of KTNT
19 Communications, Inc. and, having been duly sworn,
20 testified as follows:

21 DIRECT EXAMINATION

22 BY MR. WIGGINS:

23 Q Please state your name.

24 A James Dennis Dees.

25 Q And your address and occupation?

1 A 620 Ruth Drive. I'm president of KTNT,
2 Communications, Incorporated.

3 Q Did you cause to be prepared and filed in
4 this docket seven pages of direct testimony?

5 A I did.

6 Q Do you have any changes to make to that
7 testimony?

8 A Yes.

9 Q What are they?

10 A Page 3, Line 7, "Illinois" should be
11 deleted.

12 Q Would you say that again, please?

13 A Yes. Page 3, Line 9, "Illinois" should be
14 deleted. We're currently operating in Michigan and
15 Ohio; Michigan, Ohio and Texas. Illinois will start
16 next week.

17 Q Do you have any other changes to make to
18 that?

19 A No, I believe not.

20 Q If I asked you the questions contained in
21 this testimony today, with that modification would
22 your answers be the same?

23 A Yes, they would.

24 MR. WIGGINS: Mr. Chairman, I move that
25 Mr. Dees' testimony be inserted in the record as

- 1 Q. Please state your name, business address and job
2 title.
- 3 A. My name is Dennis Dees; my business address is 621
4 Ruth Drive, Kennedale, Texas 76060. I am employed by
5 KTNT Communications, Inc. as President.
- 6 Q. What are your present duties with KTNT?
- 7 A. I oversee the day to day operations of KTNT and design
8 the network for how calls will be routed through KTNT.
- 9 Q. What is the purpose of your testimony in this docket?
- 10 A. The purpose of my testimony is to present evidence to
11 support the financial, technical and managerial
12 abilities of KTNT to provide telecommunications
13 service in Florida. We have already filed with the
14 Commission a complete application that contains the
15 requisite information, schedules, financial statements
16 and other proof of managerial, technical, and
17 financial fitness.
- 18 Q. Please describe the corporate structure and nature of
19 KTNT's business?
- 20 A. KTNT will be using the assumed names of I Don't Care
21 and It Doesn't Matter. We are a switchless reseller
22 whose primary business activity has been as an
23 operator service provider. KTNT will be expanding
24 into other areas of telecommunications such as one
25 plus and 800-888 numbers as time permits.

- 1 Q. Has KTNT registered to do business in Florida?
- 2 A. Yes. KTNT is a Texas corporation admitted to do
3 business in Florida. The d/b/a's I Don't Care and It
4 Doesn't Matter have also been registered and approved
5 by the Secretary of State of Florida.
- 6 Q. How long has KTNT been in business and what are the
7 financial, managerial and technical abilities of KTNT?
- 8 A. KTNT started business in Texas in February of 1995
9 The assumed names I Don't Care and It Doesn't Matter
10 have been in operation, in Texas, since September of
11 1995. KTNT expanded into Michigan and Ohio in April
12 of 1997 using the assumed names.
- 13 Q. Does KTNT have the resources to expand into Florida
14 and other states?
- 15 A. Yes.
- 16 Q. Is the management of KTNT competent to run this
17 business?
- 18 A. Yes. The management of KTNT has already proven its
19 ability by the success of KTNT and the fact that KTNT
20 continues to expand throughout the country.
21 Since KTNT is a reseller, it has entered into
22 contracts with underlying carriers. They handle most
23 of the technical side of our business. The switch,
24 T1's, and operator centers are all leased facilities.
25 Even though KTNT has a firm understanding of the

- 1 technical side, it obviously does not need to manage
2 in detail this side of the business.
- 3 Q. Where is KTNT currently certified?
- 4 A. Illinois, Michigan, New Jersey, Ohio, Texas and
5 Wisconsin.
- 6 Q. Has KTNT been denied certification in any state?
- 7 A. No.
- 8 Q. In what states does KTNT operate?
- 9 A. ~~Illinois~~ Michigan, Ohio and Texas.
- 10 Q. Please describe the services KTNT proposes to offer.
- 11 A. Initially, KTNT will be providing operator assisted
12 calling such as collect calls, person to person, third
13 party, and calling card calls. Eventually, as our
14 business grows we will expand into other areas such as
15 one plus and 800-888 numbers.
- 16 Q. Will KTNT own any network switches or transmission
17 facilities?
- 18 A. No. KTNT operates as a switchless reseller, and as
19 such, resells the switching and transmission services
20 of its underlying providers.
- 21 Q. How will KTNT bill for its services?
- 22 A. KTNT has contracted with ZPDI of San Antonio, Texas to
23 handle all of its billing for the State of Florida.
24 ZPDI already handles all of KTNT's billing in the
25 states it does business in now.

- 1 Q. How will billing inquiries and/or customer complaints
2 be handled?
- 3 A. All customer inquiries will be handled on behalf of
4 KTNT by ZPDI. Customers will be directed to make
5 their inquiries by dialing an 800 number which will be
6 included in the billing. If ZPDI for some reason is
7 unable to satisfy the customer then the customer will
8 be given KTNT's 800 number and we will handle the
9 complaint.
- 10 Q. Will KTNT comply with Commission rules, orders, and
11 policies pertaining to the reselling of intrastate
12 telecommunications services?
- 13 A. Yes.
- 14 Q. How will the people of Florida benefit from KTNT's
15 services and presence in Florida?
- 16 A. The public interest is served by creating greater
17 competition in the reselling of intrastate
18 telecommunications services. KTNT anticipates that
19 its proposed services will increase consumer choice.
- 20 Q. Why does KTNT use the assumed names I Don't Care and
21 It Doesn't Matter?
- 22 A. KTNT believes these names are attention grabbers which
23 will enable us to get consumers to know who we are
24 faster than other companies. With the advent of the
25 Telecommunications Act of 1996, the age of competition

1 has arrived. Companies need to be more creative, and
2 we feel that some consumers will relate to these names
3 because they have a "sense of humor" to them instead
4 of the usual approaches to long distance names. We
5 believe that some of these consumers will think our
6 approach is innovative which will result in customers
7 for KTNT.

8 Q. Does KTNT intend to telemarket its services with these
9 unusual names?

10 A. KTNT will not use telemarketing means to gain
11 customers with the names I Don't Care and It Doesn't
12 Matter. We believe that consumers are tired of the
13 tactics of many long distance companies who engage in
14 telemarketing. We believe in the right of these
15 companies to use this approach but from a marketing
16 angle we feel it is the wrong approach. Generally
17 speaking, we believe that people are tired of the
18 calls at home during dinner hours or during anytime of
19 day. Consumers may hear from many different companies
20 soliciting over the telephone in a given year and some
21 of the same companies many times during the course of
22 a year. It gets to the point where some consumers get
23 tired of the calls and have an attitude of "I don't
24 care" or "it doesn't matter" or "they're all the
25 same." When they hear about our company's names they

1 might laugh and say "that is clever I might look into
2 using them for my long distance service." The point
3 is that consumers ought to have a choice whether or
4 not they want to do business with KTNT or someone
5 else. We believe that many consumers truly do not
6 care who their long distance carrier is and if that is
7 their attitude, then maybe we will be an attractive
8 choice.

9 Q. How will KTNT promote the names I Don't Care and It
10 Doesn't Matter?

11 A. The names can be promoted by direct mail, newspaper
12 advertising, radio commercials, billboards and most
13 importantly by word of mouth. Eventually, KTNT would
14 like to air television commercials. We have discussed
15 several different ideas for television commercials.
16 One approach we like is a take-off on the Abbot &
17 Costello routine "Who's on first?" We would use the
18 same approach with I Don't Care and It Doesn't Matter,
19 to highlight that some consumers really do not care as
20 long as it is the same old big companies. KTNT
21 believes the public would respond favorably to such an
22 advertising campaign. It would bring some fun to this
23 industry instead of the same old commercials where the
24 big three constantly pound on each other. KTNT ought
25 to be rewarded for its clever marketing approach and

1 let the public decide whether or not they want to
2 choose us as a carrier.

3 Even though we believe a good number of Florida
4 consumers already know who we are, it takes time for
5 the general public to hear about any company, not just
6 KTNT, because a company must first go through a
7 certification process before the consumer has even had
8 a chance to know who they are. In other words,
9 certification must come first and then promoting who
10 you are by clever strategies comes second.

11 Q. How many complaints has KTNT had regarding the names
12 I Don't Care and It Doesn't Matter?

13 A. To our knowledge we have never had a complaint filed
14 against KTNT regarding the names I Don't Care and It
15 Doesn't Matter with the FCC, any of the State PUC's
16 where we do business or any other agency where a
17 consumer may file a complaint.

18 Q. Does this conclude your testimony?

19 A. Yes it does.

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1 Q (By Mr. Wiggins) Mr. Dees, did you also
2 cause to be prepared and filed in this docket 15 pages
3 of rebuttal testimony?

4 A I did.

5 Q And did that include one exhibit, DD-1?

6 A Yes, it does.

7 Q Do you have any changes to make to your
8 rebuttal testimony?

9 A Yes; Page 7, Lines 5 and 6.

10 Q And what is that change?

11 A Beginning -- I'm sorry. It's Lines 4 and 5,
12 deleting Lines 4 and 5; replacing them with "Since
13 then, AT&T has raised its rates -- its charges for
14 this type of call. Therefore, our rates are currently
15 below AT&T's rates and charges for this type of call."

16 Additionally, to Line 6, striking the word
17 "keep" and -- let me just reread the sentence and
18 maybe that would be easier. "Why would you keep your
19 rates below AT&T rates if the customer's decision to
20 place a zero minus is currently not price sensitive?"

21 Q Okay. Let's go over that again. You would
22 delete the word "lower" on Line 6?

23 A Yes.

24 Q And insert the word "keep"?

25 A Yes.

1 Q With those changes, would your answers be
2 the same if I asked you the questions contained in
3 your prefiled rebuttal testimony?

4 A Yes, they would.

5 COMMISSIONER CLARK: Mr. Wiggins, I would
6 like to be clear about something. Then you're not
7 going to be filing replacement pages? You're leaving
8 them the way they are, and you are now below AT&T
9 because they're higher?

10 WITNESS DEES: Yes, their tariffs have
11 changed.

12 COMMISSIONER CLARK: Okay. Thanks.

13 MR. WIGGINS: Mr. Chairman, I move that his
14 rebuttal testimony be inserted in the record.

15 COMMISSIONER DEASON: Without objection, it
16 shall be so inserted.

17 MR. WIGGINS: And I would like Exhibit DD-1
18 to be marked.

19 COMMISSIONER DEASON: It will be identified
20 as Exhibit 1.

21 (Exhibit 1 marked for identification.)
22
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24
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1 Q. Please state your name, business address and job
2 title.

3 A. My name is Dennis Dees; my business address is 621
4 Ruth Drive, Kennedale, Texas 76060. I am employed by
5 KTNT Communications, Inc. as President.

6 Q. What are your present duties with KTNT?

7 A. I oversee the day-to-day operations of KTNT and design
8 the network for how calls will be routed through KTNT.

9 Q: Did you file direct testimony in this proceeding?

10 A: Yes. I filed direct testimony on behalf of KTNT on
11 February 12, 1998.

12 Q. What is the purpose of your testimony in this docket?

13 A. The purpose of my testimony is to respond to the
14 issues and factual assertions set out in the testimony
15 Mr. R. Earl Poucher filed by the Office of the Public
16 Counsel and the Citizens of Florida ("OPC").

17 Q. What is your basic reaction to Mr. Poucher's
18 testimony?

19 A. My basic reaction is disappointment. He states
20 unequivocally that our "basic marketing plan hinges
21 upon exploiting customers." (Page 2, Lines 15-16) He
22 also says that our motives are "directed primarily at
23 deceiving the public" (Page 2, Line 17) and then says
24 that a "company that intentionally engages in
25 deceptive trade practices ought not to be allowed to

1 operate in the State of Florida." (Page 2, Lines 18-
2 19) This portrayal of our company is simply not true.
3 I believe that the OPC's position can only be
4 maintained by ignoring the facts and distorting KTNT's
5 business plan.

6 Q: What do you mean by "ignoring the facts and distorting
7 KTNT's business plan?"

8 A: Let's take the OPC's concerns about the corporate name
9 KTNT. Mr. Poucher suggests that we intend to
10 "masquerade" as AT&T in the marketing of one plus
11 services because the names sound alike when spoken.
12 (Page 3, Line 25) He makes this claim even though I
13 explained at deposition that we chose the name because
14 two of the principals had a previous company named TNT
15 Communications, and we wanted to use "TNT" in the new
16 name. I am from Kennendale, so we took the "K" from
17 that word and added it to the "TNT."

18 Q: Did you do that to make your name sound like AT&T?

19 A: No. In fact, our first reaction was that our name
20 looked like a radio station.

21 Q: Do you like the name "KTNT?"

22 A: Not particularly. The main problem with the name is
23 that it gives folks like Mr. Poucher concerns that we
24 want to trick people.

25 Q: Why don't you change the name "KTNT?"

- 1 A: I suppose that the name hasn't created enough problems
2 for us to want to change it. To make the change we
3 have to change corporate registrations, billing
4 contracts and other documents, but these are not major
5 obstacles. We would be willing to change "KTNT" to
6 some other name that the OPC believes would not be
7 confusing to the public. I assume that with this
8 change, there would no longer be any concern about the
9 corporate name. However, this change would not
10 resolve the controversy over the fictitious names and
11 service marks "I Don't Care" and "It Doesn't Matter."
- 12 Q: Has Mr. Poucher distorted other aspects of your
13 business plan?
- 14 A: Yes. Perhaps the simplest way to say this is that I
15 think his basic premise is a distortion, i.e., that we
16 are out to trick and cheat the customer. I would like
17 to start with a more particular point, however. In
18 his testimony, Mr. Poucher seems to suggest that we
19 were attempting to ignore the fact that our primary
20 business plan involved zero minus traffic. This is a
21 misapprehension of my testimony and the record in this
22 proceeding. In our initial application for a
23 certificate, we represented to the Commission that our
24 business for the foreseeable future would be
25 exclusively zero-minus. Therefore the Commission did

1 not need to address in the certificate application the
2 area of telemarketing I Don't Care and It Do sn't
3 Matter for direct dialed long distance. Our bus ness
4 plan has evolved somewhat. As reflected in my direct
5 testimony however we now contemplate moving into one
6 plus and other areas of telecommunications such as one
7 plus and 800-888 numbers as time permits.

