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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition by Telephone Company of Central Florida, Inc. for the resolution of items under dispute in resale agreement with BellSouth Telecommunications, Inc.) DOCKET NO. 981952-TP
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PROCEEDINGS: PREHEARING CONFERENCE

BEFORE: COMMISSIONER SUSAN F. CLARK

DATE: Monday, January 12, 1999

TIME: Commenced at 1:30 p.m.
Concluded at 2:30 p.m.

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

REPORTED BY: NANCY S. METZKE, RPR, CCR

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APPEARANCES:

JUNE C. MCKINNEY, ESQUIRE, FPSC, 2542 Shumard Oak
Boulevard, Tallahassee, Florida 32399-0850.

VICKI GORDON KAUFMAN, ESQUIRE, TCCF, McWhirter,
Reeves, McGlothlin, Davidson, Decker, Kaufman, Arnold &
Steen, P.A., 117 South Gadsden Street, Tallahassee, Florida
32301.

MARY KEYER, ESQUIRE, BellSouth, c/o Nancy Sims, 150
South Monroe Street, Suite 402, Tallahassee, Florida
32301.

* * * *

1 up the additional proposed issue?

2 MS. MCKINNEY: Yes.

3 COMMISSIONER CLARK: Okay. Let's go ahead and do
4 that.

5 MS. MCKINNEY: For the record, I've handed
6 counsel of BellSouth a copy of the proposed issue which
7 Ms. Kaufman had sent to us earlier in November; and that
8 issue, for the record, is: "What language, if any, should
9 be included within the agreement to guarantee the delivery
10 of service order intervals to TCCF that are at least equal
11 to the service intervals delivered to BellSouth's retail
12 customers?"

13 COMMISSIONER CLARK: And Ms. Kaufman, it's your
14 request that this be included as an issue?

15 MS. KAUFMAN: Yes, it is, Commissioner.

16 COMMISSIONER CLARK: I'll hear from you then on
17 including it as an issue.

18 MS. KAUFMAN: Thank you. Essentially,
19 Commissioner, TCCF would like this issue included as an
20 issue in the arbitration portion of the proceeding. To our
21 way of thinking, the question of appropriate service
22 intervals has always been an issue. It was an issue that
23 has been discussed over the past two and one half years
24 between BellSouth and TCCF, and so the record is clear, the
25 issue is not what should a particular service interval be

1 for a particular activity, the issue is -- or what TCCF
2 seeks in their new agreement is, if I might, some sort of
3 teeth that will require BellSouth to comply with the
4 service intervals.

5 TCCF currently has an agreement with BellSouth.
6 It has language in it which requires BellSouth to comply
7 with certain service intervals. It's TCCF's position that
8 that has not happened, so as they go forward, they want
9 some language in the new agreement that will ensure that
10 BellSouth will comply with the service intervals as they so
11 state in their agreement.

12 This issue was included on an issue discussion
13 list that was exchanged between Ms. Keyer and Ms. Welch of
14 TCCF. In our view, it's always been an open issue.
15 Testimony has been filed both by TCCF and by BellSouth on
16 this question, and we think that it is appropriate for
17 arbitration.

18 Now in Ms. Arrington's testimony, a witness for
19 BellSouth, she says, well, if TCCF has a claim that
20 BellSouth hasn't complied with the service intervals, they
21 ought to come to the Commission and file a complaint; and
22 that's certainly one thing that they could do. But given
23 their past experience, it seems more efficient and cost
24 effective to get the issue resolved on the front end and
25 get it clear for the new agreement that there are certain

1 things that BellSouth has to do to comply. That's why we
2 think that the --

3 COMMISSIONER CLARK: What is the language you
4 want, not the issue, but what language do you want
5 included?

6 MS. KAUFMAN: The language --

7 COMMISSIONER CLARK: Do you have a copy of that?

8 MS. KAUFMAN: The language -- I believe that it's
9 in Ms. Welch's testimony, if you'll give me a minute.

10 (MS. KAUFMAN REVIEWED DOCUMENTS)

11 MS. KAUFMAN: It's on, it's at the beginning --
12 at the bottom of Page 24 and going over to the top of Page
13 25 in Ms. Welch's direct testimony, and I can read that.
14 What TCCF seeks, and this is not the exact language, but we
15 want a copy of the most recent standard interval guide to
16 be attached to the resale and interconnection agreement,
17 and what we are seeking is a penalty if BellSouth does not
18 comply and does not meet the service interval. And what
19 Ms. Welch has suggested in her testimony is a 25-dollar
20 penalty per each order.

21 COMMISSIONER CLARK: So you want a penalty to
22 enforce it?

23 MS. KAUFMAN: Yes, ma'am.

24 COMMISSIONER CLARK: Okay. Ms. Keyer.

25 MS. KEYER: Commissioner Clark, it's BellSouth's

1 position that this is not an appropriate issue for
2 arbitration, mainly because the parties, frankly, never
3 negotiated this. The parties agreed on the service order
4 interval language that is in the agreement that was
5 proposed to TCCF. The only two issues that remained open
6 and were not agreed upon by the parties are the two issues
7 that are before the Commission for the arbitration, and
8 that is the OSS issue and the ESSX issue.

9 The service order interval language is in, I
10 believe it's Section 6 of the agreement. And the
11 discussion list that Ms. Kaufman referred to was, in fact,
12 not a list between me and Ms. Welch, but it was a list that
13 Ms. Welch sent to Ms. Arrington back in, I believe, the
14 very start of negotiations and basically said, Not
15 happening, need copy of the service order interval guide,
16 or something to that effect.

