

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In Re: Discovery related to study on : DOCKET #980733-TL
fair and reasonable rates and on :
relationships among costs and charges :
associated with certain :
telecommunications services provided :
by local exchange companies, as :
required by Chapter 98-277 :
:

PROCEEDINGS: ORAL ARGUMENT
BEFORE: COMMISSIONER CLARK
HEARING OFFICER
DATE: SEPTEMBER 11, 1998
TIME: COMMENCED AT 10:00 A.M.
CONCLUDED AT 10:50 A.M.
PLACE: BETTY EASLEY CONFERENCE CENTER
ROOM 152
4075 ESPLANADE WAY
TALLAHASSEE, FLORIDA
REPORTED BY NANCY S. METZKE, RPR, CCR
POST OFFICE BOX 3093
TALLAHASSEE, FLORIDA 32315

C & N REPORTERS
REGISTERED PROFESSIONAL REPORTERS
POST OFFICE BOX 3093
TALLAHASSEE, FLORIDA 32315
(850)697-8314 / FAX (850)697-2263

BUREAU OF REPORTING

RECEIVED 9-30-98

DOCUMENT NUMBER - DATE

10765 SEP 30 98

FPSC-RECORDS/REPORTING

1 APPEARANCES:

2 BETH KEATING, ESQUIRE, FPSC, 2540 Shumard Oak Boulevard,
3 Tallahassee, Florida 32399-0850, on behalf of the
4 Commission Staff.

5 CHARLES J. REHWINKEL, ESQUIRE and JOHN P. FONS, ESQUIRE,
6 Ausley & McMullen, Post Office Box 391, Tallahassee,
7 Florida 32302, on behalf of Sprint-Florida, Inc.

8 CHARLES BECK, ESQUIRE, (by phone) Office of Public Counsel,
9 c/o The Florida Legislature, 111 West Madison Street, Room
10 812, Tallahassee, Florida 32399-1400, on behalf of the
11 Citizens of the State of Florida.

12 MARY KEYER, ESQUIRE, (By phone), BellSouth, 675 West
13 Peachtree Street, Suite 4300, Atlanta, Georgia 30375.

14 BRIAN FARLEY, ESQUIRE (by phone), GTE, Collier, Shannon,
15 Rill & Scott, 3050 K Street NW, Washington, DC 20007.

16 DAVID FRANK, ESQUIRE, (by phone), AARP, 140e Maclay
17 Commerce Drive, Suite 3, Tallahassee, Florida 32312.

18 MICHAEL A. GROSS, ESQUIRE, Office of the Attorney General,
19 PL-01 The Capitol, Tallahassee, Florida 32399-1050.

20 * * * *

21 ALSO PRESENT:

22 ED PASCHALL, AARP.
23
24
25

P R O C E E D I N G S

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

1
2
3
4 COMMISSIONER CLARK: Well, let's call this
5 prehearing to order. Thank you all for getting here and
6 being ready. I've talked to Beth -- And I am sorry for
7 being late. I'm having difficulty being everywhere I'm
8 supposed to be.

9 Did we send out a notice for this?

10 MS. KEATING: Yes, we did.

11 COMMISSIONER CLARK: All right. Why don't you
12 read the notice?

13 MS. KEATING: By notice issued September 9th,
14 1998, the time and place have been set for oral argument in
15 Docket Number 980733-TL, discovery related to the study on
16 fair and reasonable rates. The purpose is as set forth in
17 the notice.

18 COMMISSIONER CLARK: We'll take appearances.

19 MR. REHWINKEL: This is Charles J. Rehwinkel and
20 John P. Fons on behalf of Sprint-Florida, Incorporated. My
21 address is P.O. Box 2214, Tallahassee, Florida, 32316.

22 At the appropriate time, Madam Chairman --
23 Commissioner, I would like to register an objection to the
24 notice, but I'll do that after appearances.

25 COMMISSIONER CLARK: Okay. All right.

1 MS. KEYER: Mary Keyer, BellSouth
2 Telecommunications, Inc., 675 West Peachtree Street, Suite
3 4300, Atlanta, Georgia, 30375.

4 COMMISSIONER CLARK: And is there another person
5 on the line? Who is that?

6 MR. FRANK: Yes. David Frank representing AARP.
7 My address is 1403 Maclay Commerce Drive, Suite 3,
8 Tallahassee, Florida, 32312.

9 COMMISSIONER CLARK: David, I'm sorry, I didn't
10 get your last name.

11 MR. FRANK: It's David Frank.

12 COMMISSIONER CLARK: F-r-a-n-k?

13 MR. FRANK: Yes, ma'am.

14 COMMISSIONER CLARK: Thank you.

15 Is there anyone else on the line?

16 MR. BECK: Yes. This is Charles Beck, Office of
17 the Public Counsel, 111 West Madison Street, Room 812,
18 Tallahassee, Florida, 32399-1400, appearing on behalf of
19 Florida citizens.

