

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

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In the matter of :
Comprehensive Review of the :
Revenue Requirements and Rate : DOCKET NO. 920260-TL
Stabilization Plan of SOUTHERN :
BELL TELEPHONE AND TELEGRAPH :
COMPANY :

_____ :
Show Cause Proceeding Against :
SOUTHERN BELL TELEPHONE AND :
TELEGRAPH COMPANY for : DOCKET NO. 900960-TL
Misbilling Customers. :

_____ :
Petition on behalf of Citizens :
of the State of Florida to :
Initiate Investigation into : DOCKET NO. 910163-TL
Integrity of SOUTHERN BELL :
TELEPHONE AND TELEGRAPH :
COMPANY's Repair Service :
Activities and Reports. :

_____ :
Investigation into SOUTHERN :
BELL TELEPHONE AND TELEGRAPH :
COMPANY's Compliance with : DOCKET NO. 910727-TL
Rule 25-4.110(2), F.A.C, :
Rebates. :

PROCEEDINGS: MOTION HEARING

BEFORE: CHAIRMAN J. TERRY DEASON
COMMISSIONER THOMAS M. BEARD
COMMISSIONER SUSAN F. CLARK
COMMISSIONER JULIA L. JOHNSON

920260MH.TAN
66 pages

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1 DATE: Friday, March 5, 1993

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3 TIME: Commenced at 9:30 a.m.
4 Concluded at 10:55 a.m.

5 PLACE: FPSC Hearing Room 106
6 Fletcher Building
7 101 East Gaines Street
8 Tallahassee, Florida

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10 REPORTED BY: JOY KELLY, CSR, RPR
11 Official Commission Reporter

12

13 APPEARANCES:

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17 and NANCY WHITE, 675 Peachtree Street, Northwest, Suite
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19 529-6361, on behalf of BellSouth Telecommunications, Inc.,
20 d/b/a Southern Bell Telephone and Telegraph Company.

21 DONALD BELL, Foley & Lardner, Post Office Box 508,
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24 MICHAEL B. TWOMEY, Assistant Attorney General,
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 Tallahassee, Florida 32399-1050, Telephone No. (904)
 488-8253, on behalf of the Attorney General of the State
 of Florida.

1 APPEARANCE CONTINUED:

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3 Suite 1410, Tallahassee, Florida 32301, Telephone No.
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5 Southern States, Inc.

6 PETER M. DUNBAR, Haben, Culpepper, Dunbar &
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11 Reeves, 315 South Calhoun Street, Suite 716, Tallahassee,
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13 Florida Interexchange Carriers Association.

14 LAURA L. WILSON, Messer, Vickers, Caparello, Madsen,
15 Lewis, Goldman & Metz, P.A., Post Office Box 1876, Tallahassee,
16 Florida 32302-1876, Telephone No. (904) 224-4359, on behalf
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18 FLOYD R. SELF, Messer, Vickers, Caparello,
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21 (904) 224-4359, on behalf of McCaw Cellular
22 Communications of Florida, Inc.

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1 APPEARANCES CONTINUED:

2 JACK SHREVE, Public Counsel, CHARLES J. BECK
3 and SUE RICHARDSON, Office of Public Counsel, c/o The
4 Florida Legislature, 111 West Madison Street, Room 812,
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7 Florida.

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10 Street, Tallahassee, Florida 32399-0863, Telephone No.
11 (904) 487-2740, appearing on behalf of the Commission
12 Staff.

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I N D E X

MOTIONS

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Public Counsel's Motion to Continue
Argument by Mr. Beck
Argument by Mr. Twomey
Argument by Mr. Anthony

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CERTIFICATE OF REPORTER

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P R O C E E D I N G S

(Hearing convened at 9:30 a.m.)

CHAIRMAN DEASON: Call this motion hearing to order. Counsel, will you please read the notice?

MR. HATCH: Pursuant to notice, this time and place have been set for a Motion Hearing in Docket 910260, et al, all the rest of the four dockets. It's 910727, 910163, 900960.

MS. WATTE: Tracy, that's 920260? Tracy?
920260?

MR. HATCH: Yes, ma'am.

CHAIRMAN DEASON: Take appearances.

MR. ANTHONY: Hank Anthony, Doug Lackey, on behalf of Southern Bell Telephone and Telegraph Company.