17 BellSouth provided that to TCCF, and there were
18 no further negotiations regarding that matter. Therefore,
19 the parties have simply not negotiated this issue, or I
20 should say they negotiated and agreed on language, and
21 there was never any negotiations about penalties or any of
22 that that went between the parties. TCCF's own testimony
23 on, I believe it's page 22 of Ms. Welch's prefiled
24 testimony, admits that TCCF, and I quote, did not request
25 the addition of any language or revisions to the existing

1 language. So it's BellSouth's position that this is just
2 not an issue appropriate for arbitration at this time.

3 COMMISSIONER CLARK: But it's your position that
4 it's not appropriate for arbitration because it was not an
5 issue negotiated. Specifically the penalty, or did you
6 agree to attack the standard interval guide?

7 MS. KEYER: I don't believe that was ever a
8 request made during arbitration. What the parties agreed
9 on is the language in Section 6(C) of the agreement that
10 said -- Let's see if I can find that.

11 (MS. KEYER REVIEWED DOCUMENTS)

12 MS. KEYER: Well, I had it here a minute ago.

13 COMMISSIONER CLARK: Well, look for it --

14 MS. KEYER: Section 6(C) says: "When
15 notification is received from reseller that a current
16 customer of the company will subscribe to reseller's
17 service, standard service order intervals for the
18 appropriate class of service will apply."

19 And the parties agreed to that on July 10th. Mr.
20 Arrington sent a letter to TCCF outlining the two
21 outstanding issues with a copy of the agreement, reflecting
22 the parties agreements to date with this provision in it,
23 and TCCF never came back and said, No, we didn't agree to
24 this. The only two issues that were open issues were the
25 OSS issue and the ESSX issue which we rightfully have

1 before this Commission, and we will be arbitrating next
2 week.

3 COMMISSIONER CLARK: Ms. Kaufman, was it? I mean
4 it sounds like they complained about two issues, and having
5 a penalty in there was not one of them.

6 MS. KAUFMAN: Commissioner Clark, the letter that
7 Ms. Keyer is referring to, I guess you could call that
8 BellSouth's analysis of the situation. This question of
9 service intervals and BellSouth's lack of compliance has
10 been something that has been discussed --

11 COMMISSIONER CLARK: Let me stop you right
12 there. At what point did they negotiate having a penalty
13 in there?

14 MS. KAUFMAN: I don't -- They have not yet
15 negotiated having a penalty in there.

16 COMMISSIONER CLARK: Then why don't -- It
17 sounds like it hasn't been negotiated. If you want to
18 negotiate that and then bring it to us when you don't
19 resolve it, if it hasn't been negotiated.

20 MS. KAUFMAN: Commissioner Clark, it's my
21 understanding that throughout the negotiations this
22 question of their compliance with the service intervals has
23 been an issue that has been open. This particular 25
24 dollars, that has not been negotiated; but the question of
25 how they will comply or whether they will comply with

1 | what's in the agreement has always been an issue, and it's
2 | not correctly represented in Ms. Arrington's letter to
3 | TCCF.

4 | COMMISSIONER CLARK: There is no dispute as to
5 | them complying with the standard interval guide, is that
6 | correct?

7 | MS. KAUFMAN: You mean whether they have
8 | represented that they will do that?

9 | COMMISSIONER CLARK: There is no dispute that
10 | that is the standard that they negotiated?

11 | MS. KAUFMAN: I agree. Yes, ma'am.

12 | COMMISSIONER CLARK: Is that correct?

13 | MS. KEYSER: I believe that is correct.

14 | COMMISSIONER CLARK: So when was there a
15 | negotiation on a penalty should that standard not be met?

16 | MS. KAUFMAN: Commissioner Clark, there was not a
17 | specific time that I can refer you to where there was
18 | negotiation in regard to a penalty, but what the issue
19 | relates to is TCCF's concern that it's been continually
20 | expressed --

21 | COMMISSIONER CLARK: I understand that. I
22 | understand that.

23 | MS. KAUFMAN: -- that BellSouth does not comply
24 | with the service intervals.

25 | COMMISSIONER CLARK: Well, that could be the

1 subject of a complaint, but I don't hear from what you're
2 saying that you ever negotiated on what would be
3 appropriate penalty for failure to meet that.

4 MS. KAUFMAN: And I guess I'm not disagreeing
5 with you, but perhaps where I would disagree is that we
6 understand that we can bring a complaint to the Commission
7 that they have not complied; however, what we are seeking
8 from the Commission is an up-front, if you will,
9 determination that they have an obligation to live up to
10 their agreement so that we don't have to come back to the
11 Commission again, once we've been through this arbitration,
12 you know, and repeat the experience we have had under the
13 current contract which is that they do not comply with the
14 service order interval guide.

15 COMMISSIONER CLARK: Well, I can tell you that
16 when we approve agreements and arbitrations, we expect both
17 parties to live up to it. And as far as I know, we haven't
18 ever put penalties in there.

19 And Ms. McKinney, I'm ready to hear from you on
20 this.

21 MS. MCKINNEY: Commissioner, we have nothing to
22 reference pertaining to a specific negotiation pertaining
23 to the penalty; but if, in fact, it is decided by yourself
24 that there was a penalty negotiated and there is an issue
25 as to whether it's an arbitrary issue or not, previously

1 the Commission has not awarded damages.