20 COMMISSIONER CLARK: Anyone else?

21 MR. FARLEY: Yes, Commissioner. This is Brian
22 Farley appearing on behalf of GTE. I'm with the law firm
23 of Collier, Shannon, Rill & Scott. The address is 3050 K
24 Street Northwest, Washington, DC 20007.

25 COMMISSIONER CLARK: Would you spell your last

1 name?

2 MR. FARLEY: Sure, it's F, like Frank, a-r-l-e-y.

3 COMMISSIONER CLARK: Thank you. Anyone else on
4 the phone?

5 (NO RESPONSE)

6 COMMISSIONER CLARK: Mr. Paschall.

7 MR. PASCHALL: My name is Ed Paschall,
8 P-a-s-c-h-a-l-l. I'm an observer here on site because our
9 lawyer is on the plain now, and he is standing by on the
10 telephone there.

11 COMMISSIONER CLARK: Okay. He is Mr. Frank?

12 MR. PASCHALL: That's right, Mr. Frank.

13 COMMISSIONER CLARK: Mr. Gross.

14 MR. GROSS: Michael Gross on behalf of the Office
15 of the Attorney General in Tallahassee.

16 COMMISSIONER CLARK: Okay.

17 MS. KEATING: And Beth Keating appearing for
18 Commission staff.

19 COMMISSIONER CLARK: Thank you.

20 Mr. Rehwinkel, you wanted to raise an objection
21 to the notice?

22 MR. REHWINKEL: Yes, ma'am. My objection, I do
23 not raise this for the purpose of debating it unless you
24 and the other parties want to entertain it; but it is our
25 position that this proceeding, the study proceeding, that

1 the discovery docket is an adjunct to, is not properly
2 subject to Chapter 120 because the proceeding is not to be
3 conducted under Chapter 120.

4 I don't know where the line stops and starts with
5 respect to what provisions of Chapter 120 would apply to
6 any aspect of the study proceeding. The notice was sent
7 out saying that the matter would be subject to Chapter
8 120. I'm sure it was a form notice, and it may or may not
9 be the intent, but it is integral to our argument about the
10 scope of discovery that this proceeding is not subject to
11 Chapter 120; and to say that it is pre-judges the scope of
12 discovery in our view.

13 COMMISSIONER CLARK: All right. What is the
14 scope of discovery?

15 MR. REHWINKEL: That's part of my argument. And
16 I don't want to get ahead unless you want me to state it.

17 COMMISSIONER CLARK: Okay. All right.

18 MR. REHWINKEL: I'm not -- Mr. Gross will be
19 going first I assume.

20 COMMISSIONER CLARK: All right. Hang on a
21 minute. I understand that. I understand now that you
22 are -- you're basing it on the fact that it isn't a 120
23 proceeding; therefore, you don't think the same -- you
24 cannot rely on 120 type precedent to determine what the
25 scope of discovery is here; is that correct?

1 MR. REHWINKEL: Yes, to the extent that 120 and
2 the uniform rules of procedure and the Commission's rules
3 require that the Florida Rules of Civil Procedure govern.
4 That is an essential part of my argument.

5 COMMISSIONER CLARK: Okay. All right.
6 Mr. Gross, it is your motion to compel, and I understand it
7 is -- there is a motion to compel by your office for GTE,
8 Sprint and BellSouth, right?

9 MR. GROSS: That's correct.

10 COMMISSIONER CLARK: Okay. I have read those
11 motions, and I have -- Have I read some responses? I saw
12 some responses. No, I didn't see any responses, did I?

13 MS. KEATING: You saw responses from GTE.

14 COMMISSIONER CLARK: Okay. All right. Go ahead,
15 Mr. Gross.

16 MS. KEYER: Excuse me, could I -- this is Mary
17 Keyer, BellSouth.

18 COMMISSIONER CLARK: Yes, go ahead, Mary.

19 MS. KEYER: BellSouth will be filing written
20 responses. It wasn't technically due until next week.

21 COMMISSIONER CLARK: Okay.

22 MS. KEYER: But we will be filing it either this
23 afternoon or Monday.

24 COMMISSIONER CLARK: Good. At this point I
25 wouldn't intend to rule until there has been an opportunity

1 to do written response. The problem is I am not here next
2 week, so I wanted to give you an opportunity to make some
3 oral remarks and maybe give me more explanation on your
4 legal positions. There is also a possibility that, instead
5 of making the ruling myself, I will ask that it be made by
6 the full Commission. But I thought it would be beneficial
7 to spend this time to hear from you and the other parties,
8 so Mr. Gross.

9 MR. GROSS: Good morning, Commissioner Clark. As
10 you know, these issues have been heavily briefed, and so I
11 am going to focus on the issues that are common to -- the
12 common objections that were raised by all three LECs.
13 There is one -- a second motion directed to GTE which I
14 would like to reserve to the end of my presentation and not
15 devote more than a minute to it.