8 Q: Let's turn to what appears to be Mr. Poucher's main
9 point. On page 4 at lines 9-12, he testifies in
10 pertinent part as follows:

11 The public interest is, indeed, best
12 served by encouraging competition.
13 However, the primary means for KTNT to
14 gain is 'market share' is not through
15 customers exercising competitive
16 choice, but by accident and deception.

17 How do you respond?

18 A: Mr. Poucher's testimony is inconsistent with how zero
19 minus carrier selection works when the customer
20 declines to make a choice. When the customer is asked
21 by the BellSouth operator which carrier he would like
22 to have handle the call and he responds "I Don't
23 Care," the BellSouth operator should respond to the
24 consumer that there is a carrier with that name and
25 ther. ask him if that is his choice. What is obvious

1 here is that we are not trying to trick the customer
2 into using our service, but rather we are attempting
3 to get his business by calling our name to his
4 attention. If we don't get his traffic, it will most
5 likely go to some other company with no name
6 recognition at the same rates. So what we are doing
7 is using our name to prompt the customer to make a
8 choice. Of course, we hope that he will find our
9 approach clever or amusing and choose us. But he
10 could say, for example, "Oh, just give me AT&T."

11 Q: Why don't you advertise or use some other less
12 controversial method of competing in the zero minus
13 market?

14 A: The nature of the zero-minus market requires
15 unorthodox marketing if you are going to compete for
16 the call, as opposed to just participate in a default
17 process.

18 Q: Why?

19 A: The zero minus market is small and would not support
20 traditional marketing techniques. In Florida, only
21 the three biggest companies with national one-plus
22 exposure provide zero minus services: AT&T, Sprint,
23 and MCI. The market is so small compared to the cost
24 of entry, that other companies with name recognition
25 simply skip participation in this line of business.

1 The only way to make any money in this market is to
2 use a marketing technique of some kind that does not
3 include high advertising costs. For example, another
4 company in the market, Connect America, operates under
5 five other names to increase its percentage of calls
6 it is assigned through default. Connect America is
7 not a company with name recognition and it doesn't
8 advertise. It simply gets business by being on the
9 rotation five times.

10 Q: But aren't you tricking the customer into using a
11 company that he doesn't know anything about?

12 A: Absolutely not. First, the customer has said that he
13 has no preference, so he does not care which carrier
14 ultimately provides the requested service. If the
15 customer does not care which carrier handles his call,
16 how can he be "tricked" into using a carrier? The
17 word "trick" suggests that had the customer known the
18 full story he would have selected another carrier.
19 Second, the customer who doesn't have a preference
20 gets a company that he doesn't know anything about,
21 unless one of the big three is at the top of the
22 rotation list. And third, we are not tricking the
23 customer, rather we are trying to prompt him to make
24 an affirmative choice.

25 Q: Are your rates an issue in this proceeding?

1 A: At the time of Mr. Poucher's testimony they were not
2 because all carriers on the rotation charged the same
3 rates, honoring the Commission's rate caps.

4 ~~Nevertheless, before hearing we will file replacement~~
5 ~~tariff pages lowering our rates for these calls.~~

6 Q: Why would you ^{Keep} ~~lower~~ your rates if the customer's
7 decision to place the zero minus call is apparently
8 not price sensitive and all carriers currently charge
9 the same rates?

10 A: To demonstrate that opposition to our certificate and
11 zero minus strategy is not based on protecting the
12 customer. Now with lower rates we have the following
13 situation with respect to our provision of zero minus
14 service:

15 (1) the customer responds to the BellSouth
16 operator's inquiry of carrier preference by
17 saying either "I Don't Care" or "It Doesn't
18 Matter;"

19 (2) the customer either means to choose us or
20 means that he has no preference;

21 (3) the operator asks the customer to specify
22 his intent;

23 (4) if he means to choose us, he confirms that
24 choice; or, if he did not mean to choose us, he
25 states his current preference for how the call

7

Since then, AT&T has raised its rates -- its charges for this
type of call. Therefore, our rates are currently below AT&T's
rates and charges for this type of call.

1 is assigned, i.e., by name of the carrier or by
2 default; and

3 (5) if we carry the call, either by the
4 customer's choice or by default, the customer
5 pays a lower rate.

6 Based on the situation, the customer's choice is
7 honored at every turn and he ends up with lower rates.
8 I think this is in the public interest.

9 Q: But isn't this approach anticompetitive?

10 A: No. Ironically, I think the opposition to our
11 application by the OPC and Attorney General is
12 anticompetitive. If they have their way, AT&T, MCI
13 and Sprint's competitive interests will be served.
14 These three will benefit more than anyone.

15 Q: Isn't this approach at least unfair to other small
16 competitors?

17 A: No, and you don't hear them complaining about our
18 approach. In fact, I've been told by a couple of
19 competitors that they wish they had thought of the
20 idea.

21 Q: Don't your fictitious names create an opportunity for
22 confusion in the marketing of one-plus and other
23 services?

24 A: No. Under the current regulatory environment with
25 respect to slamming, it would be foolhardy for us to

1 market in a way that invited slamming complaints.
2 Obviously we will put effort and thought into
3 complying with the Commission's new slamming rules.
4 In addition, we will be using our unusual fictitious
5 names to distinguish ourselves from other carriers,
6 not confuse the customer that we are some one else.

7 Q: Mr. Poucher notes in his testimony that in Texas you
8 used 46 different names which he believes was ". . .
9 aimed at short-circuiting the process of transfer
10 services in that state." How do you respond?

11 A: This is another area where I believe he has ignored
12 facts and distorted our business plan. We did sponsor
13 or use 46 names in Texas, but at one point there were
14 more than a thousand names on the rotation list! This
15 rotation list has been narrowed quite a bit, but today
16 the number of names still exceeds one hundred. If you
17 expected any zero minus traffic by default you had to
18 have many names on the list. We were just one of many
19 to do that.

20 But it was within this context that we came up
21 with the strategy to "pop-up" our existence from among
22 the mass of unknown carriers waiting in line. We
23 experimented and used several different fictitious
24 names in Texas, but we have now narrowed our use of
25 fictitious names in Florida to just two: I Don't Care

1 and It Doesn't Matter.

2 And as Paul Harvey might say, "Here's the rest of
3 the story." In Texas and other states, we have
4 completed over 300,000 calls, and to the best of my
5 knowledge we have never had a single complaint about
6 our fictitious names, from either a customer or a
7 competitor. In addition, I don't think any regulatory
8 agency has ever suggested that we were not cooperative
9 and compliant with respect to applicable regulations.
10 In short, in states where we are providing service,
11 customers are not complaining, competitors are not
12 complaining, and regulators are not complaining. And
13 yet the OPC has insisted on forcing us to hearing to
14 contest our managerial fitness to provide service. I
15 think this process has been unfair to us.

16 Q: Turning to the issue of name confusion, Mr. Poucher
17 suggests on page 6 that the Commission has attempted
18 in the past "to insure that telephone customers are
19 provided clear and specific information to assist
20 customers in making informed judgments in the
21 selection of telecommunication services." (Page 6,
22 Lines 7-10) In addition, throughout his testimony,
23 Mr. Poucher suggests that the two fictitious names are
24 either confusing or could be used to deceive
25 customers. How do you respond?

1 A: I am sure the Commission has put a lot effort into
2 assuring that consumers are protected in their
3 exercise of choice, and, as I have already explained,
4 I see our service as honoring choice. But with
5 respect to either corporate or fictitious names, it
6 seems to me that other companies are currently
7 providing service under other names that could be more
8 confusing than "I Don't Care" and "It Doesn't Matter"
9 in some contexts. For example, there are:

- 10 . The Other Phone Company, Inc.
- 11 . The Phone Company
- 12 . Dial & Save
- 13 . Florida Public Telecommunications Association,
14 Inc.
- 15 . Budget Call Long Distance, Inc.
- 16 . Business Discount Plan, Inc.
- 17 . Hometown Telephone, Inc.
- 18 . Long Distance Savers, Inc.
- 19 . A Quality Communication Services

20 I suppose we could all create hypothetical situations
21 where a consumer might be confused by these names.

22 But if there is truly concern about confusion
23 among names in the market place, the Commission should
24 recognize there are many carriers competing under
25 names that could be confusingly similar to the

1 consumer. Attached as Exhibit (DD-1) is a list of
2 resellers with names that are arguably confusingly
3 similar.

4 As an example of potential confusion, let's
5 assume that within one week a customer received
6 telephone calls from marketing agents for any two of
7 the following carriers:

- 8 . TEL-LINK
- 9 . Tel3
- 10 . Telcom.Net, Inc.
- 11 . Telcorp Ltd.Company
- 12 . TeleCard Communications International, Inc.,
- 13 . Telecom*USA
- 14 . Teleglobe USAInc.
- 15 . TeleHub Network Services Corporation
- 16 . Telenational Communications Limited
- 17 . Telstar Long Distance, Inc.

18 I think it highly unlikely that the average consumer
19 would know the difference between the companies, and
20 would likely be confused that the second call was a
21 follow-up.

22 Q: Mr. Poucher suggests that in the future you might
23 attempt to use other fictitious names in Florida. How
24 do you respond?

25 A: I do not understand how this can be a serious

1 objection to our receiving a certificate. Any
2 existing certificated carrier could do the same thing.
3 I had the same problem with OPC's protest to the grant
4 of a certificate.

5 Q: Please explain.

6 A: Our original application was filed on January 24,
7 1997, and included the use of the fictitious names.
8 In its recommendation dated August 6, 1997, the staff
9 recommended approval of our application as filed. At
10 agenda conference without any prior contact with us
11 the Attorney General's office objected to our being
12 certificated. The Commission deferred the item to
13 give everyone a chance to meet and possibly resolve
14 our differences.

15 When it became clear to us that the OPC and the
16 Attorney General would not agree to us using our
17 fictitious names in Florida, we decided to amend our
18 application. On June 19, 1997, our counsel wrote Mr.
19 Williams asking that certification be granted in the
20 name "KTNT Communications, Inc. d/b/a IDC
21 Telecommunications." Staff recommended approval of
22 this and PAA Order No. PSC-97-1060-FOF-TL was issued
23 on September 9, 1997, proposing the grant. There was
24 a specific condition in the proposed order that we
25 would not use the controversial fictitious names

1 unless we obtained prior approval from the Commission.

2 The OPC protested the proposed grant forcing us
3 into this hearing over names we said we would not use.
4 OPC's concern was apparently the same as the one Mr.
5 Poucher mentions in his testimony: someday we might
6 try to use names they don't like, even though we would
7 have to obtain regulatory approval first.

8 Q: To be clear, in what names are you asking that the
9 certificate be granted?

10 A: Because we have been forced to hearing, we would
11 revert to our original application. Specifically, we
12 would like the certificate to be granted under the
13 names "KTNT Communications, Inc. d/b/a I Don't Care"
14 and "KTNT Communications, Inc. d/b/a It Doesn't
15 Matter."

16 Q: Please summarize your rebuttal testimony.

17 A: Mr. Poucher in his testimony argues that our
18 fictitious names are incompatible with the public
19 interest and that we are not fit to be certificated.
20 I disagree.

21 We know that our names are controversial. As I
22 have said publicly before, some people love them and
23 some people don't. But the OPC is basically saying
24 that we are out to cheat people, and that simply is
25 not true. In the zero minus environment we have

1 created a clever name that pops us into the customer's
2 attention. This leads the customer to make an
3 affirmative choice, which may or may not be us. In
4 other markets such as one plus, our names are so
5 distinctive that we will also stand out from the
6 competition.

7 The OPC suggests that we are tricking customers
8 and unfairly competing with other carriers, large and
9 small. But only the OPC and the Attorney General seem
10 to be saying that. To repeat what I said earlier,
11 customers are not complaining, competitors are not
12 complaining, and regulators are not complaining.

13 We applied for our certificate over a year ago.
14 Staff has recommended twice that we be granted a
15 certificate and we have shown by our conduct in this
16 proceeding that we attempt to honor regulatory policy.
17 We have established that we have the technical,
18 managerial, and financial fitness to be certificated.
19 We therefore request that the Commission grant our
20 certificate as soon as possible.

21 Q. Does this conclude your rebuttal testimony?

22 A. Yes it does.

23

24

25

1 **MR. WIGGINS:** Mr. Dees, do you have a
2 summary today for the Commissioners?

3 **A** I do.

4 **Q** Would you please give it?

5 **A** Please. The purpose of my testimony is to
6 present evidence to support the financial, technical,
7 and managerial capabilities of KTNT Communications to
8 be certified to do business in Florida.

9 We've already filed with the Commission a
10 complete application that contains the requisite
11 information, schedules, financial statements, and
12 other proof of managerial, technical, and financial
13 capabilities.

14 KTNT will be using its new names of "I Don't
15 Care" and "It Doesn't Matter." We are a switchless
16 reseller whose primary business activity has been as
17 an operator service provider. KTNT will be expanding
18 into other areas of telecommunications, such as 1+ and
19 toll free numbers as time and resources permit.

20 We believe these names are attention
21 grabbers which will enable us to get customers to know
22 who we are faster than other companies. With the
23 advent of the Telecommunications Act of 1996, the age
24 of competition has arrived.