2 COMMISSIONER CLARK: You've not included a
3 provision on damages in the contracts?

4 MS. MCKINNEY: No, we have not, Commissioner.

5 COMMISSIONER CLARK: Okay.

6 MS. MCKINNEY: And that's what orders have
7 shown. We have found that it's not an appropriate issue.

8 COMMISSIONER CLARK: So you're saying regardless
9 of whether or not there was a negotiation it would not be
10 something that we would arbitrate and impose into the
11 contract?

12 MS. MCKINNEY: Yes, Commissioner. Staff would
13 recommend that the Commission deny the inclusion of
14 specific language pertaining to penalty because we don't
15 normally deal with awards of damages.

16 COMMISSIONER CLARK: All right. I'm going to
17 deny the inclusion, and I would - I think it's appropriate
18 to say on two grounds. First off, it doesn't sound to me
19 like it was negotiated; and even if it had been the subject
20 of negotiation, the Commission has not arbitrated
21 provisions relating to liquidated damages or penalties.

22 Okay. Now is it your recommendation we proceed
23 through the draft prehearing order?

24 MS. MCKINNEY: Yes, Commissioner.

25 COMMISSIONER CLARK: All right. Are there any

1 changes through Page 4 down to the order of witnesses?

2 MS. MCKINNEY: Commissioner, I have one to make
3 for the record. On the original draft prehearing order on
4 Page 4, under Section V, "Prefiled Testimony and Exhibits;
5 Witnesses," the first sentence has been removed; and,
6 "Testimony of all witnesses to be sponsored by the parties
7 has been prefiled" has been removed from that page.

8 COMMISSIONER CLARK: And it should be in there?

9 MS. MCKINNEY: No, it has been removed. I was
10 just noting that for the record.

11 COMMISSIONER CLARK: Okay.

12 MS. MCKINNEY: Additionally, there was a request
13 from Ms. Kaufman that the direct adverse witnesses be moved
14 and placed behind her other witnesses. I notified
15 BellSouth of that change also, so now the direct adverse
16 witnesses for TCCF are on Page 5.

17 COMMISSIONER CLARK: Okay. All right. Are there
18 any other changes through Page 4 down to the order of
19 witnesses?

20 MS. KEYER: I just have one change. I need to be
21 shown on the front as entering an appearance.

22 COMMISSIONER CLARK: Okay. Does Nancy need to
23 stay on there too?

24 MS. KEYER: Yes, I think so.

25 COMMISSIONER CLARK: Okay. Ms. Kaufman.

1 MS. KAUFMAN: Yeah, Commissioner Clark, the
2 adverse witnesses that are listed on Page 3 that
3 Ms. McKinney referenced, beginning with Ms. Webb, those
4 witnesses need to be moved to follow Ms. Welch on Page 4
5 because they are part of our direct.

6 COMMISSIONER CLARK: Okay. All right. Well, but
7 nothing before the order of witnesses?

8 MS. KAUFMAN: No, ma'am, I'm sorry.

9 COMMISSIONER CLARK: Okay. So then the order of
10 witnesses you want to show -- Is that Mr. Ripper?

11 MS. KAUFMAN: Yes, ma'am.

12 COMMISSIONER CLARK: Mr. Keller and Ms. Welch,
13 and then the adverse witnesses?

14 MS. KAUFMAN: That's right.

15 COMMISSIONER CLARK: Okay. And then we would
16 move to BellSouth, and that is Hendrix, Arrington and
17 Caldwell. Would that be correct, at least as to the order?

18 MS. KEYSER: Yeah.

19 COMMISSIONER CLARK: Now Ms. Kaufman, tell me
20 about all these adverse witnesses. Are you going to take
21 their depositions so we have them ahead of time?

22 MS. KAUFMAN: Well, I think we have an issue
23 before you about that very thing, as to whether or not
24 BellSouth will produce these witnesses. Whether or not we
25 will call all of them, I cannot tell you at this point in

1 time; but we do have an issue in regard to their
2 unwillingness to make certain of them available. And we
3 can go to that now or go through the rest of the prehearing
4 statement.

5 COMMISSIONER CLARK: That's an awful lot of
6 adverse witnesses.

7 MS. KAUFMAN: Yes, ma'am.

8 COMMISSIONER CLARK: And I would certainly think
9 some of it's going to be redundant. Have you identified
10 why you want to call each one of those witnesses?

11 MS. KAUFMAN: Yes, and I think I can tell you,
12 Commissioner Clark, that we will not call every single
13 adverse witness that is on here, if that gives you any
14 comfort.

15 COMMISSIONER CLARK: Well, I want to know who you
16 want to call and why, and we'll put them on the list; and
17 you are going to depose them ahead of time so we have
18 the --

19 MS. KAUFMAN: I'm attempting to, yes.

20 COMMISSIONER CLARK: Okay. Now you have an issue
21 as to whether or not some people have been made available
22 or will be made available. Is that the motion to compel?

23 MS. KAUFMAN: Yes, ma'am.

24 COMMISSIONER CLARK: Okay. Who are you going to
25 depose between now and the hearing?

1 MS. KAUFMAN: Mr. Baker who appears -- Well, you
2 mean the people that are still in dispute?

3 COMMISSIONER CLARK: No, who have you scheduled
4 for deposition?

5 MS. KAUFMAN: We have scheduled for deposition
6 all of the Bullsouth witnesses that have prefiled
7 testimony. In fact, today your staff took the deposition
8 of Ms. Caldwell, and at the end of the week we will be
9 deposing the remaining Bell witnesses who have filed
10 testimony in this case.