16 COMMISSIONER CLARK: Go ahead.

17 MR. GROSS: But what we have today are the
18 Attorney General's motions to compel answers to the AG's
19 first interrogatories and third request for production
20 directed to GTE, BellSouth and Sprint. Now the basic and
21 threshold objection which all three LECs, if you will, have
22 made is that the discovery in this docket is limited to
23 verifying the cost data and analysis which the LECs filed
24 with the Commission. The corollary to this contention is
25 that discovery is limited to what the staff has asked

1 for.

2 The LECs point to section 2, subsection (2)(b) in
3 98-277, the bill, to support their position. This section
4 permits the Commission and all intervenors access to
5 records supporting cost data and analysis submitted by the
6 LECs. This position is erroneous for several reasons: One,
7 the specific language of 98-277, which I will recite
8 momentarily; two, the additional authority and jurisdiction
9 conferred upon the Commission under Section 364.183,
10 subsections (1) and (2), and the order on procedure
11 establishing this discovery docket.

12 Now the bill itself in section 2, subsection (1)
13 requires the Commission to study and report on the
14 relationships among the costs and charges associated with
15 providing basic local service, intrastate access and other
16 services provided by local exchange companies. Subsection
17 (2)(a) requires the Commission to further report its
18 conclusions as to the fair and reasonable Florida
19 residential basic local service rates considering
20 affordability, the value of service, comparable residential
21 basic local telecommunications rates in other states, the
22 cost of providing residential basic local
23 telecommunications services in this state, and including
24 the proportionate share of joint and common costs.

25 Now only one of those items that the Commission

1 is to consider is directed to the cost to providing basic
2 residential local service. The LECs would have you believe
3 that this entire study is limited to that one item. That's
4 among five in that subsection alone, five items, and in the
5 previous paragraph there are several more items.

6 Now I'd also like to point out that notably --
7 excuse me, I've already made this point, but in section
8 364.183(1), regarding access to company records, the
9 Commission has -- "shall have access to all records of
10 telecommunications companies that are reasonableness
11 necessary for the disposition of matters within the
12 Commission's jurisdiction." And they go on to say that
13 when there are questions of cross subsidization that this
14 even includes affiliates of the company. And in Subsection
15 2, and this is to, a precursor to my response to
16 Mr. Rehwinkel's objection, is that discovery in any docket
17 or proceeding before the Commission shall be in the manner
18 provided for in Rule 1.280 of the Florida Rules of Civil
19 Procedure; and the Commission's order establishing this
20 discovery docket is authorized by the statute, by its
21 supplemental authority which was not repealed or
22 contradicted in 98-277.

23 Further, the order on procedure states that the
24 legislature asked for a report on fair and reasonable
25 rates. A special project has been established to timely

1 complete the report. The discovery docket is open for
2 discovery related to the special project; therefore,
3 discovery is that which is necessary to study and report on
4 all of the issues and concerns of the legislature, not
5 limited to cost data filed by the LECs or required by
6 staff.

7 Now all three LECs have objected to the Attorney
8 General's discovery on the basis that it is limited to just
9 basic residential local service; however, all three LECs
10 have provided both cost and revenue information pertaining
11 to services other than residential basic local service in
12 their responses to the staff's data requests. The staff
13 has asked for cost and revenue information in addition to
14 just the cost of basic local residential service, and all
15 three LECs have provided that information. This is a very
16 strong indication that both the LECs and the staff agree
17 with the position of the Attorney General's office.

18 The Division of Communications', just to give you
19 an example, Data Request 2 asks for a contribution analysis
20 for intrastate switched access. Request 3 asks for a
21 contribution analysis for intraLATA toll, and request 4
22 asks for a contribution analysis for a number of residence
23 and business vertical services. A contribution analysis is
24 simply a comparison of the costs and charges for each
25 category of service being studied.

1 I have with me, just to illustrate, and I don't
2 mind leaving this, attachments from BellSouth's filing, and
3 all three LECs filed similar filings, that contain the
4 revenue information as far as interstate switched access
5 and intraLATA toll. The point is that the LECs themselves
6 have provided information to the staff that supports the
7 Attorney General's interpretation that there is a broader
8 scope of discovery.

9 Now Sprint is requesting that no order be entered
10 to avoid appellate rights in this case. I would just like
11 to point out that the order creating this discovery docket
12 created appellate rights. There was a notice of rights
13 attached, and several temporary protective orders have been
14 entered already that create appellate rights; and the
15 Commission's only authority to issue these temporary
16 protective orders is under the Commission's rules dealing
17 with discovery under their authority in Section 364.183.

18 Now this is basically the fundamental argument as
19 to the objections that the LECs have made. I mean there
20 are other arguments as to whether we are entitled to
21 information on interstate deregulated services, information
22 regarding affiliates. I think that once -- If the
23 Commission, if you --

24 COMMISSIONER CLARK: You have to answer the
25 preliminary question to get to the --

1 MR. GROSS: Right. That's the threshold
2 question. If that threshold question is answered, then I
3 think it opens it up to those others.