25 Companies need to be more creative, and we

1 feel that some customers will relate to these names
2 because they have a sense of humor. To them --
3 instead of the usual approaches, instead of -- used by
4 other long distance companies. We believe that some
5 of these consumers will think our approach is
6 innovative, which will result in new customers for
7 KTNT.

8 The purpose of my rebuttal testimony is to
9 respond to the testimony of Mr. Poucher who argues
10 that our fictitious names are incompatible with the
11 public interest and that we are not fit to be
12 certificated. I disagree.

13 We know that our names are controversial.
14 As I have said publicly before, some people love our
15 names, some people don't. But the OPC is basically
16 saying that we're out to cheat people, and that's
17 simply not true.

18 In the zero minus environment we have
19 created a clever name that pops up to give us the
20 customer's attention. This leads the customer to make
21 affirmative choices, which may or may not be us. In
22 other markets, such as 1+, our names are so
23 distinctive that we will also stand out from the
24 competition.

25 The OPC suggests that we're tricking

1 customers and unfairly competing with other carriers
2 large and small, but only the OPC and the Attorney
3 General seems to be saying that. Customers are not
4 complaining, competitors are not complaining, and
5 regulators are not complaining.

6 We applied for certificate over a year ago.
7 Staff has recommended us twice -- recommended twice
8 that we be granted certificate, and we have shown by
9 our own conduct in this proceeding that we are
10 attempting to honor regulatory process and policy.

11 We have established that we have a
12 technical, managerial, and financial fitness to be
13 certified. Therefore, we request the Commission grant
14 our certificate as soon as possible.

15 This concludes my statement.

16 MR. WIGGINS: Mr. Dees is available for
17 cross-examination.

18 COMMISSIONER DEASON: Mr. Beck?

19 MR. BECK: Thank you, Commissioner Deason.

20 CROSS EXAMINATION

21 BY MR. BECK:

22 Q Good morning, Mr. Dees. My name is Charlie
23 Beck.

24 A Good morning.

25 Q Mr. Dees, have you had an opportunity to

1 review your -- the order, prehearing order, that gives
2 your positions on the various issues?

3 A I have.

4 Q And have you reviewed specifically your
5 basic position?

6 A Yes.

7 Q Are the statements contained in your basic
8 position true?

9 A Yes.

10 Q In your statement of basic position in about
11 the middle, it says "KTNT has completed over 300,000
12 calls in Texas without complaints from customers,
13 regulators or competitors." Is that statement true?

14 A I believe it is, regarding the use of the
15 names. We have received complaints, as any company
16 would.

17 MR. BECK: Commissioners, I have an exhibit
18 I'd like to ask to be identified.

19 COMMISSIONER CLARK: Mr. Dees, your voice
20 trailed off. You are saying you have received
21 complaints but not with respect to your name?

22 WITNESS DEES: That is correct.

23 COMMISSIONER CLARK: Okay.

24 COMMISSIONER DEASON: This will be
25 identified as Exhibit 2.

1 (Exhibit 2 marked for identification.)

2 Q (By Mr. Beck) Mr. Dees, do you have
3 Exhibit 2 for identification before you?

4 A I do.

5 Q And have you seen this document before?

6 A Yes, I have. In fact, in deposition you
7 presented this document to me.

8 Q Would you agree that this document reflects
9 a complaint about the name "KTNT"?

10 A I would agree this document does.

11 Q I'm sorry?

12 A Yes.

13 Q Then would you agree that your statement of
14 basic position that says that 300,000 calls in Texas
15 without complaints is incorrect?

16 A No. This initial complaint was -- and I do
17 remember this one because there were numerous calls.
18 The initial complaint mentioned nothing regarding the
19 names. This was an afterthought. We had already
20 resolved the matter with the client, or with the
21 customer, reducing their charges below what AT&T
22 charges.

23 Until this letter and until he had seen some
24 broadcast, then he had not mentioned KTNT. And, in
25 fact, the person writing this letter was not our

1 customer.

2 Q Mr. Dees, let me ask you about the name
3 "KTNT" and how that came about.

4 A Okay.

5 Q You and some of your partners had a company
6 called TNT Communications; is that true?

7 A Yes.

8 Q And what did the "TNT" stand for?

9 A TNT was not my creation. I'm under the
10 impression it stood for Tony and Tom.

11 Q Those were people who had an interest in
12 that firm?

13 A Only Tony did. It was a name he had used
14 previously.

15 Q That's Tony Vaccaro?

16 A Vacca.

17 Q Vacca?

18 A V-A-C-C-A.

19 Q And does he also have an interest in
20 KTNT Communications?

21 A He does.

22 Q Would it have been possible to use that
23 corporate name for the business you're in now?

24 A TNT Communications is an ongoing
25 corporation.

1 Q Do they provide services that are different
2 from KTNT's?

3 A No, the services are the same, but the
4 ownership is different.

5 Q You state that when you came up with the
6 "KTNT" that what you did is you used the "TNT" and
7 added the "K" in front of it.

8 A That is correct.

9 Q And the "K" was for the city which you came
10 from?

11 A The city I currently live in.

12 Q How come you didn't use names? If the T's
13 stand for Tony and Tom, why didn't you use "DTNT" when
14 you became involved in that company?

15 A It did not seem relevant at the time.

16 Q Well, why would you mix names with a -- you
17 know, person's names with city names to come up with a
18 name for a company?

19 A I have no answer to that, I mean, as to why
20 anything is named anything particular. It's a name
21 that sounded okay to us, so we used it.

22 Q Didn't you pick it because of the similarity
23 in sound to AT&T?

24 A No.

25 Q Did it occur to you when you named the

1 company KTNT that it was similar to AT&T?

2 A No.

3 Q When did it occur to you that the name

4 "KTNT" sounded similar to AT&T?

5 A I believe after the media addressed that.

6 Q It was only after someone else brought it to

7 your attention that you first realized that the name

8 "KTNT" sounds very similar to AT&T?

9 A Yes.

10 Q Your primary business right now is in the

11 zero minus or transfer service business, is it not?

12 A Yes.

13 Q And this occurs when a -- is it primarily

14 payphones where this occurs?

15 A No.

16 Q Where does it primarily occur?

17 A The traffic is not majority from any

18 location. It's payphones or home phones, any phone

19 that -- any telephone that can -- is capable of

20 reaching a LEC operator.

21 Q Well, in any event, it's when somebody dials

22 zero to make a call. Is that the business?

23 A Yes.

24 Q And they will get a local exchange company

25 operator when they do that?

1 A Yes.

2 Q And the operator then will typically ask the
3 customer which long distance company they wish to use;
4 is that right?

5 A Yes.

6 Q And if they pick the company, that's the
7 company that will be given to them; is that right?

8 A Yes.

9 Q Let me ask you, Mr. Dees, if somebody was
10 asked that question by an operator and they said, "I
11 want to use MCI," do you think the operator is going
12 to say "We have a company named MCI; would you like to
13 use them?"

14 A No.

15 Q If somebody says, "It doesn't matter," do
16 you think the operator is going to say "We have a
17 company named It Doesn't Matter"?

18 A Yes.

19 Q Why would they treat your company
20 differently than a specific company name?

21 A We've given them the permission to do so and
22 encouraged them to do so to avoid confusion.

23 Q You've given them permission to do so?

24 A Yes.

25 Q And what makes you think that they're going

1 to do that? Why would they treat your company
2 differently than another? Simply because you gave
3 them permission?

4 A In the areas that we're currently doing
5 business, because they've elected to.

6 Q Originally in Texas the companies didn't do
7 that, did they?

8 A Yes, they --

9 Q The local companies. They did?

10 A "I Don't Care" and "It Doesn't Matter," it
11 was our request from the inception.

12 COMMISSIONER JACOBS: Did you have some
13 specific arrangement or agreement with the local
14 exchange company to do that?

15 WITNESS DEES: Yes, we did.

16 COMMISSIONER JACOBS: That was in writing?

17 WITNESS DEES: No. We gave them verbal
18 permission to do so, and we obviously never contested
19 their doing so.

20 Q (By Mr. Beck) So the companies, the local
21 companies, aren't under any contractual obligations to
22 treat your company differently than they would treat
23 other companies?

24 A No.

25 COMMISSIONER CLARK: Mr. Dees, I'd like to

1 ask you a clarifying question. Do the operators use
2 KTNT when a person says for instance, "I hav= no
3 preference;" do they then turn to the first entity on
4 their rotation list and just send it to them, or do
5 they ask them if they want it sent to them?

6 WITNESS DEES: In Florida I am not sure.

7 COMMISSIONER CLARK: What happens in Texas?

8 WITNESS DEES: In Texas the rotation list is
9 very far down on the process now, but it depends on
10 the operator. Their procedure was, it was a
11 suggestion list and they should be told who they're
12 being transferred to.

13 COMMISSIONER CLARK: Is KTNT on that list?

14 WITNESS DEES: Yes.

15 COMMISSIONER CLARK: So you have several.
16 You have "I Don't Care", you have "It Doesn't Matter,"
17 but KTNT is also one that you'll verbally say to the
18 customer "KTNT is available to you"?

19 WITNESS DEES: In Texas that is correct.

20 COMMISSIONER CLARK: I thought you said in
21 your testimony the customer doesn't know it's KTNT
22 until he gets the bill.

23 WITNESS DEES: I believe I said most
24 customers don't, because most of our -- KTNT is not
25 widely used.

1 **COMMISSIONER CLARK:** In Florida do you
2 intend -- do we have a rotation list?

3 **WITNESS DEES:** Yes.

4 **COMMISSIONER CLARK:** And let's just assume
5 for a minute people are told before they're
6 transferred. Will there be three names that are used,
7 "I Don't Care," "It Doesn't Matter" and "KTNT"?

8 **WITNESS DEES:** No. "I Don't Care" and "It
9 Doesn't Matter" are the only names that we intend to
10 use in the state of Florida.

11 **COMMISSIONER CLARK:** And is it your
12 understanding of the limitation on your -- the
13 previous limitation on your certificate was that if
14 you wanted to use KTNT, you had to come back and tell
15 us you were using it?

16 **WITNESS DEES:** It believe that is correct.

17 **COMMISSIONER CLARK:** Okay.

18 **Q** **(By Mr. Beck)** Mr. Dees, let's discuss that
19 rotation list a little bit. Page 9 of your rebuttal
20 testimony you discuss that you sponsored 46 names in
21 Texas at one point, did you not?

22 **A** I did.

23 **Q** And at Line 21 on Page 9 of your rebuttal
24 testimony, it says that you came up with a strategy to
25 pop up your existence from among the mass of unknown

1 carriers waiting in line. Is that to give yourselves
2 a preferential position over the other carriers that
3 are waiting in line.

4 A It's to provide differentiation.

5 Q Well, it's not just differentiation, is it?
6 I mean, some unknown carrier won't pop up when a
7 customer has no choice, but your names will when they
8 say "It doesn't matter," or "I don't care."

9 A It provides differentiation.

10 Q In your testimony you said you narrowed your
11 use of fictitious names in Florida to just two; "I
12 Don't Care" and "It Doesn't Matter."

13 A Yes.

14 Q Is that based upon your experience in Texas?

15 A Yes.

16 Q Is that because those are the phrases most
17 often used by customers when they have no preference
18 for a carrier?

19 A I'm not sure what phrases are most used.

20 Q Well, why did you narrow your choice down to
21 just those two names then in Florida?

22 A They were the most beneficial for us.

23 Q What do you mean?

24 A They generate the most traffic.

25 Q In other words they get used by customers

1 more often than your other names?

2 A Yes.

3 Q Mr. Dees, you've not been denied a
4 certificate by any state public service commission,
5 have you?

6 A No.

7 Q But you've pulled your application in
8 several states, haven't you, also?

9 A Yes.

10 Q And that was in the face of opposition from
11 the staffs of those commissions; is that right?

12 A In some cases.

13 Q In which states did you pull your
14 application before it was taken up by the commissions?

15 A Georgia and Nevada.

16 Q Any others?

17 A There may have been others, but we withdrew
18 the applications for market reasons in the others.
19 Simply the market would not exist for us there.

20 Q Didn't you pull your certificate application
21 in Maryland because of opposition from the staff?

22 A No. I believe that was more of a market
23 based decision. We reevaluated the market, and there
24 was not enough traffic there to justify our existence
25 there.

1 Q Did something change between the time that
2 you made the application in the market that made you
3 take it back?

4 A The NYNEX merger may have had something to
5 do with that and the way the calls were handled.

6 Q What are some of the other unusual names
7 that you've used in Texas, Mr. Dees?

8 A Some of the usual names are "Anyone Is
9 Okay," "I Don't Know," "Whoever."

10 Q "Pick One"?

11 A And "Pick One" has not been implemented yet.

12 Q But it's one of the names that's available
13 to you in Texas?

14 A We've registered it. We've not implemented
15 it.

16 Q If your application is granted, do you
17 believe there would be anything stopping you from
18 using those names in Florida also?

19 A Yes.

20 Q What would that be?

21 A Market conditions.

22 Q Okay. That those just aren't good enough --
23 or as good as "I Don't Care" and "It Doesn't Matter"?

24 A Yes.

25 Q Your company had over a million dollars in

1 revenue last year?

2 A I believe so.

3 Q And how much did you spend on marketing?

4 A Very little.

5 Q About \$500 or less?

6 A I believe that's a good number.

7 Q And your marketing program consisted of pens
8 that were handed out at traffic stops -- or stopping
9 places on the interstate highways?

10 A Rest areas, anyone who would take one, and
11 some newspaper advertisements.

12 Q And the newspaper advertisements were in
13 alternative newspapers?

14 A Correct.

15 Q Any other marketing activities by your
16 company to generate that million dollars in revenue?

17 A Marketing would include, I believe, the
18 promotion that we've done and all the media coverage
19 we've received.

20 COMMISSIONER CLARK: Excuse me, Mr. Beck.
21 What's an alternative newspaper?

22 WITNESS DEES: I guess any -- in this case
23 it was Dallas Observer, which is aimed at markets that
24 typically -- other than the major newspaper of the
25 city; so I guess non-mainstream press.