11 COMMISSIONER CLARK: The adverse witnesses?

12 MS. KAUFMAN: The adverse witnesses, we are
13 attempting to depose Mr. Baker, who appears on Page 5, and
14 Mr. Wilburn, who is at the top of Page 6; and that is
15 related to our motion to compel.

16 COMMISSIONER CLARK: All right. What about these
17 other witnesses, if you're not going to depose them, what
18 do you expect them to say?

19 MS. KAUFMAN: I think that at this point in time,
20 Commissioner Clark, we can probably delete the adverse
21 witnesses with the exception of Mr. Baker and Mr. Wilburn.

22 COMMISSIONER CLARK: Okay. All right. And you
23 have filed a motion to compel to take Mr. Baker and
24 Mr. Wilburn's --

25 MS. KAUFMAN: Yes, ma'am.

1 COMMISSIONER CLARK: Okay. It's your motion;
2 I'll hear from you.

3 MS. KAUFMAN: Commissioner Clark, TCCF requested
4 of BellSouth that we be allowed to depose the four
5 witnesses that have filed prefiled testimony as well as
6 Mr. Baker and Mr. Wilburn. When we made that request, I
7 discussed it with Ms. Keyer, and she told me that they
8 would not voluntarily produce Mr. Baker and Mr. Wilburn
9 because, as I recall the conversation, she said she didn't
10 understand why we needed to depose those gentlemen.

11 I don't think I need to take much time telling
12 you that Rule 1.280 of the Florida Rules of Civil Procedure
13 governs the scope of discovery and it says: "The parties
14 may obtain discovery regarding any matter not privileged
15 that is relevant to the subject matter of pending action."

16 We can set aside the privilege exception.
17 There's been no claim that these gentlemen have any
18 privileged information that we are going to talk about.
19 They are employees of BellSouth. Both of them have been
20 intimately involved with TCCF in regard to the issues that
21 are before you. We are entitled to take their deposition
22 pursuant to Rule 1.280.

23 Ms. Keyer has said, well, there are other
24 witnesses who have prefiled testimony, and you can ask
25 whatever questions you might have of the witnesses that we

1 proffer to you. That may well be the case; however,
2 BellSouth does not have the right to instruct TCCF as to
3 who or who they may not ask relevant questions of.

4 Just to give you a little background --

5 COMMISSIONER CLARK: Backup, tell me why they
6 have relevant information.

7 MS. KAUFMAN: I was just going to go into that.

8 COMMISSIONER CLARK: Okay.

9 MS. KAUFMAN: Okay. Mr. Wilburn, as I understand
10 it, manages the account team that is assigned to TCCF. Any
11 issues that are outstanding, that cannot be resolved, go to
12 Mr. Wilburn; that's my understanding of the process. He
13 has knowledge about many of the OSS issues that you are
14 going to hear about at hearing. And if you flip through
15 TCCF's direct testimony, you'll see there's a lot of
16 correspondence and memoranda attached to the various
17 witnesses' testimony which either came or went to
18 Mr. Wilburn or on which he is shown as receiving a copy.
19 He's intimately familiar, particularly with the OSS
20 problems that TCCF has been having.

21 Mr. Baker, as I understand his position, is a
22 senior marketing and sales person for the CLEC support
23 group. Again, Mr. Baker, if you review the correspondence,
24 you will see him being copied on various memoranda and
25 letters. And again, he has knowledge of many of the issues

1 that you're going to hear about.

2 They haven't made a claim that these gentlemen do
3 not have relevant information. They just want us to ask
4 the questions that we have of different people, and we
5 think we are entitled to ask them of any BellSouth
6 employees that have information that's relevant. Ms. Keyer
7 says in her motion that this is an attempt to harass
8 BellSouth. We have offered to take these depositions by
9 telephone. We are not attempting to harass them; however,
10 because they have refused to produce these gentlemen, we
11 have had to have your clerk issue subpoenas, which have
12 been served on them, for depositions as well as for the
13 hearing.

14 If we take these gentlemen's depositions and we
15 find that they have nothing to contribute, then I will
16 inform Ms. Keyer that they will be released from their
17 subpoenas and they won't have to appear at the hearing.
18 But at this point, we think they have relevant information,
19 and under the rules, we are certainly entitled to depose
20 them.

21 Now in the normal course of events, I would have
22 served the subpoena, and I guess Ms. Keyer would have moved
23 to quash; but given the time frame and the fact that we
24 were going to have the prehearing today, we wanted to get
25 this issue in front of you so we could have a ruling. And

1 | we have agreed that if you grant the motion to compel that
2 | these gentlemen will be produced for telephonic deposition
3 | on the 18th. So that's why I followed the process of
4 | filing the motion rather than waiting for her to quash the
5 | subpoenas or move to quash them.

6 | COMMISSIONER CLARK: Okay. Ms. Keyer.

7 | MS. KEYER: Commissioner Clark, I would like to
8 | make -- state at the outset that BellSouth has not refused
9 | to produce these witnesses. BellSouth was trying to be
10 | reasonable and work with TCCF on these witnesses. As
11 | indicated in my response, TCCF notified BellSouth on
12 | January 4th -- we have a discovery deadline of January
13 | 15th. They notified me on January 4th that they wanted to
14 | take the deposition of six individuals, two of which are
15 | Mr. Baker and Mr. Wilburn.