4 COMMISSIONER CLARK: Okay.

5 MR. GROSS: And those have been briefed, so it's
6 not necessary to go through that here.

7 Now there is -- I would like to reserve one more
8 minute or two to a dispute that has arisen between GTE and
9 the Attorney General. The Attorney General served
10 discovery right around the end of the first week after data
11 requests were due, and they crossed -- our interrogatories
12 literally crossed the --

13 COMMISSIONER CLARK: Is this the number of
14 interrogatories?

15 MR. GROSS: Yeah, this is a dispute over the
16 number.

17 COMMISSIONER CLARK: Surely you can work that
18 out.

19 MR. GROSS: I think the key here, and this is all
20 I wanted to bring up, is that we have been unable to work
21 it out; and that is what is regrettable. And I spoke to --

22 COMMISSIONER CLARK: Mr. Farley?

23 MR. GROSS: -- Ms. Caswell --

24 COMMISSIONER CLARK: Oh, Ms. Caswell?

25 MR. GROSS: -- last night to make one last

1 attempt to resolve it. What the Attorney General is
2 proposing is to offset -- I mean we have three hundred
3 total discovery requests.

4 COMMISSIONER CLARK: To GTE?

5 MR. GROSS: Yes.

6 COMMISSIONER CLARK: Okay. And what --

7 MR. GROSS: No, excuse me, under the procedural
8 order, 150 of interrogatories and 150 requests for
9 production.

10 COMMISSIONER CLARK: Okay.

11 MR. GROSS: We have a hundred requests for
12 production still in the bank, even accepting GTE's
13 position, which we don't. You know, this is not even
14 adjusting downward for the withdrawal in discovery.

15 COMMISSIONER CLARK: Right.

16 MR. GROSS: We would like to offset -- we can
17 convert these interrogatories, the excess interrogatories
18 as claimed by GTE, to requests for production. GTE in its
19 opposition, which I got yesterday, on the very last page,
20 the very last sentence says why doesn't the Attorney
21 General do that and we wouldn't have to be here today? My
22 response to that, and I called Ms. Caswell again last
23 night, and I said, you know, you are accusing the Attorney
24 General of not trying to resolve this dispute as required
25 by the rules, but why make the Attorney General go through

1 that exercise and GTE is still going to have to go through
2 the exercise of responding to those. And so that is what
3 the Attorney General believes is a reasonable solution to
4 that dispute, and we would still be well within the total
5 of three hundred discovery requests.

6 COMMISSIONER CLARK: Okay. Mr. Beck or
7 Mr. Frank, what --

8 MR. REHWINKEL: Madam chairman.

9 COMMISSIONER CLARK: Hang on a minute. I just
10 want to ask, what is your position on these motions to
11 compel?

12 MR. FRANK: Are you asking David Frank?

13 COMMISSIONER CLARK: Yes, you are with AARP,
14 correct?

15 MR. FRANK: Yes, ma'am.

16 COMMISSIONER CLARK: Are you going to make
17 argument today?

18 MR. FRANK: Yes, ma'am, very briefly.

19 MR. REHWINKEL: I would object.

20 COMMISSIONER CLARK: Hang on a minute.

21 COMMISSIONER CLARK: And Mr. Beck, are you going
22 to make argument?

23 MR. BECK: Just very briefly also.

24 COMMISSIONER CLARK: All right. Now I'll let you
25 know when I'm ready to hear argument from you.

1 Mr. Rehwinkel.

2 MR. REHWINKEL: Madam Chairman, I would object to
3 any party that has not filed a pleading in this matter
4 arguing. We have a limited time. I was under the
5 understanding that this was going to be over at 10:30.
6 These parties have not -- these participants in the study
7 have not sought to --

8 COMMISSIONER CLARK: You make a good point.

9 Mr. Frank and Mr. Beck, at this point I'm going
10 to suspend allowing you to make argument. Are you going to
11 make any written filings on this issue, either one of you?

12 MR. FRANK: This is David Frank. No, Madam
13 Commissioner, not on this. AARP has filed yesterday --

14 MR. REHWINKEL: I would object, Madam Chairman.
15 Mr. Frank --

16 MR. FRANK: Can I finish what I'm --

17 MR. REHWINKEL: -- wants to talk to you about a
18 confidentiality matter that we have not had a chance to
19 provide any response to.

20 COMMISSIONER CLARK: Let him tell me what he
21 wants to tell me, Mr. Rehwinkel.

22 MR. FRANK: I'm not trying to sneak an argument
23 in here. I'm just simply saying that we joined -- I don't
24 know of any procedural rule that says you have to file
25 something in order to appear at a hearing in a proceeding

1 for which you are an interested party or a party.

2 COMMISSIONER CLARK: Okay. I appreciate that,
3 Mr. Frank.

4 Mr. Beck, I'm going to just -- what I would like
5 to know is, do you intend to make any written filing?

6 MR. BECK: No.

7 COMMISSIONER CLARK: Okay. I am concerned about
8 the time. I need to get to another proceeding. I'm going
9 to hear from the parties, from Sprint, from GTE and from
10 BellSouth. I kind of doubt there will be any time to hear
11 from you all, and you may file something written and I will
12 look at that.