1 **COMMISSIONER CLARK:** Okay.

2 **Q** **(By Mr. Beck)** Have you ever had a Better
3 Business Bureau oppose your application?

4 **A** I don't know.

5 **Q** In Illinois, Mr. Dees?

6 **A** There was testimony from the Better Business
7 Bureau. I do remember that.

8 **Q** And they opposed your application because
9 that they felt there would be confusion through the
10 use of your names, did they not?

11 **A** I can't recall why they would oppose that.

12 **MR. BECK:** Thank you, Mr. Dees. That's all
13 I have.

14 **WITNESS DEES:** Thank you, Mr. Beck.

15 **COMMISSIONER DEASON:** Staff?

16 **CROSS EXAMINATION**

17 **BY MS. BROWN:**

18 **Q** Good morning, Mr. Dees. I'm Martha Brown
19 for the Commission Staff.

20 **A** Good morning.

21 **Q** Would you turn to Page 4 of your direct
22 testimony, Lines 18 and 19?

23 **A** Yes.

24 **Q** You state there that KTNT's proposed
25 services will increase consumer choice. How will

1 KTNT's proposed services increase consumer choice?

2 A I think the ways are many. One is there's
3 another alternative for companies -- or for end users
4 to choose from. That by itself will increase consumer
5 choice to our name. And our company typically gets a
6 lot of media attention, so the consumers are aware
7 that they have a choice when making this type of call.
8 And our name itself prompts people to realize that
9 they do have a choice.

10 Far from forcing or enticing someone to use
11 our service, it gives them an opportunity then to take
12 something that may have been a default and make an
13 affirmative choice.

14 Q Now, go over for me again how your name by
15 itself prompts people to realize that they do have
16 another choice.

17 A Well, in some cases it may be a natural
18 reaction for people to say "It doesn't matter" or "I
19 don't care" when they're asked which company they
20 wanted to -- at a phone when making operator assisted
21 calls or a minus type.

22 Once they find there a company called "I
23 Don't Care," they realize, well, this may make a
24 difference, and then they can choose whether to use
25 the convenience of our company or to find another way

1 to make that call.

2 Q So one of the ways your company's services
3 enhance consumer choice is by making consumers who
4 don't have a choice aware that you all are there and
5 that they did have that choice if they wanted to?

6 A Yes, and other carriers as well.

7 Q But that assertion really is based on your
8 testimony of how transfer to you occurs through the
9 LEC operator, correct?

10 A Correct.

11 Q Okay. Would you go over that again in your
12 own words and explain what happens to a customer when
13 they make a call and they ask for an operator -- or
14 they call the operator and they say they have no
15 choice. What happens then?

16 A Well, if they say they have no choice, the
17 operator in the BellSouth region will say, "you have
18 to make a choice. I can read a list of names to you."
19 Then they will read a list of names, and you'll have
20 to select a carrier from that list of names.

21 Q Well, if the customer says "I don't care; it
22 doesn't matter," what happens then?

23 A Then the operator -- again, we don't control
24 BellSouth, so I can't speak for BellSouth. But our
25 position would be that the operator should say "We

1 have a company by that name. Is that who you choose,
2 or are you stating you have no preference?

3 Q Okay. Let me go back over what you just
4 said. You just said you can't speak for BellSouth,
5 you don't control BellSouth; but you think the
6 operator should say "Well, there is a company by that
7 name. Is that the one you want?"

8 Is that correct? Is that what you just
9 said?

10 A Yes. We will encourage them to do that, but
11 we can't force them to.

12 Q What I want to know is what kind of evidence
13 you have beyond your own bare assertions in your
14 testimony that that is what happens when a local
15 operator -- a BellSouth operator specifically, because
16 we're concerned about Florida -- but an operator in
17 Texas gets a call like that, what else do you have in
18 this record to show this that is a fact that that
19 exactly happens?

20 A Well, I've made numerous test calls, and
21 that is fairly consistently happening. I am not a
22 representative of Southwestern Bell, so I can't make
23 any assertions for them.

24 Q Okay. You said earlier in response to some
25 questions from Mr. Beck that it was really up to the

1 operator about how they handled that kind of call. Do
2 you remember that?

3 A I do. That was regarding a previous
4 procedure. The new procedures have been more
5 restrictive.

6 Q Well, where are these procedures? Have you
7 filed them as documentation in the case? Do you have
8 an affidavit from an operator that says that's the way
9 they do it?

10 A No.

11 Q Are you aware of any written procedures from
12 BellSouth that demonstrate what you have asserted in
13 your testimony?

14 A No.

15 COMMISSIONER JACOBS: Mr. Dees, let's assume
16 for the moment that the company does adhere to that
17 procedure, i.e., when the customer is asked about
18 that, their request, they're given this list of
19 companies.

20 Under your application, they would mention
21 "I Don't Care" and "It Doesn't Matter" in that list of
22 companies, would they not?

23 WITNESS DEES: That is correct.

24 COMMISSIONER JACOBS: And so at the end of
25 that list the customer would know that your names are

1 in that list of companies?

2 WITNESS DEES: That is correct.

3 COMMISSIONER JACOBS: So if they say "I have
4 no preference," there would be no reason to think that
5 they would choose your company; is that right?

6 WITNESS DEES: No. I think there's great
7 reason if they're going to be reading the list.

8 COMMISSIONER JACOBS: Why?

9 WITNESS DEES: Why? Because the name
10 appeals to a certain type of person.

11 COMMISSIONER JACOBS: No. But they just
12 heard that there are companies offering services
13 called "I Don't Care" and "It Doesn't Matter," but
14 then they say "I have no preference."

15 WITNESS DEES: Then we wouldn't get that
16 call.

17 COMMISSIONER JACOBS: Do you agree that that
18 should be the way it should happen?

19 WITNESS DEES: Yes.

20 COMMISSIONER JACOBS: Okay.

21 Q (By Ms. Brown) How many companies are on
22 this so-called rotation list for BellSouth at the
23 moment?

24 A In Florida I believe there are 13.

25 Q And how do you know that?

1 A Test calls.

2 Q No other documentation from BellSouth or a
3 letter that says "We now have 13 companies"?

4 A They view that information as proprietary.
5 I'm sure the Commission can get it, but it's not
6 available to me.

7 COMMISSIONER CLARK: Excuse me just a
8 minute. When you made the test calls, what happened?

9 WITNESS DEES: They will read a list of the
10 available carriers.

11 COMMISSIONER CLARK: So the test calls you
12 made were you pushed 1 minus.

13 WITNESS DEES: Zero minus.

14 COMMISSIONER CLARK: Yes, zero minus.

15 WITNESS DEES: I'm sorry.

16 COMMISSIONER CLARK: Then the operator came
17 on the line. Tell me what transpired.

18 WITNESS DEES: I asked to make a collect
19 call to an area outside of the LATA. They asked me to
20 choose a company. I told them I had no preference,
21 and they said "Well, you have to make a preference,"
22 and read -- and then they will read a list of -- their
23 tariff requires them, I think, to read a list of the
24 top four or five, and their typical policy is that
25 they'll read the entire list of about 13 carriers.

1 **COMMISSIONER CLARK:** Did you ever call and
2 say -- I guess you wouldn't say "It Doesn't Matter"
3 because you're not there yet, you're not on the list
4 yet.

5 **WITNESS DEES:** Correct.

6 **COMMISSIONER CLARK:** Okay.

7 **Q** **(By Ms. Brown)** You said in some of your
8 responses to the questions that I was just asking you
9 that it's really up to the operator. So I would
10 assume you would agree with this; that it's entirely
11 possible that a LEC might not bother to ask that
12 second question, correct?

13 **A** It's possible.

14 **Q** And you don't really have any way of telling
15 whether they have asked that question?

16 **A** Only by my test calls.

17 **Q** And you really can't control what the LEC
18 operator does, can you?

19 **A** No.

20 **Q** Do you agree that without that second
21 question that the operator asks, that your name could
22 be deceptive to the customer who calls and says "I
23 don't care"?

24 **A** No.

25 **Q** Is it never the situation where an operator

1 would automatically pick you all then in response to
2 that statement from the customer without informing the
3 customer that there was, in fact, a company of that
4 name?

5 A Could you repeat the question, please?

6 Q Okay. Is there a circumstance in your mind
7 where a customer could be misled when they said "I
8 don't care" in response to the LEC operator's first
9 question?

10 A No.

11 Q Why not?

12 A We brand the calls "I Don't Care," "It
13 Doesn't Matter."

14 Q Excuse me?

15 A We brand the call -- our operator answers
16 the call with "I Don't Care", "It Doesn't Matter,"
17 depending on which company they've selected.

18 Q The choice has already been made at that
19 point?

20 A We've reiterated that we are a company; our
21 company name is "I Don't Care," "It Doesn't Matter,"
22 whichever they select or the trade names we're using;
23 therefore, they've been notified that we are a
24 company, and that's done twice before any billing
25 incident has occurred.

1 Q So if they were surprised when they were
2 trying to make this call and they were transferred to
3 your company and the brand came on "I Don't Know" or
4 "I Don't Care -- I can't keep them all straight.
5 Forgive me.

6 A I have a tough time, too. It's okay.

7 Q And they were surprised and decided, whoa, I
8 don't want to select this, what would they do at that
9 point?

10 A They could simply hang up and dial zero
11 again and request a different company.

12 Q Okay. So I assume from your answers then,
13 that you don't believe the names that you have chosen
14 to use could ever be misleading to customers?

15 A No.

16 Q Mr. Dees, in the opening statements by
17 Public Counsel and the Attorney General, Mr. Beck
18 mentioned a section of Florida Statutes, 364.335, that
19 says the Commission may grant a certificate with
20 conditions or modifications in the public interest.
21 And we do have a specific issue in this case as to
22 whether the Commission should grant you a certificate
23 with a modification that you shouldn't use these
24 fictitious names.

25 What is your response to that, and how does

1 the company feel about being granted a certificate in
2 Florida, but prohibited from using those names?

3 A We would -- we expect to use the names "I
4 Don't Care" and "It Doesn't Matter." We would agree
5 to any prohibition to additional names.

6 Q What if the Commission granted a certificate
7 to KTNT with the condition that it could not use those
8 two names it's asked for?

9 A We would not be very happy with that.

10 COMMISSIONER CLARK: I think she wants to
11 know would you still do business in Florida.

12 WITNESS DEES: I don't know, and not under
13 that name. (Laughter)

14 COMMISSIONER CLARK: And you don't care.
15 (Laughter)

16 MS. BROWN: Staff has no further questions.

17 COMMISSIONER DEASON: Commissioners?

18 COMMISSIONER JACOBS: Mr. Dees, if these
19 names are commodities or -- and have value to your
20 company, it seems to me like you want customers to
21 associate you with those names. Then why no
22 advertising of those names?

23 WITNESS DEES: We get so much free
24 publicity, we don't have to. I think our name is
25 widely known.

1 COMMISSIONER JACOBS: But is the name
2 widely known in association with your company?

3 WITNESS DEES: Absolutely.

4 COMMISSIONER JACOBS: So you believe that
5 the customers associate KTNT with "I Don't Care" or
6 "It Doesn't Matter"?

7 WITNESS DEES: Well, they'd recognize the
8 service mark "I Don't Care," "It Doesn't Matter."

9 COMMISSIONER JACOBS: How? You haven't
10 advertised it. How would they recognize it?

11 WITNESS DEES: We've had prime time media
12 coverage. We've been covered in almost every
13 newspaper in the country; many magazines, both
14 nationally and international, and that's coverage that
15 you can't buy when you're a small company. And,
16 frankly, that's what the names are designed to do, get
17 us more leverage and more attention than we'd
18 otherwise get for a company our size; and it's worked
19 quite well for that.

20 COMMISSIONER JACOBS: So it's your
21 contention that when that list -- if it were to be the
22 procedure that the operator reads down that list of
23 names to that customer at the moment they dial that
24 zero and they hear "I Don't Care" "It Doesn't Matter,"
25 they say, "Ah, KTNT, I want them"?

1 WITNESS DEES: No, but they may have heard
2 of the service.

3 COMMISSIONER JACOBS: I'm sorry?

4 WITNESS DEES: Not necessarily KTNT, but
5 they would have heard of the service marks, "I Don't
6 Care," and "It Doesn't Matter."

7 COMMISSIONER JACOBS: Okay.

8 COMMISSIONER DEASON: Redirect?

9 REDIRECT EXAMINATION

10 BY MR. WIGGINS:

11 Q Mr. Dees, let's address the name "KTNT." Do
12 you like that name?

13 A Not a lot.

14 Q In your rebuttal testimony you offered to
15 change, the company offered to change, the name "KTNT"
16 to remove any problem with it being a homonym with
17 AT&T; is that correct?

18 A Yes.

19 Q Are you serious about that?

20 A Absolutely.

21 Q Would you stipulate to that as a condition
22 of certification?

23 A I would for Florida.

24 Q Sir?

25 A I would for Florida.

1 Q Okay. Thank you. The next question, I
2 believe Ms. Brown asked you some questions about
3 operator transfer and default, and I want to make sure
4 that you were both singing from the same page.

5 Is it possible in Florida -- let me back up
6 a second. If you were certificated in Florida under
7 the names whatever and -- excuse me. I don't want to
8 use that one -- if you were certificated under a new
9 name with d/b/a "I Don't Care" or "It Doesn't Matter,"
10 and those two names are placed on the BellSouth
11 default list -- do you understand --

12 A Correct.

13 Q -- would you request BellSouth to respond to
14 the customer who says "It doesn't matter," that
15 "There's a company by that name. Is that your
16 choice?"