16 | When I tried to schedule their, the depositions
17 | of their witnesses, Ms. Kaufman was not available for that
18 | week, the week of the 4th. I was not going to be available
19 | today, tomorrow, and the next day, I think it was three
20 | days, and we agreed on the 14th and the 15th to take the
21 | depositions. In fact, I'm going to be taking their
22 | witnesses' deposition at the end of those days.

23 | The depositions of Mr. Baker and Mr. Wilburn
24 | appear to be duplicative and, frankly, harassment because
25 | Mr. Baker is a vice president of sales. He's over the

1 whole organization. He had some limited contact with TCCF,
2 but Mark Cathey who works directly under Mr. Baker has had
3 the most contact with TCCF and has any and all relevant
4 information that TCCF could, frankly, need or want or that
5 would be relevant to the issues in this case.

6 Mr. Baker's involvement involved settlements that
7 are for time periods that are not at issue in this case.
8 The issue is for time periods other than when settlements
9 and adjustments have been made, and Mr. Baker's involvement
10 was with the settlement with TCCF that wipes out any
11 knowledge that he may have about issues that occurred prior
12 to that time. So I don't know what information, frankly,
13 Mr. Baker has that's relevant.

14 Mr. Wilburn --

15 COMMISSIONER CLARK: Hang on a minute.

16 MS. KEYER: I'm sorry.

17 COMMISSIONER CLARK: He is the senior marketing
18 person for CLECs. He would have some knowledge about TCCF;
19 is that correct?

20 MS. KEYER: Yes.

21 COMMISSIONER CLARK: I guess, you know, I don't
22 feel like I can say no to the right to depose someone who
23 conceivably has relevant information; and as I understand
24 it now, you have eliminated, I don't know -- There are 23
25 adverse witnesses that you have listed that you have -- you

1 no longer need to call for any reason?

2 MS. KAUFMAN: I didn't count them up, but if
3 that's what it is, yes.

4 COMMISSIONER CLARK: Okay. Now I would agree
5 with you that a list that long looks like it is beyond what
6 needs to be done, but if Mr. Baker has had -- is over that
7 business area, I don't know how I can say no.

8 MS. KEYER: Well, I guess if he doesn't have any
9 information that Mark Cathey doesn't have, I don't
10 understand the relevance or the need to take his
11 deposition.

12 COMMISSIONER CLARK: Has Mark Cathey's deposition
13 been taken?

14 MS. KEYER: It will be taken, and he has filed
15 prefiled testimony, and he has had most of the contacts
16 with TCCF. He reports to Mr. Baker.

17 COMMISSIONER CLARK: Well, it may work out that
18 there is no reason to take Mr. Baker's testimony if he has
19 all the information, but --

20 MS. KEYER: That's what I suggested to
21 Ms. Kaufman, that, you know, let's take these other
22 witnesses first. There are five BellSouth witnesses in
23 this case to address all these issues, and if Mr. Cathey or
24 some other witness cannot address the issues that they
25 think only Mr. Baker can address, then we would produce

1 him. But, you know, to produce a vice president, and not
2 that he's higher or mightier than thou, but to testify on
3 something that he had minimal contact that really is not
4 relevant to the case, I don't think is appropriate.

5 MS. KAUFMAN: Commissioner Clark.

6 COMMISSIONER CLARK: Ms. Kaufman, tell me again
7 what testimony you think will come from Mr. Baker that's
8 relevant to the case.

9 MS. KAUFMAN: Commissioner Clark, as you
10 mentioned, Mr. Baker is a senior marketing and sales person
11 for a CLEC support group. I disagree, just because
12 Mr. Calhey might be able to answer a question, that doesn't
13 mean that he is going to be giving the same answer that
14 Mr. Baker does; and we have the right to talk to Mr. Baker,
15 see what he knows about what has gone on with TCCF.
16 He has a lot of knowledge about how the CLEC support
17 group functions, and he has personal knowledge, in my
18 understanding, of the interaction between TCCF and
19 BellSouth. Just because BellSouth has not chosen to
20 utilize him as a witness, doesn't have anything to do
21 with TCCF's right to do discovery.

22 COMMISSIONER CLARK: All right. Tell me what you
23 expect -- what testimony you expect to elicit from him that
24 is relevant to which issues.

25 MS. KAUFMAN: Mr. Baker has intimate knowledge of

1 the ESSX issue which is Issue Number -- Complaint Issue
2 Number 1, I believe, as well as complaint -- Arbitration
3 Issue 2, I believe. He also has knowledge in regard to the
4 operation of the OSS systems, which is the other issue, I
5 believe, Arbitration Issue Number 1. I can't tell you at
6 this point Commissioner Clark, nor do I think I should be
7 required to tell you the exact questions that we are going
8 to ask of him.

9 COMMISSIONER CLARK: No, I'm not looking for
10 exact questions; I'm just looking for the area that you are
11 going to inquire into and how it relates to the issues.

12 MS. KAUFMAN: As I said, he has direct knowledge
13 of the two ESSX issues that are before you. And as head of
14 the CLEC support group, he has knowledge of how the OSS
15 functions as well.

16 COMMISSIONER CLARK: Okay. Ms. Keyer.

17 MS. KEYER: First of all, I'm not aware of any
18 knowledge that Mr. Baker has about OSS issues or any
19 involvement that he has had on that. Any knowledge that he
20 has about the ESSX issue is -- as I said, was prior to a
21 settlement that was entered into with BellSouth and TCCF
22 that released BellSouth of any and all complaints or
23 anything to do with that prior to the date that he entered
24 into -- we entered into those agreements, and Mr. Baker has
25 no knowledge outside of that. Outside of the settlement of

1 that, he has no knowledge that's relevant to this case.