13 Go ahead, Mr. Rehwinkel.

14 MR. REHWINKEL: I understood that the GTE folks
15 might want to go first.

16 COMMISSIONER CLARK: All right. Mr. Farley.

17 MR. FARLEY: However we would like to proceed,
18 Commissioner. If you'd like us to go first, we can
19 certainly do that.

20 COMMISSIONER CLARK: Yes, go ahead, Mr. Farley.

21 MR. FARLEY: Okay. I believe the AG's office has
22 accurately characterized the overall objection put forth by
23 GTE, and that essentially is, the AG's discovery is going
24 far beyond the scope of this proceeding. The procedural
25 order on discovery says in the first sentence that the

1 discovery portion is opened in accordance with Chapter
2 98.277. And if you look at .277(2)(b), it tells quite
3 specifically that, yes, intervening parties are able to --
4 and have access to the records related to the cost of
5 providing residential basic local telecommunications
6 service of each local exchange company; but there is a very
7 important and very strict limitation on what they, and why
8 the discovery must be allowed; and that is, quote, for the
9 purpose of verifying the submitted cost data and analysis
10 by the ILEC.

11 The AG's office is essentially arguing that this
12 Commission should disregard that very specific, very
13 limited language that the legislature has included in its
14 law. It is allowing the Commission -- allowing, excuse me,
15 the AG's office to go off on a tangent, essentially
16 pursuing rate case related information. That related to
17 revenues. That related to affiliate data. It goes far
18 beyond what the intent of both the law question is and what
19 the goal of this proceeding is.

20 The information that the AG's office is looking
21 for goes beyond not only what GTE submitted with its cost
22 study but goes far beyond what GTE submitted in response to
23 staff's data request. The AG's office discovery is, as
24 I've indicated, attempting to turn this into a rate case.
25 GTE Florida is price regulated now, and the AG's office is

1 pursuing the antiquated technique when we may have been
2 regulated under rate of return. That is the type of
3 information that the AG's office is looking for. That
4 information is precluded by the statute. It goes beyond
5 the purpose of this proceeding, and it should not be
6 allowed.

7 Commissioner, I also would like to respond, if
8 you would like to hear it now, with relation to the last
9 argument made by the AG's office.

10 COMMISSIONER CLARK: The number of it?

11 MR. FARLEY: Exactly.

12 COMMISSIONER CLARK: I sure would like to hear
13 that because it certainly seems to me that you all could
14 work this out.

15 MR. FARLEY: Well, we have tried to work it out,
16 and the AG's office is correct. He did speak with
17 Ms. Caswell last night, and Ms. Caswell and I spoke both
18 last night and this morning. What we tried to resolve with
19 the AG's office is we will answer these data requests as
20 interrogatories, even though you are above the 150 limit,
21 only if, and if you will, agree not to serve any more
22 interrogatories on us. Essentially the AG's office has
23 already used up its 150 interrogatories. We'll answer
24 those that go above 150, up to 164 by GTE's count. Even
25 though it's in violation of the procedural order, we will

1 go ahead and answer those questions if you agree to ask no
2 more interrogatories. That settlement was apparently
3 rejected by the AG's office.

4 There is no offsetting here between
5 interrogatories and requests for production of documents.
6 The procedural order, GTE and all other parties have been
7 operating under an assumption as clearly delineated in the
8 procedural order, that you are allowed to ask 150
9 interrogatories including subparts and 150 requests for
10 production of documents. If the AG's office converts the
11 interrogatories to requests for production of documents,
12 they remain below their 150 requests for production of
13 document limit, and we will respond to those requests for
14 the production of documents; but it goes beyond what the
15 actual procedural order and what all parties have been
16 operating on to be able to say, now all of a sudden you
17 have three hundred total discovery requests as opposed to
18 the very specific and limited interrogatory and data
19 request number that was included in the discovery order.
20 So we have worked with the AG's office in an attempt to
21 resolve this. And a settlement implicates that each party
22 give a little bit. The AG's office is refusing to give on
23 the interrogatory number despite GTE's best efforts and
24 request that if they are not going to accept that
25 settlement offer that they convert it to a request of

1 documents and GTE will respond accordingly.

2 COMMISSIONER CLARK: I appreciate that, and I
3 guess Sprint is next. But Mr. Farley, let me point out,
4 and to you also, Mr. Gross, I consider this something that
5 shouldn't even be brought to me. I think you all can work
6 this out. We have issues on the merit that need to be
7 resolved. I encourage you to settle it. If you can't
8 settle it, I will; but it just seems to me it can be worked
9 out.

10 Go ahead, Mr. Rehwinkel.

11 MR. REHWINKEL: Thank you, Madam Commissioner.
12 GTE has laid out essentially the arguments, but I would
13 like to add something to their casting of the issues.

14 Before you, you have three studies. You have
15 what I'm going to call the universal service fund cost of
16 basic service study. You have this study, the fair and
17 reasonable residential rate study, and you have the
18 landlord/tenant study that all came out of the same bill.
19 The legislature said the USF study would be after notice
20 and opportunity for hearing. You are holding that
21 hearing. It is a fully -- a full-fledged administrative
22 proceeding.