17 A Yes.

18 Q Why would you do that?

19 A It's much smoother for us from regulatory
20 issues and it avoids confusion with the consumers.

21 Q I'm sorry. Your voice dropped on that
22 last --

23 A It's much clearer for us when we deal with
24 regulatory issues, and it's easier for the consumer
25 and for us to clear up the confusion, if there was

1 any.

2 Q Now, is that what you did in Texas?

3 A Yes.

4 Q Did Southwestern Bell cooperate with you on
5 that?

6 A Yes, they have.

7 Q But can you guarantee that in every instance
8 the operator will, in fact, do that validation?

9 A Of course not.

10 COMMISSIONER CLARK: Let me ask, even if
11 they don't, when it is transferred to your operator,
12 your operator is going to say whatever -- if it was
13 transferred --

14 WITNESS DEES: The operator will brand the
15 call either "I Don't Care" or "It Doesn't Matter."

16 COMMISSIONER CLARK: So the people will know
17 before they complete the call who they're using.

18 WITNESS DEES: Before the call is completed
19 or a charge is incurred they will know who they are
20 using.

21 COMMISSIONER JACOBS: In the other states
22 are your rates capped?

23 WITNESS DEES: They're capped in Ohio, I
24 believe.

25 COMMISSIONER JACOBS: And that's the only

1 other place? So in Texas how do your rates stand with
2 the other people on the rotation list?

3 WITNESS DEES: The last survey we did, we
4 were in the lower 40 percentile of the people in the
5 rotation.

6 COMMISSIONER JACOBS: So you were --

7 WITNESS DEES: We were below average. That
8 may be different now, because they haven't done that
9 survey for about a year.

10 Q (By Mr. Wiggins) If in Florida the
11 BellSouth operator fails to follow your request and
12 perhaps the agreement from BellSouth to essentially
13 validate the choice of "It Doesn't Matter" or "I Don't
14 Care," in that situation do you believe the customer
15 was misled if he or she is routed to "It Doesn't
16 Matter" and "I Don't Care"?

17 A No.

18 MR. WIGGINS: I have no further redirect.

19 COMMISSIONER DEASON: Exhibits?

20 MR. WIGGINS: Yes, sir. I'd like to move
21 Exhibit 1.

22 COMMISSIONER DEASON: Without objection
23 Exhibit 1 is admitted.

24 (Exhibit 1 received in evidence.)

25 MR. BECK: And we move Exhibit 2.

1 **COMMISSIONER DEASON:** Without objection,
2 Exhibit 2 is admitted.

3 (Exhibit 2 received in evidence.)

4 **COMMISSIONER DEASON:** Thank you Mr. Dees.
5 (Witness Dees excused.)

6 **R. EARL POUCHER**
7 was called as a witness on behalf of the Citizens of
8 the State of Florida and, having been duly sworn,
9 testified as follows:

10 **DIRECT EXAMINATION**

11 **BY MR. BECK:**

12 **Q** Would you please state your name?

13 **A** My name is R. Earl Poucher. My business
14 address is 111 West Madison Street, Room 812,
15 Tallahassee, Florida 32399-1400. I'm a legislative
16 analyst with the Office of Public Counsel.

17 **Q** And did you prepare testimony that was filed
18 in this case?

19 **A** Yes, I did.

20 **Q** Do you have any changes or corrections to
21 that testimony?

22 **A** Yes, I do. On Page 6, Line 2, the word
23 "deception" at the end of the line should read
24 "deceptive."

25 **Q** With that change, if I were to ask you the

1 same questions today, would your answers be the same?

2 A Yes, they would.

3 MR. BECK: Commissioners, I move
4 Mr. Poucher's testimony into the record as though
5 read.

6 MR. WIGGINS: Objection.

7 COMMISSIONER DEASON: Please state your
8 objection.

9 MR. WIGGINS: Mr. Poucher is offering
10 opinion testimony. He's not offering any evidence,
11 hard data. To be able to offer or have opinion
12 testimony go into the record as evidence, it must be
13 offered by someone that has more expertise than the
14 average person in the area in which it's being
15 offered.

16 As Mr. Gross said earlier in his opening
17 statement, this is an issue that does not require
18 special expertise. This is a matter of your
19 perception of fairness.

20 Mr. Poucher has no specific expertise in the
21 area of service marks, deceptive trade practice and
22 the like, and his entire testimony goes to the point
23 that he believes in his opinion that this is tricky
24 practices.

25 Anyone who knows Mr. Poucher knows there's

1 not a straighter arrow or more profoundly decent human
2 being, so he is less qualified than the average person
3 to testify about trickery, and so this evidence should
4 not be admitted.

5 COMMISSIONER DEASON: Mr. Beck?

6 MR. BECK: Thank you, Commissioner.

7 Mr. Poucher has testified numerous times on
8 telecommunications issues before this Commission.
9 Most recently he testified before slamming -- on the
10 slamming rules and was qualified.

11 You'll see from his testimony that he has 29
12 years of experience with Southern Bell where he's had
13 management positions in forecasting, in business
14 operations and in marketing.

15 He was -- among the qualifications you'll
16 see on Page 2 -- or on Page 1 of his testimony, he was
17 unit manager -- or district manager, downtown Atlanta,
18 and general commercial supervisor, Atlanta area; and
19 in that position he supervised the Atlanta area
20 business office and marketing staff of Southern Bell.

21 Certainly Mr. Poucher is far more qualified
22 than the average person to testify to these matters.
23 He's been qualified numerous times before this
24 Commission. He's also testified in court on
25 telecommunications matters before for Southern Bell.

1 I would urge you to allow his testimony into
2 the record.

3 COMMISSIONER DEASON: I do note that
4 Mr. Poucher does have marketing background as part of
5 his experience, and I will overrule the objection, and
6 the Commission will give the weight we think
7 Mr. Poucher's testimony deserves.

8 COMMISSIONER CLARK: Mr. Chairman, can I ask
9 a question? Are you offering him both as an expert
10 and an ordinary person? He can give regular
11 testimony, too, can't he? I mean, what is your
12 objection?

13 MR. WIGGINS: Mine or Mr. Poucher's?

14 COMMISSIONER CLARK: Yours to Mr. Poucher.
15 It was expert.

16 MR. WIGGINS: Yes, ma'am, expert.

17 COMMISSIONER CLARK: But he can give regular
18 testimony, right?

19 MR. WIGGINS: Yes, but his opinion testimony
20 in areas of -- to have it have probative value for the
21 purposes of sustaining their case, it would have none.

22 COMMISSIONER CLARK: I see. And you're
23 taking issue with his opinion that its deceptive?

24 MR. WIGGINS: Yes, ma'am.

25 COMMISSIONER CLARK: Oh. All right.

1 **COMMISSIONER DEASON:** The objection is noted
2 and has been ruled upon, and the testimony will be
3 inserted into the record.

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1 **BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**2
3 **REBUTTAL TESTIMONY OF R. EARL POUCHER**4
5 **DOCKET NO. 970109-TL**
6
78 **Q. Please state your name, address, and position.**9 **A. My name is R. Earl Poucher, and my business address is 111 West**
10 **Madison St., Room 812, Tallahassee, Florida 32399-1400. I am a**
11 **legislative analyst with the Office of Public Counsel.**
1213 **Q. Please state your business experience.**14 **A. I graduated from the University of Florida in 1956 and I was employed by**
15 **Southern Bell in July 1956. I retired in 1987 with 29 years of service.**
16 **During my career with Southern Bell, I held a wide variety of management**
17 **positions in the areas of forecasting, business office operations, rate and**
18 **tariffs, marketing and outside plant operations. My business office**
19 **experiences include the following job titles: Service Representative-**
20 **Jacksonville, Supervisor-Orlando, Office Manager-Melbourne, Unit**
21 **Manager-Orlando, District Manager-Downtown Atlanta and General**
22 **Commercial Supervisor--Atlanta Area. The last named position included**
23 **direct supervision of the Atlanta Area business office and marketing staff**
24 **organizations for Southern Bell in Georgia. I joined the Office of Public**
25 **Counsel in October 1991.**

1 Q. **Have you ever appeared before this Commission?**

2 A. Yes I have. I have testified on behalf of Public Counsel on numerous
3 occasions before this Commission in various telephone and depreciation
4 dockets over the past six years. In addition, as an employee of Southern
5 Bell I testified in rate case and anti-trust dockets before the Public Service
6 Commissions in Georgia and North Carolina.

7

8 Q. **On who's behalf are you providing this testimony**

9 A. I am providing this testimony on behalf of the Office of Attorney General
10 ("AG") and the Citizens of Florida ("Citizens" or "OPC").

11

12 Q. **What is the purpose of your testimony?**

13 A. The purpose of my testimony is to rebut the testimony of KTNT witness
14 Dennis Dees. After review of the testimony offered by Mr. Dees, who is
15 the CEO of KTNT, it is obvious that the company's basic marketing plan
16 hinges upon exploiting customers. I believe that management motives of
17 the company are directed primarily at deceiving the public and that a
18 company that intentionally engages in deceptive trade practices ought not
19 to be allowed to operate in the State of Florida.

20

21 Q. **Please describe the products and services offered by the company.**

22 A. The company's primary product is the offering of operator transfer
23 service. Operator transfer service is provided in Florida by approximately
24 fifteen companies who offer operator services to those customers who
25 dial "0" and request an operator-handled toll call via the local operator of

1 the serving local exchange company. Mr. Dees maintains in his testimony
2 that the company intends to offer other long distance services in Florida,
3 such as 800 service and 1+ dialing. However, based on his responses to
4 questions asked in his deposition, the overwhelming percentage of
5 revenues currently received by the company are generated from
6 customers who have responded to deceptive trade names when asked to
7 choose a long distance operator services company for the completion of
8 an operator handled call. Thus, the current track record of the company
9 depends almost solely upon revenues that are generated from an
10 accidental and unintended choice of language by customers who are
11 attempting to place long distance calls by dialing "0".
12

13 **Q. Is there any problem with the use of the name KTNT?**

14 **A.** Yes, there is. Witness Dees states that customers aren't aware of the
15 name KTNT except upon receipt of their telephone bill and therefore
16 customers don't think they heard AT&T when the name of the company is
17 actually KTNT. In other words, if the words aren't spoken, then there is
18 no confusion. Under current operations that deal exclusively with
19 operator transfer services the company will use the names "I Don't Care"
20 and "It Doesn't Matter" to trick customers into an unintended choice, and it
21 will then bill in the name of KTNT.
22

23 In addition, the company has stated it has ambitions to enter the long
24 distance market as a primary provider of full IXC services. How long will it
25 be before the company is masquerading as AT&T in the solicitation of

1 long distance subscribers? Of course, the company will probably take the
2 position that it's just an accident, not intentional, that customers would be
3 confused by the use of KTNT -- a name that sounds suspiciously like
4 AT&T, the largest and most successful trade name in the long distance
5 market.

6
7 **Q. Isn't the public interest be served by creating greater competition in**
8 **the reselling of intrastate communications services?**

9 **A.** Yes. The public interest is, indeed, best served by encouraging
10 competition. However, the primary means for KTNT to gain its "market
11 share" is not through customers exercising competitive choices, but by
12 accident and deception.

13
14 **Q. Why do customers choose to use KTNT by accident, not by choice?**

15 **A.** KTNT's chosen operating names for Florida are "I Don't Care" and "It
16 Doesn't Matter." These names are registered with the local exchange
17 carrier such as BellSouth in order for the company to share in default
18 operator services traffic that is generated through "0" dialing. The
19 process has been described in the past as "0-" (zero minus) traffic
20 because the customer dials only "0" and no other digits. Such calls are
21 routed to the local exchange operator. When it is determined that a
22 customer wants to make a collect, person to person, third party, or calling
23 card call, the local exchange operator then offers to connect the customer
24 to the operator services company of choice and asks the customer for the
25 name of the company. If the customer says "I don't care" or "It doesn't

1 matter," the call goes to KTNT, despite the fact that the customer may
2 never have heard of KTNT, "I Don't Care," or "It Doesn't Matter."

3

4 **Q. Does the company's presence in the operator transfer business**
5 **serve to increase customer choice?**

6 A. To the contrary, by selecting company names that are phrases normally
7 used by customers to convey the thought that the customer has no
8 choice, the company is actually pursuing an anti-competitive strategy that
9 would serve to limit customer choice.