2 Mr. --

3 COMMISSIONER CLARK: All right. Tell me about
4 Mr. Wilburn.

5 MS. KEYER: Mr. Wilburn is in the -- he reports
6 directly to Mr. Cathey, and what I heard Ms. Welch say is
7 something about OSS complaints, et cetera. The issues in
8 the case are what are the costs of OSS. I don't know what
9 - I'm not sure what relevant information Mr. Wilburn has
10 to the issues. Mr. Cathey will be testifying -- I mean
11 Mike Wilburn reports directly to Mr. Cathey.

12 MS. KAUFMAN: Commissioner Clark, if you look
13 at --

14 COMMISSIONER CLARK: As I understand, he manages
15 the account team assigned to TCCF and outstanding issues go
16 to him, and he is familiar with TCCF; is that correct?

17 MS. KEYER: That is correct.

18 COMMISSIONER CLARK: Okay.

19 MS. KAUFMAN: I was just going to point out that
20 in their response BellSouth says Mr. Wilburn and Mr. Cathey
21 have worked hand in hand on TCCF's account. It goes to
22 that same point.

23 COMMISSIONER CLARK: Ms. Keyer, I think a case
24 has been made that they need to be made available for
25 depositions. I think they come under the scope of

1 discovery.

2 MS. KEYER: Could I just add, on Mr. Baker -- I
3 understand the point on Mr. Wilburn, although I believe
4 Mr. Cathey can address whatever issues Mr. Wilburn can; but
5 on

6 COMMISSIONER CLARK: That may be true, but it may
7 be that --

8 MS. KEYER: I understand. But on Mr. Baker, I
9 really don't, do not see the necessity in him because his
10 knowledge, frankly, is limited, like I said, to
11 settlement -- and that's not at issue in this case -- to
12 issues that have been settled.

13 COMMISSIONER CLARK: Well, it may be a very short
14 deposition. I mean he may say, I just don't know about
15 those things; but it appears to me by virtue of his
16 position and what he handles that he may have relevant
17 information; and that appears -- the scope of discovery is
18 it's reasonably designed to lead to relevant information.

19 MS. KEYER: With all due respect, would that mean
20 that my boss' boss, you see what I'm saying, would be --

21 COMMISSIONER CLARK: Yeah.

22 MS. KEYER: Because he runs the Department?

23 COMMISSIONER CLARK: Could be. I mean if he
24 has --

25 MS. KEYER: Well, I --

1 COMMISSIONER CLARK: But as I understand it, he's
2 the VP --

3 MS. KEYER: I don't think that's the purpose of
4 the rules.

5 COMMISSIONER CLARK: -- senior marketing position
6 for CLEC support group, and Ms. Kaufman has outlined the
7 information she is interested in obtaining, CLEC support
8 group functions and interactions.

9 MS. KEYER: Well, it will be a short deposition
10 because he doesn't have any day-to-day knowledge of TCCF
11 outside of what -- their initial contacts on the
12 settlement.

13 COMMISSIONER CLARK: Okay. When are the
14 depositions scheduled of the witnesses, the five Is it
15 five witnesses BellSouth has listed? Yeah. When are those
16 witnesses' depositions scheduled for again?

17 MS. KAUFMAN: One was done today.

18 COMMISSIONER CLARK: Which one?

19 MS. KAUFMAN: Ms. Caldwell. Your staff noticed
20 that one. And Ms. Arrington and Mr. Hendrix are scheduled
21 for Thursday, the 14th. Mr. Pate and Mr. Cathey are
22 scheduled for the 15th, I believe. We attempted to
23 schedule Mr. Baker and Mr. Wilburn, but until this matter
24 was resolved, BellSouth would not agree to schedule them
25 this week; so that's why we agreed to do them on Monday the

1 18th, a week from today.

2 COMMISSIONER CLARK: But do I understand your
3 position that if you get the information you need from the
4 five witnesses that are listed there may be no need to
5 depose Mr. Baker or Mr. Wilburn?

6 MS. KAUFMAN: No, that is not our position. We
7 want to depose Mr. Baker and Mr. Wilburn because, as I
8 said, we may ask the same question to Mr. Cathey, he may
9 give an answer, but it may not be the same answer, for
10 example, that Mr. Wilburn will give. So we --

11 COMMISSIONER CLARK: Staff.

12 MS. KAUFMAN: I'm just -- So that is the reason
13 that regardless of the order of the depositions or whose
14 deposition comes first we want to depose Mr. Baker and
15 Mr. Wilburn.

16 COMMISSIONER CLARK: And you may be calling them
17 as adverse witnesses?

18 MS. KAUFMAN: Yes, ma'am, depending on their
19 deposition. Perhaps we'll be able to enter the deposition
20 into the record if we have agreement; or if not, if they
21 have relevant information, we will call them as adverse
22 witnesses at the hearing.

23 COMMISSIONER CLARK: And you are going to hold
24 the depositions by phone?

25 MS. KAUFMAN: Yes, ma'am.

1 COMMISSIONER CLARK: Okay. Staff, I guess I'm
2 inclined to grant the motion to compel for these two
3 witnesses only.

4 MS. MCKINNEY: Staff recommends that.

5 COMMISSIONER CLARK: Okay. And those are the
6 only adverse witnesses we'll have to deal with as far as
7 their testimony, filing their testimony?