23 Let me go to the landlord/tenant study. That is
24 a study. There are many parties involved. There are more
25 parties in that, and there are probably more factual issues

1 if you really want to know the truth in that one than in
2 this one, but there is no discovery allowed in that. The
3 difference I would assert to you is the language -- and let
4 me read the whole language because I think some of it's
5 been left out. It says:

6 "The local exchange company
7 shall provide to the Commission by
8 August 1, 1998 cost data and analysis
9 that support the cost of providing
10 residential basic local telecommunications
11 service in their service area as
12 prescribed by the Commission for purposes
13 of recommending the fair and reasonable
14 rate, for the purpose of verifying the
15 submitted cost data and analysis. The
16 Commission, and all intervenors, shall
17 have access to the records related to the
18 cost of providing residential basic local
19 telecommunications service of each local
20 exchange company."

21 It is our view that 364.17 and 364.18 have limited
22 access to company records and that because of the price cap
23 exemption elected under 364.051 this law creates a limited
24 exception to that exception.

25 COMMISSIONER CLARK: Say that again.

1 MR. REHWINKEL: Okay. What that says is 364.17
2 and 364.18 limit your authority to prescribe the forms of
3 records and reports to be submitted by the companies.

4 COMMISSIONER CLARK: Okay.

5 MR. REHWINKEL: Limit or -- Basically the repeal
6 of them eliminate your ability to inspect or authorize
7 another person to inspect our books and records.

8 Now Mr. Gross did not put it in his pleading, but
9 he is now citing 364.183, and he quoted you some language.
10 What he stopped short of quoting you is that you have
11 access to records necessary for the disposition of any
12 matter concerning an affiliated transaction or claim of
13 anti-competitive behavior. There is no such claim before
14 you. Our whole argument here is you don't have a pending
15 action. You don't have a claim. There is not a matter
16 between parties here. There is a study that you have been
17 directed to do and submit to the Commission. This language
18 applies if there is a pending matter before you.

19 We believe that the -- that absent the language
20 that gives intervenors access to the records there would be
21 no discovery. These parties assert that they are, should
22 have rights here because they are intervenors. Well, with
23 the intervenor language comes the same limitations that
24 are -- contains the limitations that are in that sentence.
25 You've got to -- if you are going to have one, you've got

1 to have the other; and that's the way the statute is
2 constructed.

3 We believe that you are being led down the road
4 towards a rate case. The requests encompass directory
5 advertising gross profit calculation that was part of a
6 rule that the Commission repealed because of the repeal of
7 364. It's the provision that requires gross profits to be
8 included for ratemaking purposes.

9 I have nothing further to add, Commissioner
10 Clark, other than to say that we believe that the
11 legislature had no idea that you would be at this stage of
12 a proceeding where you had discovery motions and motions to
13 compel in developing your study. We believe it's your
14 study to do. Your staff has prescribed the information to
15 be provided. Discovery by law is limited to verification
16 of what is submitted.

17 The other sections above that Mr. Gross has
18 cited, those are not matters that the Commission has
19 authority under the statute to prescribe the companies to
20 provide.

21 COMMISSIONER CLARK: Let me ask a question, and
22 my notes really probably refer to GTE's responses, but they
23 objected to (1) (a), which was local private line revenues.
24 Did you, Sprint, also object to that?

25 MR. REHWINKEL: Yes, ma'am.

1 COMMISSIONER CLARK: Okay. I guess what my
2 curiosity was, the audit asks for a breakdown of local,
3 which system is capable of giving, such as EAS or local
4 private line; and at first glance it seemed to me that the
5 request was related to what they had asked for.

6 MR. REHWINKEL: Yeah. Madam Chairman, going back
7 to the language of the statute, it limits discovery for the
8 purpose of verifying the costs, okay? Now your staff has
9 asked for some revenue information, and we gave it to them
10 because they asked for it.

11 COMMISSIONER CLARK: And what does the -- Read
12 me the statute again.

13 MR. REHWINKEL: The statute says:

14 "For purposes of verifying
15 the submitted cost data and analysis,
16 the Commission and all intervenors
17 shall have access to the records
18 related to the cost of providing
19 residential basic local
20 telecommunication service."

21 Their discovery seeking questions about revenues is
22 beyond that. They reference in the, in Mr. Gross's -- in
23 the Attorney General's argument, he references the term in
24 subsection 1, costs -- that you are required to study the
25 relationship among the costs and charges associated with

1 providing basic local service and interstate access and
2 other services. And the term "charges" then gets turned
3 into the term "revenues" in the next part of that
4 sentence. "Charges" are prices. "Revenues" are what you
5 book or accrue on your books. They may or may not have
6 anything to do with what your tariffed prices are or what
7 your price list is. They have more to do with the booking
8 of those revenues. "Charges" are just your tariffed rates.