10

11 **Q. Why would such a practice be anti-competitive?**

12 A. There are approximately fifteen competitive operator service providers in
13 Florida who are registered with BellSouth to provide operator transfer
14 services. When the customer has no choice, the traffic is evenly
15 distributed to each of the providers on an alternating basis. By use of the
16 names "I Don't Care" and "It Doesn't Matter," KTNT will be foreclosing
17 each of the other fifteen companies from achieving their equal share of
18 the available market. KTNT's market approach will insert itself ahead of
19 the existing fifteen company so that all participants will not receive an
20 equal share of the default traffic. More importantly, however, is the fact
21 that customers will wind up being served by an operator services
22 company that operates solely on the premise of being selected not based
23 upon merit but on the basis of accidental use of deceptive company
24 names. This is hardly the kind of competition that one would hold out as
25 being good for customers or fair for other providers. If the Commission

1 grants approval for the use of the two names proposed by KTNT, there
2 will be no basis in the future to preclude the use of other ^{deceptive} ~~deception~~
3 names.
4

5 **Q. Has the Commission shown concern in the past regarding the use of**
6 **deceptive marketing practices by telephone companies?**

7 **A. The Commission has shown keen interest in the past to insure that**
8 **telephone customers are provided clear and specific information to assist**
9 **customers in making informed judgements in the selection of**
10 **telecommunications services. For instance, the existing Commission**
11 **rules require local exchange companies to inform customers of the least**
12 **costly options available for the provision of basic telephone service.**
13 **Likewise, companies are required to make customers aware of lifeline**
14 **options, and to advise customers of available choices for long distance**
15 **providers. In 1993, the Commission conducted a extensive audit of**
16 **BellSouth's marketing practices to assure itself that the company's service**
17 **representatives were adequately informing the public of the optional**
18 **nature of services offered. BellSouth's current sales plan represents an**
19 **aggressive approach to eliminate customer deception in the sales**
20 **process. This plan is a direct result of the Commission's investigation of**
21 **BellSouth's sales practices and the agreement reached between the**
22 **company and the Office of the Attorney General. In short, the**
23 **Commission, in the past, has stood solidly against practices and**
24 **procedures by telecommunications companies that would serve to**
25 **deceive and confuse customers.**

- 1 Q. **KTNT's witness has testified that it chooses not to market its**
2 **services through telemarketing tactics, which customers are tired of.**
3 **Doesn't this bode well for the customers who don't like**
4 **telemarketing?**
- 5 A. The only actual data this Commission can draw conclusions from
6 regarding the likely future operations of the company is available by
7 looking at its operations in other states. Witness Dees states their
8 revenues are presently around \$1 million annually and that the company
9 has spent "several hundred" dollars on advertising. It is fair to conclude
10 that the company has no realistic marketing plan to promote its product
11 other than to position itself in a spot where it can gain business through
12 deception alone, without the necessity of marketing, sales or promotion.
13
- 14 Q. **But certainly the use of simply two company names such as "I Don't**
15 **Care" and "It Doesn't Matter" does not preclude use of other**
16 **responses by customers to indicate to the local exchange company**
17 **that they have no particular choice of companies to handle operator**
18 **services calls, does it?**
- 19 A. No it does not. For example, customers might say "No," "I don't know,"
20 "Nope," "Not particularly," "It don't matter," "Not that I know of," "Whatever
21 you think," "Anybody," "Anyone," "Whatever you say," or any number of
22 other phrases to convey the thought that they have no choice. KTNT
23 provides operator services in Texas through the use of 46 different names
24 that generally appear to be aimed at short-circuiting the process of
25 providing operator transfer services to customers in that state.

1 KTNT (which sounds like AT&T) has devised a marketing plan which is a
2 sham. Customers end up being served by the company primarily by
3 deception and use of a company name that tricks the customer into a
4 choice of providers that was not intended by the customer. The
5 management of the company talks about the need for creativity, the need
6 for a clever approach, and the need for a sense of humor in the long
7 distance marketplace. The bottom line is that it's not funny when
8 customers are deceived and the Commission should not reward the
9 management of such a company with a certificate to abuse Florida
10 customers in the name of competition.

11

12 **Q.** **Does that conclude your testimony?**

13 **A.** **Yes it does.**

1 Q (By Mr. Beck) Mr. Poucher, would you
2 summarize your testimony?

3 A Yes. Commissioners, our purpose in being
4 here today is to oppose the request of KTNT for
5 certification as an interexchange telecommunications
6 company in Florida.

7 Our position is very simple. We believe
8 that the motives of management of this company are
9 directed towards deceiving the public, that the
10 company intentionally engages in deceptive practices,
11 and to that extent we believe that the management of
12 the company does not meet the standards that you
13 should require in the state of the Florida.

14 KTNT's marketing plan is based almost solely
15 on the accidental and unintended choice of language by
16 customers who are attempting to place long distance
17 calls by dialing zero.

18 The marketing plan of KTNT is intended to
19 trick customers into an unintended choice of providers
20 when that customer responds by saying "It doesn't
21 matter" or "I don't care."

22 The company has stated that it has ambitions
23 to enter the long distance market as a primary
24 provider of IXC services, and if the company is
25 allowed to operate in Florida, then the use of

1 deceptive and confusing names such as those proposed
2 will result in customer confusion and selection of a
3 company as a primary provider when that was not the
4 choice of the consumer.

5 The Commission should not allow the company
6 to enter the market in Florida when the primary means
7 for the company to gain its market share is not by the
8 exercise of competitive choice, but by accident and
9 deception.

10 Q Does that complete your summary?

11 A Yes, it does.

12 MR. BECK: Thank you. Mr. Poucher is
13 available for cross-examination.

14 COMMISSIONER DEASON: Mr. Wiggins?

15 **CROSS EXAMINATION**

16 BY MR. WIGGINS:

17 Q Good morning, Mr. Poucher. Patrick Wiggins.
18 Mr. Poucher, you do not contest, do you, the technical
19 or financial capability of this company to provide
20 service in Florida?

21 A No, we do not.

22 Q Now, you've said that you think they're
23 going to engage in deceptive trade practices. But in
24 terms of the managerial capability of providing
25 service, it is not your opinion, is it, that they're

1 incompetent?

2 A I believe they're competent to provide a
3 service which I would describe as deceptive and
4 misleading.

5 Q Thank you.

6 A And that's their plan.

7 Q Thank you. Now, there's been some
8 discussion about KTNT's name "KTNT" this morning, and
9 you address it in your testimony. Would you take a
10 look at Page 3, Line 22 of your testimony?

11 A Okay. Page 3, Line 22?

12 Q Yes, unless of course I've marked the
13 wrong -- I'm sorry. I'm giving you a wrong cite, and
14 I apologize. Let me tell you what I recall you
15 saying.

16 You said something to the effect "How long
17 will it be before KTNT masquerades as AT&T?" Do you
18 recall that?

19 A Yes. I remember -- it's in here.

20 Q And then I think you said, and what will
21 their response be; some explanation as to why that's
22 okay. I'm confused by that statement.

23 Are you -- is it your opinion and your
24 testimony this morning that this company intended and
25 proposed to come into the state and misuse the name

1 KTNT?

2 A I don't want to treat the question lightly,
3 but it just seems unusual to me that a company that's
4 been in the telecommunications business for 13 years
5 couldn't figure out that "KTNT" sounds like "AT&T"
6 when they established that name.

7 Q But would you not agree with me that that
8 particular piece of testimony is conjecture on your
9 part?

10 A Yes. It is my conjecture that that's the
11 case, and that's not consistent with what we heard
12 from KTNT when they described to us how they selected
13 that name that sounds like AT&T.

14 Q Well, has Mr. Dees mollified you in any way
15 this morning by stipulating that he would change --
16 the company would change the name "KTNT"? Can we
17 agree that this is no longer an issue if they agree to
18 change the name "KTNT" to something else?

19 A Well, I -- no, I will not agree to that.

20 Q Not the name "I Don't Care," "It Doesn't
21 Matter," but if they change the business name "KTNT"
22 to some other name, can we agree that there's no
23 problem with KTNT anymore as "KTNT"?

24 A That's not correct. We have a problem with
25 this company as the management of their company. And

1 the management of the company operates under "KTNT,"
2 "I Don't Know," "It Doesn't Matter," and a lot of
3 other names that are deceptive. And I don't care what
4 you call them. In Florida it's the same company and
5 the same management, and that's our basic complaint.

6 Q Mr. Poucher, I understand that part clearly.
7 Let me go back to this. You raised a concern, and I
8 believe the Attorney General and the Public Counsel
9 both raised the concern, that the business name "KTNT"
10 was troublesome because it sounded like "AT&T,"
11 correct?

12 A Oh, yes.

13 Q Now, KTNT stated that it had no intention to
14 use its business name as a service mark in this state
15 before, correct?

16 A Yes.

17 Q Nevertheless, the Public Counsel and the
18 Attorney General worried that it might choose to use
19 the business name "KTNT" as a service mark sometime in
20 the future, correct?

21 A I would assume that would be a concern.

22 Q Well, you said, how long will it be before
23 they're in the state using this name to masquerade as
24 AT&T, so you were concerned that they might come in
25 and use that name.

1 A Sure.

2 Q This morning Mr. Dees said, look, we will
3 stipulate that we will change our business name from
4 KTNT to something else, so that that's not a problem.
5 Does that address your concerns?

6 A It does not -- my concerns --

7 Q About the name "KTNT."

8 A Yes. In connection with that -- let me go
9 on -- in connection with that portion of my testimony,
10 that addresses my concerns, but it doesn't eliminate
11 my concerns about the management of this company,
12 because it's the same management.

13 Q Understood.

14 A And, in addition, I would say that if the
15 Commission approves "I Don't Care," "It Doesn't
16 Matter" or "KTNT," then it really opens the door for a
17 whole litany of other names that would be just as
18 confusing and deceiving. So basically we're at a
19 point where we have a standard that protects consumers
20 or we don't.

21 Q Do you have Mr. Dees' exhibit with you up
22 there?

23 A In his rebuttal?

24 Q Yes, sir. Would you look at that, please?

25 A Would that be DD-1?

1 Q Yes, sir.

2 A Yes.

3 Q Now, would you agree with me that choosing a
4 new name for KTNT will require some thought in order
5 not to infringe any existing service marks of
6 currently certificated companies?

7 A There are 500 long distance companies in the
8 state of Florida, so I would assume that that would
9 require some effort.

10 Q So for example, look at -- on this exhibit
11 we have American Long Lines, Inc., American MetroComm
12 Long Distance Corporation, AmericaTel Corporation and
13 Amerivisions Communications, Inc., just a block of
14 four.

15 Isn't it true that if KTNT decided to use
16 the name "American Reduced Long Distance Service,"
17 that that could be confusing to a consumer?

18 A Between the company -- which one?

19 Q Any of these four.

20 A Not particularly.

21 Q Okay. Let's approach this from a different
22 point of view. If I say -- what comes to mind if I
23 say to you the word "Lexus"?

24 A "Lexus"?

25 Q Yes, sir, "Lexus."

1 A A car.

2 Q If I said to you, "I have some legal
3 research to do, and I'm going to do it on LEXIS," are
4 you confused?

5 A No.

6 Q Are you familiar with the legal search
7 engine LEXIS?

8 A Yes.

9 Q If I say to you "diehard," what comes to
10 mind?

11 A Battery.

12 Q If I say to you I went to see the movie "Die
13 Hard," are you confused about the battery?

14 A Only if we were looking at batteries in the
15 movie.

16 Q Only if we were at Sears, right? Okay.
17 So would you not agree with me that whether
18 or not a service mark is confusing depends on the
19 context in which it's used?

20 A Very definitely.

21 Q Okay. Thank you. Now let's take a look at
22 the context in which the service marks "I Don't Care"
23 and "It Doesn't Matter" would be used.

24 Let's take 1-800 calls. Do you have any
25 problem at all with the company offering a service

1 that is "1-800 I Don't Care"?

2 Do you understand my question; where a
3 customer would call "1-800 I Don't Care" for long
4 distance service?

5 A No.

6 Q It wouldn't be confusing --

7 A And you're saying the numbers that go with
8 "I Don't Care"?

9 Q Yes, sir.

10 A Sure.

11 Q Thank you for helping with that. Similarly
12 if there was a 10XXX dial-around affirmative call by
13 the customer for "I Don't Care" or "It Doesn't
14 Matter," you wouldn't have a problem with that?

15 A No, I would not.

16 Q Do you have concerns at this moment about "I
17 Don't Care" and "It Doesn't Matter," these service
18 marks leading to slams?

19 A Yes.

20 Q Do you think it's fair to assume that any
21 company that is asking to be certificated will not
22 attempt to follow the Commission's new slamming rules?

23 A Ask that one more time.

24 Q Well, let me ask it this way: Well, if KTNT
25 using its service marks "I Don't Care" and "It Doesn't

1 Matter" faithfully adhered to the Commission's new
2 slamming rules, would you have a problem with those
3 names being used in the 1+ market?

4 A I certainly would.

5 Q And the reason being is that there might be
6 unauthorized conversions?

7 A The reason being that clearly this company
8 is built on the basis of deception, and I don't trust
9 them, and that's a personal opinion; but I would never
10 trust a company that bases its marketing strategy on
11 that kind of a concept. You might.

12 Q Let's assume there's a written LOA that was
13 perfectly acceptable for a company such as -- I don't
14 want to pick on the big ones.

15 Let's take one here, "Budget Call Long
16 Distance, Inc.," and that, Mr. Poucher, you looked at
17 that LOA, that written LOA, the Staff looked at the
18 LOA and they said, "No. This is a valid LOA. The
19 person made an informed choice."

20 If we put in instead of the name "Budget
21 Call Long Distance, Inc.," we put in "It Doesn't
22 Matter" or "I Don't Care," and in that context it's
23 clear, do you have a problem with that?

24 A No. That's not my concern.

25 Q I understand. Do you want to go ahead and

1 tell me again what your concern is, because I just cut
2 you off.

3 A My concern would be in verbal tel marketing.

4 Q All right. The Commission's slamming rules,
5 new rules, require third-party verification and the
6 tapes -- to be taped and maintained; is that correct?

7 A Yes.

8 Q And are not those rules designed to ensure
9 that the customer has an informed choice before the
10 service is being converted?

11 A Yes.

12 Q If KTNT operates using the service marks
13 either "I Don't Care" or "It Doesn't Matter" conformed
14 to those rules, and the customer does make an informed
15 choice to use this company, do you have a problem with
16 that?

17 A Yes.

18 Q Why?

19 A When a telephone customer applies for
20 telephone service, they basically talk to a service
21 rep, and the conversation that I would perceive that
22 would go between a service rep and the customer is
23 "And now which long distance company would you prefer
24 to select?" And the customer could easily say "It
25 doesn't matter."

1 And knowing service reps and how they
2 operate, the response to that question is "Okay. We
3 can install your service on Monday. Will you be at
4 home all day?" And that choice would happen because
5 of the use of the words "It doesn't matter," or "I
6 don't care."

7 That would be the predominant way that a
8 customer would get chosen in the first place, by
9 accident, which is the same as happens in the operator
10 services part of the business.

11 Q Thank you. I actually had never thought of
12 that problem.

13 A I did.

14 Q Good. So let's go back to the problem I was
15 addressing; a telephone solicitation where the
16 Commission's rules were followed faithfully; it's
17 taped; there's a third-party verification; and the
18 customer makes an informed choice being fully aware
19 that "It Doesn't Matter" is a phone company and not a
20 statement of no preference.