8 MS. KEYER: Yes, Commissioner.

9 COMMISSIONER CLARK: So we may be filing a
10 deposition?

11 MS. KAUFMAN: Yes, depending on what happens at
12 the deposition Monday.

13 COMMISSIONER CLARK: Okay.

14 MS. KEYER: Just for the record, so that we are
15 not back, I need to work with them on the times because
16 those were subject to their availability.

17 COMMISSIONER CLARK: Yes, ma'am. I would agree
18 with that. Do we have to -- All right. We should go
19 back to the prehearing order; is that correct?

20 MS. MCKINNEY: Yes, Commissioner.

21 COMMISSIONER CLARK: All right. And so the
22 adverse witnesses for TCC will be limited to Mr. Baker and
23 Mr. Wilburn, and they will follow -- in the prehearing
24 order they will follow the witnesses for TCCP.

25 Okay. Any changes to basic positions?

1 (NO RESPONSE)

2 COMMISSIONER CLARK: Any changes to the complaint
3 issue?

4 (NO RESPONSE).

5 COMMISSIONER CLARK: Or the arbitration issue?

6 (NO RESPONSE).

7 COMMISSIONER CLARK: Let me ask staff, on Page 8,
8 are these part of the basic positions, the complaint issue
9 and the arbitration issue, and then we begin with the
10 numbered issues on Page 9?

11 MS. MCKINNEY: Correct, those are the actual
12 issues.

13 COMMISSIONER CLARK: Okay. All right.

14 MS. MCKINNEY: There is a correction to
15 Arbitration Issue Number 2, Page 12 of the corrected
16 draft. BellSouth has submitted their position, which
17 they've also handed to TCCF, and staff will be inserting
18 it.

19 COMMISSIONER CLARK: All right. Let me ask you,
20 Ms. Keyer, are there any changes for BellSouth through Page
21 12 of the prehearing order?

22 MS. KEYER: No, none other than what Ms. McKinney
23 just referred to on Page 12.

24 COMMISSIONER CLARK: Okay.

25 MS. KEYER: To insert BellSouth's position on

1 Issue 2 for the arbitration.

2 COMMISSIONER CLARK: All right. Any changes for
3 you, Ms. Kaufman?

4 MS. KAUFMAN: No, Commissioner.

5 COMMISSIONER CLARK: Okay. Ms. McKinney, are
6 there any other changes we have to take up to the
7 prehearing order? These are just the -- I guess through
8 the exhibit list, Page 19, any changes?

9 MS. MCKINNEY: Just for the record, on Page 20,
10 under Ms. Caldwell, we are going to add in DC-2.

11 COMMISSIONER CLARK: Okay.

12 MS. MCKINNEY: And nothing else that I'm aware of
13 at this time.

14 COMMISSIONER CLARK: Well, then let me ask it
15 this way: Are there any other changes to the prehearing
16 order at this time, Ms. Keyer?

17 MS. KEYER: No.

18 COMMISSIONER CLARK: Ms. Kaufman?

19 MS. KAUFMAN: No, ma'am.

20 COMMISSIONER CLARK: Okay. There is an
21 outstanding motion to strike.

22 MS. MCKINNEY: Yes, that was related to the
23 proposed issue which you ruled on earlier would not be an
24 issue pertaining to this arbitration.

25 COMMISSIONER CLARK: Okay. So I should grant the

1 motion to strike?

2 MS. MCKINNEY: Yes, Commissioner.

3 COMMISSIONER CLARK: Okay. Is there anything
4 else I have to take up at this time?

5 MS. MCKINNEY: Yes, Commissioner. When we spoke
6 earlier, we were talking about the OSS issue, and you
7 wanted to address it with the parties and provide them the
8 options of how we can handle that.

9 COMMISSIONER CLARK: Yeah. Staff has come to me
10 and indicated, once again, that there keeps popping up in
11 these arbitration issues that perhaps we should handle
12 generically. I guess that's the OSS, the UNEs, the
13 collocation, and the geographic deaveraging. And staff
14 seems to -- their desire at this point is sort of to get
15 the Commission to do it generically, but we have them as
16 issues in this case. We can go forward and see what we can
17 resolve. I think there's always the possibility though
18 that the panel will be uncomfortable making these decisions
19 and maybe we have not accomplished anything. I'm willing
20 to go through in this proceeding -- and staff, if you could
21 kind of outline some of the possibilities that could come
22 out of this proceeding. I suppose they would find there's
23 not evidence and that it should be handled generically.
24 And we could set it but only on an interim basis. There
25 seemed like there was a third one, but I can't remember it

1 now.

2 MS. MCKINNEY: Commissioner, there's also the
3 option of us making a ruling pertaining to the OSS in this
4 case specifically where it's not setting precedent and the
5 rate could be used in other cases.

6 COMMISSIONER CLARK: And I guess I wanted to hear
7 from the parties, are you comfortable going ahead with the
8 case understanding that that -- trying to determine this
9 kind of issue in an arbitration may not be the way the
10 commissioners ultimately want to go?

11 MS. KEYER: I think we are.

12 COMMISSIONER CLARK: You're ready to go forward?

13 (MS. KEYER NODDED HEAD AFFIRMATIVELY)

14 COMMISSIONER CLARK: Okay.

15 MS. KAUFMAN: Commissioner Clark, I've just had a
16 moment to chat about it, and as you know, in that other
17 docket where the petition has been filed, we represent some
18 of the parties that have asked for a generic proceeding on
19 just those very issues. I would ask that we have a few
20 minutes to discuss it, and maybe I could give you a more
21 definitive answer.