9 COMMISSIONER CLARK: So you are saying that the
10 discovery -- the information they are entitled to is for
11 the -- is that which is outlined in the section creating
12 this study, and it's only for the purpose of them verifying
13 costs?

14 MR. REHWINKEL: Yes, ma'am.

15 COMMISSIONER CLARK: Okay. All right. Do you
16 have anything else?

17 MR. REHWINKEL: No, ma'am.

18 COMMISSIONER CLARK: All right. Ms. Keyer.

19 MS. KEYER: Yes. I, frankly, Commissioner,
20 cannot add anything to what both Sprint and GTE have
21 offered.

22 COMMISSIONER CLARK: Okay.

23 MS. KEYER: I think all our objections are
24 basically grounded under the same arguments. I would only
25 add or reiterate that it does appear that what the Attorney

1 General is doing is trying to turn this into a rate case.
2 Basically the issues that we have left with the Attorney
3 General really do deal mainly with this revenue and his
4 trying to get information that, frankly, really will not
5 enhance or help determine the fair and reasonable rates for
6 residential basic local service, which is the whole purpose
7 of this study.

8 COMMISSIONER CLARK: Let me ask a question of
9 Sprint, GTE and BellSouth. Is this information provided in
10 the universal service docket similar information?

11 MR. REHWINKEL: I'm not aware that it is, Madam
12 Chairman.

13 COMMISSIONER CLARK: Is there any prohibition
14 that information gleaned in that proceeding can be used in
15 this proceeding, or be suggested to be considered in the
16 study?

17 MR. REHWINKEL: I don't know if that would be the
18 case, Madam Chairman.

19 COMMISSIONER CLARK: Okay.

20 MR. REHWINKEL: I don't know that it would be
21 relevant to ask -- for instance, to fill out this gross
22 profit from directory advertising revenues form, ask that
23 in 696 docket; that is the USF docket. I don't think it
24 would be relevant, and it would be objectionable there, the
25 same with the nonregulated.

1 COMMISSIONER CLARK: But they would be entitled
2 to use any information they legitimately come by to make
3 their case on the study.

4 MR. REHWINKEL: Yeah, I don't perceive us
5 objecting to whatever comments that people want to submit
6 because my position is this is a legislative matter. They
7 are the forum that is going to be deciding this, and if
8 they want to consider that information, then so be it.

9 COMMISSIONER CLARK: Okay. I am sort of beyond
10 the time I had allotted. I need to get to the other
11 proceeding.

12 Mr. Gross, I'll allow you one minute.

13 At this point, what I'm inclined to do is perhaps
14 have the whole Commission consider this at the next agenda,
15 which I think is the 22nd. My concern is this is something
16 that came up before the Commission originally, and we kind
17 of said we wanted to wait to see what the requests were and
18 make a judgment then; and so I think probably what we'll
19 probably do is try and get it on that agenda; and I will
20 talk to the chairman about the fact that we may want to
21 allot some time for them, to hear from you all.

22 I would indicate to you, Mr. Frank and Mr. Beck,
23 that if you want to make an argument, I think due process
24 requires that you put that in writing so that people are
25 prepared to respond to that.

1 Mr. Gross.

2 MR. GROSS: Yes, thank you. I would like to make
3 a couple of comments.

4 The LECs are trying to limit the scope of
5 discovery to that one specific right that was delineated in
6 paragraph (2) (b), but by no means does that say that that
7 is the exclusive right to information. That's a specific
8 mandate. That's the floor of what needs to be done, not
9 the ceiling.

10 If the Commission were to limit itself to simply
11 that particular data and the verification of that data, the
12 Commission would be straight jacketed and stripped of the
13 tools to consider all of the other factors that the
14 legislature has asked the Commission to consider in doing
15 its report.

16 Now price regulation is a separate, an entirely
17 separate issue from this study. This study doesn't --
18 price regulation doesn't exempt the LECs from responding to
19 the request of the Commission and the parties in this
20 particular study. This is a separate issue. It's not a
21 rate case, the Attorney General agrees with that; but the
22 specific demands of the legislation require the Commission
23 to consider a lot of facts, evidence and data that would
24 also be considered in a rate case, and the authority for
25 that is the legislation.

1 I would also just like to point out that I have
2 brought with me examples of what BellSouth has filed with
3 the Division of Communications, which includes revenues.
4 I've got this right here. The staff has asked for it.
5 They've provided it. Mr. Rehwinkel claims that charges are
6 not revenues, but revenues depend on charges for services
7 and the number of customers that purchase those services.
8 For example, if your charge for a service is ten dollars,
9 you have ten customers, your revenues for that service are
10 a hundred dollars.

11 Secondly, paragraph 1 of the law we are dealing
12 with refers to the relationship between charges and costs.
13 Charges are tracked in revenue accounts. This is an
14 accounting principle. There are no charges accounts.
15 Likewise, there are no accounts called cost accounts, but
16 those accounts instead are called expense accounts;
17 therefore, to review records that relate to charges and
18 costs actually requires obtaining records which show
19 revenue and expenses because that is where the terms are
20 used and the way the records are kept. This is an
21 accounting principle at work here.