21 Do you have a problem with that customer
22 presubscribing under those circumstances?

23 A You're talking about telemarketing --

24 Q Yes, sir.

25 A -- and presubscribing?

1 Q Yes, sir.

2 A As a new customer, or as a change from --
3 we're talking about slamming, so you're talking about
4 change from one to another.

5 Q Yes, sir.

6 A With the new Commission rules, which may or
7 may not go into effect, I guess, I think that there
8 are some built-in protections that would keep those
9 kind of problems from occurring in the telemarketing
10 business; but in the primary selection part of it, I
11 have tremendous concerns there.

12 Q So staying with slamming for a minute, I
13 think both you and I would agree, wouldn't we, that if
14 "I Don't Care" or "It Doesn't Matter" using those
15 service marks slam people, that would not be good,
16 that would violative of public policy, and it should
17 not be tolerated, period. We'd agree with that,
18 wouldn't we?

19 A In the telemarketing --

20 Q Yes, sir.

21 A -- process? Not in the selection process.

22 Q Correct.

23 A Yes.

24 Q Okay. Now let's take the situation where a
25 new customer moves to Miami, goes in to get service.

1 And you're saying that the problem is that when the
2 Bell employee says, "Who would you like to have as a
3 long distance company?" and the person says "I don't
4 care," that the customer is going to end up with
5 I Don't Care as a presubscribed carrier?

6 A That's correct.

7 Q Who would they end up with if -- who do they
8 end up with today when they say "no preference"?

9 A I would assume that they would end up with
10 either no carrier, which is an option, or that a
11 service rep would go down the list of -- oh, strike
12 that. There's too many of them.

13 I'm not positive, but I think that the
14 service reps from a practical standpoint probably say
15 "You'll have to find a long distance carrier and call
16 us back and tell us."

17 Q Okay. If KTNT used the same approach with
18 its new customer for presubscription as it does with
19 zero minus, that is, asked Bell to instruct its
20 employees to inform the new customer that the
21 statement of the words, "I don't care" or "It doesn't
22 matter" could be interpreted as a choice, that still
23 would not mollify you -- satisfy you, would it?

24 A Well, that's a huge leap. You were probably
25 involved in the presubscription for intraLATA, and the

1 scripts in the competitive marketplace are serious
2 business. They required PSC orders to modify those
3 scripts to make sure that all of the competitors had
4 an equal shot, and I don't believe that any company is
5 going to modify its script in that competitive
6 marketplace, whether it be in the business office or
7 in operator services, without an order from this
8 Commission.

9 And, in fact, in Texas when they started
10 business, there were no such explanations provided to
11 customers, and it was only after the public service
12 commission got involved that they did, in fact, change
13 that script. But that requires a hearing before the
14 Commission, I would assume, because it's not the
15 option of Southern Bell to change that script in a
16 competitive marketplace, or any other company in
17 Florida.

18 Q Let's turn to zero minus transfers now, or
19 operator transfers, zero minus calls. Do you make a
20 lot of zero minus calls?

21 A Zero minus?

22 Q Yes, sir.

23 A Almost never.

24 Q When was the last time you made a zero minus
25 call?

1 A Last night.

2 Q And where did you make that from?

3 A My home.

4 Q And what happened?

5 A I got read the list. The list up here is
6 rather small. There's only two companies, Sprint and
7 MCI -- and AT&T. I'm sorry; three.

8 Q Did you, in preparing your testimony, survey
9 persons who make zero minus calls?

10 A No, I did not.

11 Q It's your opinion that the customer is being
12 deceived and tricked in the zero minus situation, as I
13 understand it. Is that a fair characterization?

14 A Yes.

15 Q Would your opinion change if you were
16 hypothetically able to talk to, let's say, everyone
17 who made a zero minus call within a year who stated
18 "It doesn't matter," and/or "I don't care," and it was
19 transferred to them, to that company, and they said
20 "We have no problem with this whatsoever. We don't
21 care -- it's no problem for us. We're okay on this"?
22 Would your opinion about this --

23 MR. BECK: Objection. It's a hypothetical
24 without any foundation whatsoever.

25 MR. WIGGINS: Oh, I'll give you foundation,

1 Mr. Beck.

2 Q (By Mr. Wiggins) In Texas there were
3 300,000 calls handled by this company, and the most
4 that your office has been able to produce is a letter
5 complaining about KTNT and rates; not one complaint
6 registered with the Texas PUC about any of these
7 fictitious names, Mr. Poucher.

8 So I ask you, does that affect your opinion
9 at all that this is cheating and deceiving the
10 customer?

11 A I'd be glad to answer your question.

12 Q Yes or no to begin would be nice.

13 A No.

14 Q Okay.

15 A And I would like to explain my answer. I
16 don't believe the customers who get zapped by using
17 "It Doesn't Matter" really understand what's
18 happening.

19 The customer makes a zero minus call. An
20 operator comes on the line. "Which company would you
21 like?" The customer says, "I don't know," or "It
22 doesn't matter." They're immediately shipped off to
23 another operator services company which may or may not
24 use the name of the company when it answers the line.

25 They subsequently are billed not under "It

1 Doesn't Matter" or "I Don't Know," they're billed by
2 KTNT. So the customer never sees "It Doesn't Matter"
3 as a bill. They never realize what happened. They
4 see a bill from KTNT.

5 So it's a very smooth and slick way, and I
6 don't believe that customers are ever aware of what
7 happened. That's conjecture.

8 Q Thank you.

9 A Does that answer your question?

10 COMMISSIONER CLARK: Mr. Poucher, is there a
11 difference between being deceived and being unaware?

12 WITNESS POUCHER: I don't draw much
13 difference. Lawyers might find it a difference, but
14 I'm not a lawyer.

15 COMMISSIONER CLARK: Let me ask you, when
16 you made your zero minus call, they read you a list,
17 right?

18 WITNESS POUCHER: Yes. Right.

19 COMMISSIONER CLARK: Did you say "I don't
20 care"?

21 WITNESS POUCHER: Yes. I said "It doesn't
22 matter."

23 COMMISSIONER CLARK: All right. And what
24 happened? They read you the list?

25 WITNESS POUCHER: She said "I only have

1 three, and you must make a choice."

2 COMMISSIONER CLARK: And you didn't still
3 insist that they turn you over to whoever was on the
4 list.

5 WITNESS POUCHER: She said "You must make a
6 choice," and she gave me the three names.

7 COMMISSIONER CLARK: Okay. If they continue
8 to do that in Florida and these people are on the
9 list, how will people be deceived?

10 WITNESS POUCHER: When I said "It doesn't
11 matter," the operator will say, "Thank you," because
12 they're on the list.

13 COMMISSIONER CLARK: All right. And if the
14 operator says "Thank you" when you get transferred,
15 will -- I guess, is it a requirement that that
16 operator service identify itself?

17 WITNESS POUCHER: Not that I know of, and I
18 have no assurance that that's what would happen.

19 COMMISSIONER CLARK: When you got
20 transferred, who did you get transferred to?

21 WITNESS POUCHER: AT&T.

22 COMMISSIONER CLARK: And what happened? Did
23 you get that bong and AT&T?

24 WITNESS POUCHER: I hung up.

25 COMMISSIONER CLARK: So you don't know?

1 **WITNESS POUCHER:** So I don't know.

2 **COMMISSIONER CLARK:** Mr. Poucher, think
3 about being deceived and being unaware. You don't
4 think there's any difference? I mean, I guess if I
5 make a phone call and they say, you know, "Who do you
6 want to carry this," and I say "I don't care," am I
7 being deceived if they give me "I Don't Care"?

8 **WITNESS POUCHER:** Yes.

9 **COMMISSIONER CLARK:** I didn't care. I mean,
10 you know, I really had no preference, and they gave me
11 that one.

12 **WITNESS POUCHER:** We're basically -- we've
13 been talking about the business office, but we're
14 basically talking about a company that operates an
15 operator services business. There's 15 competitors on
16 that list. They want to introduce two new names on
17 that list, which gives them a double opportunity to
18 get selected.

19 **COMMISSIONER CLARK:** Let me interrupt you
20 right there. Can the other people do other names on
21 the list if they want to?

22 **WITNESS POUCHER:** I would assume, but they'd
23 have to be authorized "doing business as" names. We
24 don't have very many companies that I know of that are
25 multiple named companies in Florida. They usually

1 pick one and operate under that.

2 COMMISSIONER CLARK: Should we prevent
3 companies from being multiple named?

4 WITNESS POUCHER: The thought occurred to me
5 during the testimony that obviously they're going to
6 get an edge by having two shots out of the list, and
7 I'm not sure that that's even fair from a competitive
8 standpoint.

9 COMMISSIONER CLARK: Well, okay.

10 WITNESS POUCHER: And I think that the
11 Commission could certainly restrict the number of
12 names that a company does business under. It's
13 very -- I just can't remember seeing a single
14 application to come over my desk -- and I see every
15 one of them -- that had multiple names on it.

16 Now I've lost my train of thought. What was
17 the --

18 COMMISSIONER CLARK: Let me ask you this:
19 Why would we care how many names they did business
20 under?

21 WITNESS POUCHER: Why would we care? Only
22 that it would give them an unfair advantage on that
23 list.

24 COMMISSIONER CLARK: Let me just ask you,
25 can't the other companies come in and up the ante by

1 putting in a number of names? I don't see how that
2 hurts the customers. It may hurt competitors, but not
3 customers.

4 WITNESS POUCHER: I think that's basically
5 what happened in Texas, their witness testified about
6 one company with 15 other names. They had 46. The
7 list basically became a gamesmanship between the
8 companies to see how many names they could put in.

9 I don't think that would be in the customer
10 interest or in the public interest in Florida, and I
11 would hope that that would not happen.

12 Now, the point that I was trying to make is
13 when a customer calls and says "I want to make a long
14 distance call". "Do you have a preference of
15 companies?" "No, I don't," then all 15 companies have
16 an equal opportunity because they're -- the list is
17 rotational.

18 If a customer "It says doesn't matter," then
19 this company, "It Doesn't Matter," if the customer
20 really was trying convey the thought that it doesn't
21 matter, this company gains an unfair competitive
22 advantage, because they're selected when the customer
23 had no intention of selecting a company by the name of
24 "It Doesn't Matter," and, therefore, that's
25 anticompetitive as far as I'm concerned.

1 **COMMISSIONER CLARK:** Well, I guess I'm
2 looking at it from the standpoint of the customer. It
3 may be anticompetitive to the competitors, and I guess
4 if they considered that a threat to their competitive
5 interests, they'd be in here, but they're not.

6 **WITNESS POUCHER:** That's right, but that's
7 part of our argument.

8 **COMMISSIONER CLARK:** Okay.

9 **Q** **(By Mr. Wiggins)** Mr. Poucher, in your
10 response earlier, before Commissioner Clark asked you
11 some questions, I think you used the term that you
12 were concerned that customers might be unaware and be
13 "zapped" over to KTNT without realizing what had
14 happened.

15 **A** Yes.

16 **Q** Now, isn't it true that if KTNT is allowed
17 to operate the way it wishes to do, and a customer
18 gets "It Doesn't Matter" as opposed to AT&T, let's
19 say, that he or she will actually receive lower rates
20 than if he had been routed to AT&T?

21 **A** You mean the currently filed tariffed rates?

22 **Q** Yes, sir.

23 **A** I looked at those most recently filed
24 tariffs. And I agree; I believe that the rates are
25 less than AT&T. But those rates can be changed on one

1 day's notice, and this is a company that has billed \$7
2 for a long distance information number; used to bill
3 \$7 per minute for the first minute in Texas. And they
4 can change those rates in one day.

5 Q Certainly. Up to how much?

6 A Up to the cap.

7 Q So in those situations could they for
8 interstate calls charge more than AT&T?

9 A Not unless they cheat.

10 Q Are you suggesting they would cheat?

11 A I don't trust this management. I've told
12 you that and made that clear. So I don't know.

13 Q But you have no basis in fact to suggest
14 that they would knowingly misrate calls for purposes
15 of exceeding the rate cap in Florida?

16 A Well, I'd be concerned about any company
17 that charges \$7 for a directory assistance call, but I
18 have no evidence.

19 Q Thank you. If they don't change their rate,
20 they would be less for the intrastate call, correct?

21 A Yes.

22 Q So this is not a rate issue, is it?

23 A Not yet.

24 Q As long as they follow the rules of the
25 Florida Public Service Commission and adhere to the

1 caps, it's not a rate issue, is it?

2 A No, it's not.

3 Q Thank you. Mr. Poucher, you suggested that
4 KTNT bills -- well, let me reframe that, because I
5 don't want to characterize your testimony. I
6 apologize.

7 In your discussion of the Texas scenario, I
8 believe you stated that the customer received the bill
9 under the name "KTNT" rather than the name the carrier
10 was branded in; is that correct?

11 A That's my understanding.

12 Q Isn't that how it's done in Florida right
13 now for a number of carriers?

14 A That the billing is billed under another
15 company name?

16 Q The billing is billed under the business
17 name on the certificate, not necessarily the service
18 mark under which the service is offered.

19 A Yes, I believe so.

20 Q So there's nothing -- I'm trying to find the
21 right word, Mr. Poucher -- there's nothing
22 unconventional about that, is there?

23 A No. The reason that I referred to that --
24 there's nothing unconventional about it. It's normal,
25 but that, to me, explains why customers don't ever

1 really fully understand how they got to this company
2 by the name of "KTNT."

3 They think they didn't have a choice and,
4 therefore, they just got a random selection, when in
5 actuality they made their choice when they said "It
6 doesn't matter."

7 Q Well, Mr. Poucher, what I'm confused by is
8 that you yourself do not make zero minus, you do not
9 survey people who have made zero minus calls, but
10 you're giving your opinion testimony as to what these
11 customers think, feel, and believe. What basis do you
12 have for that?