22 COMMISSIONER CLARK: Well, okay, we'll take five
23 minutes. Let me just say that I'm inclined to go ahead and
24 move forward with it, but I'm going to urge the staff to
25 talk to the chairman and indicate that this is, you know,

1 this is something we've got to resolve -- we've got to look
2 at, look at the whole picture and resolve it one way or the
3 other, and rather than doing it on an adhoc basis, if
4 that's not what we are comfortable with.

5 MS. KAUFMAN: I guess I would say that we would
6 have some concern on the one hand setting the rates only
7 for this relatively small company. That would cause us
8 concern because we learned just today in the deposition
9 that the rates that are proffered here are set on a nine --
10 all nine state basis with the projection of the orders that
11 BellSouth projects getting from all the ALECs, not just
12 from this one small company. So I think that was one of
13 the approaches you mentioned that would cause us some
14 concern. But if we could have a few minutes, we could
15 probably give you a definitive answer.

16 COMMISSIONER CLARK: Okay.

17 (BRIEF RECESS)

18 COMMISSIONER CLARK: We'll go back on the record.

19 MS. KAUFMAN: Commissioner Clark, Ms. Welch, who
20 I failed to introduce at the beginning, who is the COO of
21 TCCF, she and I have discussed your question about the
22 generic proceeding, and we think that a generic proceeding
23 makes a lot of sense because, as you've referenced, you see
24 these same OSS issues coming up over and over again. And I
25 can tell you from having worked on this case and others as

1 well that you're probably not going to get agreement.
2 BellSouth says the OSS works. The resellers and the folks
3 that are trying to do the UNEs say it doesn't. So at some
4 point the Commission is going to have to reach some
5 conclusion about that, and since it's the same systems all
6 these people are using, it seems like a generic proceeding
7 makes sense. And it also is of some concern that we only
8 have a panel here and that we have a relatively small
9 company with not as many resources as perhaps some other
10 folks have, so

11 And the other thing that concerns us is that -
12 At least it's our understanding that some of the Bell
13 witnesses in this proceeding before you are not the folks
14 that are out in the field working with the resellers with
15 these systems, and we think those are folks you'd need to
16 hear from. But having said all that, I think we would be
17 willing to in effect sever out the OSS issue out of this
18 proceeding assuming that we are going to have some sort of
19 generic look at it so long as we could -- TCCF could
20 continue to operate under the agreement that they now have
21 until there was a final order in whatever generic
22 proceeding that you have, in so long as there was no
23 provision for any sort of retroactive billing if any
24 charges were to come out of a generic proceeding. So I
25 think under those conditions we would agree.

1 MS. KEYER: Well, I think the last part of that
2 basically decided us because we can't agree to go forward
3 under the old -- the whole purpose of the arbitration --

4 COMMISSIONER CLARK: You can't --

5 MS. KEYER: We can't agree to continue the old
6 agreement, you know. I had a couple of questions with the
7 generic docket, settle it once and for all and be precedent
8 setting all across the board; and secondly, in the interim,
9 if we pulled it out of this arbitration, is there going to
10 be some provision for some interim rates and then for a
11 true-up when the issue is decided in the generic docket?
12 So, you know, unless that were to happen, I'm not sure we
13 could even consider pulling it out.

14 COMMISSIONER CLARK: Let me just be sure that I
15 understand. You had an agreement, and you are now
16 renegotiating an agreement, and we heard of two issues that
17 you could reach agreement on. Okay.

18 MS. KAUFMAN: Commissioner Clark, if I could just
19 make one more comment about this. To my knowledge, and
20 Ms. Keyer could correct me, FOCF is the first company where
21 we are talking about these charges for OSS, where this
22 issue has come up. I think it's going to come up again and
23 again and again. I'd be very surprised if any CLEC would
24 agree to sign an agreement with a charge of 20 plus dollars
25 for processing each manual order, so it's going to come up

1 over and over again. And it seems somewhat inefficient,
2 and I might even use the word unfair to kind of place the
3 burden on a relatively small company to try and deal with
4 some of the issues that you will be looking at as they
5 relate to OSS.

6 COMMISSIONER CLARK: Let me ask the question: How
7 long is your current agreement? When does it expire?

8 MS. WELCH: The agreement was originally signed
9 May 28, '96, for a period of two years with successive
10 renewal periods of one year each for two additional years.
11 So we are midway through the first of the two additional
12 years.

13 COMMISSIONER CLARK: Okay. So that if this issue
14 isn't resolved then you go under your current contract
15 until it's resolved?

16 MS. WELCH: Correct.

17 COMMISSIONER CLARK: Okay. Well, we'll go
18 forward with it as in this case; but, you know, I don't
19 know that everyone -- all the commissioners are going to
20 feel comfortable doing that, and I understand staff is
21 going to continue to pursue with the chairman's office some
22 sort of generic proceeding that may address all the issues
23 that affect all these agreements and perhaps should be done
24 on a generic basis, so we'll leave it the way it is and
25 we'll go forward.

1 Anything else that we need to take up at this
2 time?

3 MS. MCKINNEY: Not at this time, Commissioner.

4 COMMISSIONER CLARK: Ms. Keyer?

5 MS. KEYER: None for BellSouth.

6 MS. KAUFMAN: No, ma'am.

7 COMMISSIONER CLARK: Thank you all very much.

8 WHEREUPON, THE HEARING WAS ADJOURNED)

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CERTIFICATE

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 12th day of January, 1999.


NANCY S. METZKE, CCR, RFR