22 I would also, just in conclusion, refer back to
23 364.183(1). The first sentence of that paragraph doesn't
24 deal with affiliates. It says:

25 "The Commission shall have

1 access to all records of the
2 telecommunications company that
3 are reasonably necessary for the
4 disposition of matters within the
5 Commission's jurisdiction."

6 This study is one of those matters. Now maybe in a
7 price regulation matter Mr. Rehwinkel's argument may have
8 more credence.

9 The second sentence says the Commission shall
10 also have access under additional specified circumstances,
11 but I'm really focusing on the first sentence of that. For
12 this reason, the Attorney General believes that the
13 Commission, in order to carry out the mandate of the
14 legislature, must have these tools and this data available;
15 and the LECs' interpretation would deny the Commission the
16 tools that it needs to gather the information to make the
17 consideration as required by the legislature. Thank you.

18 COMMISSIONER CLARK: Thank you. What I would
19 like you to do -- I know you've withdrawn some of the
20 parts. If you would make, have somebody -- I don't really
21 want you to do it, Beth. If you would have, maybe your, an
22 assistant make a matrix of what has been objected to and if
23 it applies to all of them.

24 Mr. Gross, the same interrogatories went to all
25 parties, right, and they were numbered the same?

1 MR. GROSS: More interrogatories were served on
2 GTE.

3 COMMISSIONER CLARK: Okay. Would you do a matrix
4 so that it is clear what we still have to rule on and
5 specifically what has been asked for so that we are clear,
6 the Commission is clear as to what we absolutely have to
7 rule on because I did notice there were a number of things
8 that were withdrawn.

9 MS. KEATING: Actually I do have something
10 together right now, but I'd ask the parties if they would
11 stay on the line for just a few minutes at the conclusion
12 of this so I can confirm.

13 COMMISSIONER CLARK: While you get that.

14 MS. KEATING: Because I had a question about a
15 few that appeared to be withdrawn for certain parties but
16 were still left out there for others.

17 COMMISSIONER CLARK: Okay. And if you would, and
18 I'm not -- It wasn't clear to me that all parties
19 objected to the same things.

20 All right. Well, then I'm going to conclude this
21 oral argument, and I would ask the parties to remain on the
22 line so Beth can verify that information. And as I say, at
23 this point my plan is to ask Beth to do a recommendation,
24 to put it on the next agenda because I know we need to get
25 this resolved so you all can move forward.

1 Anything else?

2 (HAND RAISED)

3 COMMISSIONER CLARK: Mr. Paschall.

4 MR. PASCHALL: Would you verify that Mr. Frank is
5 still on the line? He may have landed.

6 COMMISSIONER CLARK: Mr. Frank?

7 MR. FRANK: Yes, ma'am.

8 COMMISSIONER CLARK: Are you still there?

9 MR. FRANK: Yes, ma'am.

10 COMMISSIONER CLARK: Your transmission to us is
11 kind of garbled, and I would -- If you can't stay for the
12 rest of this, Mr. Paschall is here and can get back to you,
13 okay?

14 MR. PASCHALL: Yes, and he --

15 MR. FRANK: That would be fine. Thank you.

16 MR. PASCHALL: He also mentioned to me yesterday
17 afternoon when we were talking, in case he did have to go
18 off the line here, that he agrees -- that AARP agrees, in
19 fact, with the Attorney General's request.

20 COMMISSIONER CLARK: I think it would be
21 appropriate for him -- if it's okay with the parties, you
22 can state that orally today, that you just are joining in
23 the motion.

24 MR. FRANK: Yes, ma'am, I would like to
25 (unintelligible).

1 COMMISSIONER CLARK: Mr. Frank, Mr. Frank. We
2 can't make out what you're saying, so you are going to have
3 to resolve that after this proceeding. The court reporter
4 can't hear what you're saying.

5 MR. FRANK: Okay.

6 COMMISSIONER CLARK: I think something needs to
7 be filed so the parties have an opportunity to respond to
8 it. I appreciate the fact that you are here at the oral
9 argument, but it's my view that it's -- due process
10 requires the written filing so they know what your argument
11 is going to be and can be prepared to respond to it.

12 MR. FRANK: Yes, ma'am. We had filed something
13 yesterday --

14 COMMISSIONER CLARK: Mr. Frank, we can't -- it's
15 too garbled for us to understand anything, so in fairness
16 to the court reporter, just indicate to Beth Culpepper
17 afterwards what your plans are. Thank you.

18 This oral argument is adjourned.

19 (WHEREUPON, THE HEARING WAS ADJOURNED)

20

21 * * * *

22

23

24

25

CERTIFICATE

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

STATE OF FLORIDA)
COUNTY OF LEON)

I, NANCY S. METZKE, Certified Shorthand Reporter and Registered Professional Reporter, certify that I was authorized to and did stenographically report the foregoing proceedings and that the transcript is a true and complete record of my stenographic notes.

DATED this 18th day of June, 1998.



NANCY S. METZKE, CCR, RPR