13 A Certainly not experience dialing zero minus
14 calls. I daresay that not a single person in this
15 room has made a zero minus call in the last year.
16 It's a seldom used convention, and it involves like 3%
17 of the traffic. So none of us here have a lot of
18 experience with zero minus calling, I wouldn't think.

19 My basis for the observations that I've
20 given to the Commission today are based on 29 years of
21 experience in the telephone industry, about 13 of
22 those that have been involved in every single job in
23 the business office, all the way from service rep to
24 general commercial supervisor.

25 I've operated as a telephone operator. I've

1 fielded complaints regarding the use of operator
2 services for years and years and years during my years
3 with Southern Bell, and based on that experience, I
4 think that what this company proposes is deceptive.

5 Q Well, based on that extensive experience and
6 with your Office of Public Counsel, do people complain
7 when they feel cheated?

8 A Some people complain. Very few people
9 really file complaints with the PSC. Like in the
10 slamming case, we found like one out of 10 customers
11 were complaining because of the slam. So very few
12 customers really file a formal complaint.

13 Q Let me change tracks on you a little bit,
14 Mr. Poucher. You've been involved with Florida Public
15 Service Commission matters for a while.

16 Are you aware of any company that has ever
17 been granted a certificate to provide long distance
18 service where they had provided service without a
19 certificate in Florida?

20 A I think it's happened, yes.

21 Q Have you ever heard of a company having done
22 that and also slammed customers and still be granted a
23 certificate?

24 A None come to mind.

25 Q When someone has come into Florida and

1 provided illegal service and are certificated, do you
2 think it's the Commission's -- would you agree that
3 the certification would have to be based on the
4 expectation that the company would comply with all
5 applicable regulations?

6 A Yes, I would.

7 Q Are you aware of KTNT providing service
8 illegally in Florida without a certificate?

9 A No.

10 Q Has KTNT refrained from providing interstate
11 service in Florida pending the resolution of this
12 docket?

13 A I don't know what they've done.

14 Q In your research for this testimony, did you
15 come across any enforcement proceeding or any
16 communication from a regulatory agency that this is a
17 company that violated the rules that were applicable
18 to them?

19 A In my research I talked specifically to the
20 Public Service Commission in Ohio and the Public
21 Counsel that operate in Ohio, and neither one of them
22 were aware of the fact that the company had a
23 certificate when I called them, and that was last
24 August when this became an issue. So basically it was
25 a surprise to both Public Counsel and the people

1 involved with the Commission that deal with those kind
2 of issues. They didn't even know they had been
3 certified.

4 In Texas there's been -- I think there's
5 been a proceeding in Texas. There have been
6 complaints in Texas. There have been concerns in
7 Texas, but Texas has, according to our Public
8 Counsel's Office for the state of Texas who we talk to
9 a lot and deal with a lot, they have some of the
10 weakest trade laws in the country.

11 They will certify a company if the person is
12 breathing, according to the people in the Public
13 Counsel's Office, and before they're able to do
14 anything about this company and its names in Texas,
15 they're going to have to change the law. And that's
16 down the road, but I think Public Counsel's Office
17 wanted to try to get some basic legal statutes passed
18 so that they could deal with the issue of deceptive
19 names such as "I Don't Care" and "It Doesn't Matter."

20 Q Thank you for the amplification. If I
21 understood your answer then, my question, are you
22 aware of any enforcement proceedings or any
23 accusations that this company does not follow the
24 applicable rules, your answer would be, no, I'm not
25 aware of such matters?

1 A I do not know the specifics of the case in
2 Texas, but the commission had a hearing, it's my
3 understanding, and we have a press release from the
4 Commission regarding their actions. So that's
5 enforcement, if you want to call it that.

6 Q Was that the hearing that -- where the
7 Commission stepped in and set ground rules and
8 parameters for how zero minus transfers would happen?

9 A Yes. We have a copy of their release, if
10 you'd like to put it into the record. I'd be glad to
11 provide it.

12 Q Well, let's talk about that for a minute. I
13 know you're not a lawyer, but if Florida were to do
14 the same thing, that would be like a rule, wouldn't
15 it?

16 A Yes.

17 Q Okay. Thank you. So I want to go back to
18 my question. If this Commission will grant a
19 certificate to a company that has violated its rules
20 and accept the representation that that company will
21 follow the rules in the future, why wouldn't this
22 Commission grant a certificate to KTNT d/b/a "I Don't
23 Care" and "It Doesn't Matter" and assume that it will
24 also follow the rules in Florida, given that it's not
25 broken any rules?

1 A It's difficult for me to speak for the
2 Commissioners, but I see a difference. I see a
3 difference, and the difference is here's a company
4 that intentionally has gone out of its way to be
5 deceptive in its marketing of its product, and it has
6 no other way to gain its market share other than by
7 deception, as opposed to some companies which may have
8 operated without certification.

9 And I do not know that the -- what goes
10 around those cases where companies have been approved,
11 but each company is going to be judged on its own
12 merits, and I believe -- I do know that with, for
13 instance, the calling card, prepaid calling card
14 sales, many of those companies apparently didn't even
15 know that they were supposed to be certificated in
16 Florida, and those companies were allowed to come in
17 and be certified.

18 I don't know of a single company that's gone
19 out of its way to avoid intentionally the regulation
20 by this Commission that they've approved in Florida
21 for service.

22 Q Are you aware of any rules of this
23 Commission that directly address what are permissible
24 business names and service marks to be used by a
25 company providing long distance service within this

1 state?

2 A No, other than the rule regarding deception
3 and the marketing of services.

4 Q The rule -- and that's in the --

5 A In the slamming docket.

6 Q In the slamming docket.

7 A Yes.

8 Q Are you aware of any Commission rule
9 addressing how the local exchange companies allocate
10 long distance companies to new customers where they
11 express no preference?

12 A No.

13 Q Are you aware of any rule of the Florida
14 Public Service Commission that addresses how local
15 exchange companies assign zero transfer traffic when
16 no preference is stated by the consumer?

17 A I do not believe that there's an existing
18 rule.

19 Q And isn't it true that the assignment of
20 default traffic has been left to the local exchange
21 company, in the zero minus situation, to handle that
22 in the way they assumed or believed to be best under
23 the circumstances?

24 A And the most cost-effective way, yes.

25 Q And isn't it true that no carrier in

1 competition with KTNT under their service marks has
2 voiced any objection to how they compete in this
3 market?

4 A Well, the carrier -- the company has not
5 begun to compete yet in the market in Florida and,
6 therefore, the carriers have no basis to file a
7 complaint.

8 Q You found no objection in Texas to their
9 competition in Texas?

10 A No.

11 Q Or Ohio?

12 A No.

13 Q Or Illinois?

14 A I do not know about Illinois. That's an
15 ongoing proceeding.

16 MR. WIGGINS: Thank you, Mr. Poucher. I
17 have no further questions.

18 COMMISSIONER DEASON: Staff, how much do you
19 have for this witness?

20 MS. BROWN: Probably about five minutes.

21 COMMISSIONER DEASON: Please proceed.

22 CROSS EXAMINATION

23 BY MS. BROWN:

24 Q Mr. Poucher, let me just follow up quickly
25 on a question that -- or a series of questions that

1 Mr. Wiggins just asked you about the Commission not
2 having specific rules on the use of service marks.

3 That wouldn't prohibit the Commission, if it
4 identified a problem with the company's use of a
5 service mark, from acting to correct that problem,
6 would it?

7 A Well, I think that's the job of the Staff.
8 I think that's why they review their certificate
9 applications, and that's one of the requirements of
10 the job, I would think.

11 Q So the answer is no?

12 A Yes. Excuse me. I'm agreeing with you;
13 whichever the answer is. (Laughter)

14 Q Well, the question was, the fact that there
15 weren't existing rules wouldn't prohibit the
16 Commission from acting if there were a problem?

17 A That's correct.

18 Q Let me just take a second to restate what I
19 think is one of the bases of your testimony and your
20 objection to the certification of this company.

21 Isn't it basically because you believe that
22 if the Commission granted this certificate to KTNT to
23 operate under these names, the Commission would be
24 furnishing this company with the opportunity of
25 misleading the public? Is that correct?

1 A That's exactly.

2 Q Now, you said earlier that you look at all
3 the certifications that the Commission issue, or that
4 petitions are filed on. They all come across your
5 desk, I think is what you said.

6 A That's correct.

7 Q You're aware, then, that the Commission has
8 certified several companies with unusual names, aren't
9 you?

10 A Yes, I am.

11 Q For instance, "The Phone Company". Are you
12 aware of that one?

13 A Yes. And "Business Discount Plan" also
14 is -- probably the two most troublesome are those,
15 but -- if I could, let me carry on a little bit and
16 tell you about those.

17 Q Well, you may be anticipating my follow-up
18 question.

19 A I probably will. Those kind of names are
20 names that could be confusing by the way that the
21 company uses those names in the telemarketing process,
22 such as "Business Discount Plan," and we saw a lot of
23 that. The company was actually misleading the
24 customer by their scripts that -- and that's not the
25 case with KTNT.

1 The confusion happens because the customer's
2 choice, unfortunate choice of words, like "it doesn't
3 matter," and -- that's far different. This "Business
4 Discount Plan" is a perfectly good name if the company
5 used it properly. I guess that's the point that I'd
6 make.

7 Q Well, that is what I want to pursue with you
8 a little bit. There is another name called "The Other
9 Phone Company" that the Commission has certified. Are
10 you aware of that?

11 A Yes, I've seen that name.

12 Q And recently the Commission approved a
13 certification of a company to do business as "The
14 State Phone Company." Are you aware of that?

15 A Yes.

16 Q Wouldn't you agree -- and I think you did
17 say this earlier -- that an unscrupulous company could
18 use a name like "The State Phone Company" to mislead
19 customers?

20 A Yes.

21 Q And that they would be provided the
22 opportunity to exercise deception in the practice of
23 their business, correct, by being granted a
24 certificate under that name?

25 A But it doesn't make it right. I mean, if

1 you put them in business, then any company has the
2 opportunity to deceive the public by whatever means
3 they want to try to do it, yes.

4 Q Right. But if they have a name like "The
5 State Phone Company," it's out there and possibly easy
6 to do.

7 A That's a little bit of a stretch, but I'll
8 agree with you.

9 Q Well, if they did that, and customers were
10 deceived or defrauded, or even confused, they could
11 complain to the Commission, correct?

12 A That's correct.

13 Q And the Commission would have the authority
14 to do something at that point, correct?

15 A Sure.

16 Q So why are we doing anything differently
17 here?

18 A Well, the difference is you have no evidence
19 that that company has operated in an unscrupulous
20 manner.

21 My position, and our position, is that
22 here's a company that operates in a deceiving and
23 deceptive and misleading manner. That's their
24 business strategy. It's their choice of their way of
25 doing business. And you don't need companies like

1 that in the state of Florida; don't need to give them
2 an opportunity to get into this state so that we can
3 find that they're doing things wrong.

4 Q Okay. Let me just go back to a couple of
5 questions that were asked of you earlier. Mr. Wiggins
6 was asking you about the company's representations
7 that at some point, some day they may get into the
8 1-800 business, and they may expand their operations.
9 Do you remember that?

10 A Yes.

11 Q And Mr. Wiggins asked you, I think, whether
12 you would have any objection to the company providing
13 a service of "1-800 I Don't Care" if a customer dialed
14 that. Do you remember that?

15 A Yes.

16 Q Just to clarify, wouldn't that be too many
17 digits for a customer to dial anyway?

18 A I wasn't counting, but he was asking the
19 questions. I don't know.

20 Q Would you accept, subject to check, that it
21 probably would be?

22 A Yes.

23 Q And I guess the point is that the company is
24 not doing business in these areas right now, correct?

25 A The company is doing business solely in the

1 area of operator services. There is a miniscule
2 amount of business that we were able to identify in
3 the deposition that was not operator service, zero
4 minus, but that's their business right now.

5 MS. BROWN: Thank you. No further
6 questions.

7 COMMISSIONER DEASON: Commissioners?
8 Redirect?

9 MR. BECK: No redirect.

10 COMMISSIONER DEASON: And there are no
11 exhibits. Thank you, Mr. Poucher.

12 (Witness Poucher excused.)

13 - - - - -

14 COMMISSIONER DEASON: Anything else to come
15 before the Commission?

16 MS. BROWN: Commissioner, I'll just read off
17 the events that are going to be happening. The
18 transcripts are due the 11th of June. Briefs are due
19 the 26th of June. Staff recommendation to be filed
20 the 23rd of July, Agenda, the 4th of August.

21 COMMISSIONER DEASON: Okay. Anything else?
22 Hearing nothing, thank you all. This hearing is
23 adjourned.

24

25 MR. WIGGINS: Thank you.

1 (Thereupon, the hearing concluded
2 at 11:30 a.m.)

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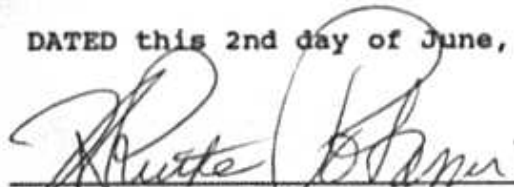
1 STATE OF FLORIDA)
: CERTIFICATE OF REPORTER
2 COUNTY OF LEON)

3 I, H. RUTHE POTAMI, CSR, RPR Official
4 Commission Reporter,

5 DO HEREBY CERTIFY that the Hearing in Docket
6 No. 970109-TI was heard by the Florida Public Service
7 Commission at the time and place herein stated; it is
8 further

9 CERTIFIED that I stenographically reported
10 the said proceedings; that the same has been
11 transcribed under my direct supervision; and that this
12 transcript, consisting of 127 pages, constitutes a
13 true transcription of my notes of said proceedings
14 and the insertion of the prescribed prefiled
15 testimony of the witness.

16 DATED this 2nd day of June, 1998.



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Official Commission Reporter
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