MR. SELF: Floyd Self, on behalf of McCaw Cellular Communications.

MR. BELL: Donald Bell, Foley and Lardner, on behalf of the American Association of Retired Persons.

MR. TWOMEY: Mike Twomey, on behalf of the Attorney General of the state of Florida.

MR. SHREVE: Jack Shreve, Charlie Beck and Sue Richardson, on behalf of the Citizens of Florida.

MR. TYE: Michael W. Tye, on behalf of AT&T Communications of the Southern States, Inc.

1 MR. DUNBAR: Peter Dunbar; Haben, Culpepper,
2 Dunbar and French, on behalf of the Florida Cable
3 Television.

4 MS. WILSON: Laura Wilson, on behalf of the
5 Florida Pay Telephone Association.

6 MS. KAUFMAN: Vicki Gordon Kaufman of the law
7 firm McWhirter, Grandoff and Reeves, on behalf the
8 Florida Interexchange Carriers Association.

9 MR. HATCH: Tracy Hatch, Angela Green and
10 Jean Wilson, appearing on behalf of the Commission
11 Staff.

12 CHAIRMAN DEASON: Mr. Hatch, how do you
13 propose we proceed at this point?

14 MR. HATCH: Public Counsel has filed basically
15 two motions seeking to postpone these proceedings. It's
16 their motion. Perhaps we should start with them.

17 CHAIRMAN DEASON: Mr. Beck.

18 MR. BECK: Thank you, Mr. Chairman.

19 Commissioners, in this past January the
20 Commission consolidated the hearings in the Southern
21 Bell rate case with the dockets concerning
22 investigations into Southern Bell's repair activities
23 and into their sales activities. Your consolidation of
24 these dockets recognized the interrelationship between
25 the investigative dockets and the rate case. Both the

1 investigations and the rate case have dealt, and do
2 deal, with quality of service. The essence of the
3 investigation deals with the quality of service
4 Southern Bell provides its customers as well as the
5 reports that Southern Bell provides to this Commission
6 concerning that quality of service.

7 The rate case itself, independently of that,
8 had issues about quality of service in it. In fact,
9 that's reflected in your Prehearing Order. Issue 31,
10 which was always in the rate case, asks whether
11 Southern Bell's quality of service is adequate. And
12 there's an Issue 9a that asks whether a penalty should
13 be imposed on Southern Bell FOR poor quality of
14 service. Testimony was filed in both the dockets
15 concerning quality of service.

16 In this case, quality of service has a
17 particular importance because the rate case, in part,
18 is to serve two functions. One is to review the
19 so-called incentive regulation plan that this
20 Commission implemented for Southern Bell in 1988, and
21 also to review their proposal for further relaxation of
22 regulation on a going-forward basis.

23 During the 1988 hearings, quality of service
24 was an important point because there was a concern that
25 incentive regulation might give Southern Bell an

1 incentive to let quality of service slip in order to
2 pursue short-term profits.

3 Your order implementing incentive regulation
4 said the following: "There is a concern that the
5 Company might improve earnings over the short run by
6 letting quality of service slip. In order to
7 discourage and detect such actions, our Staff will
8 continue its ongoing review of the service quality as
9 required by Commission rules and will consider more
10 expanded service audits if any significant slippage in
11 quality is detected. The Commission will be notified
12 if service quality significantly deteriorates during
13 the course of this plan or if the Commission rules
14 concerning service standards are violated. The
15 Commission may then consider imposing a penalty on
16 Southern Bell." And that's verbatim from the
17 Commission's 1988 order that started off the incentive
18 plan.

19 In addition to that special importance the
20 quality of service has because of the incentive
21 regulation that's being reviewed in this docket,
22 statutorily the Commission is required in any event to
23 consider quality of service when setting rates for the
24 company and in considering the return on equity that
25 the Commission will set for Southern Bell. That's true

1 whether or not there is so-called incentive regulation
2 at issue.

3 I'd like to just briefly review the status of
4 our efforts to obtain information about Southern Bell's
5 quality of service issues.

6 Twenty-one months ago we sent interrogatories
7 to Southern Bell asking them to name the persons who
8 had knowledge about various types of abuses. That went
9 through the Commission with three different orders,
10 went to the Supreme Court. The Supreme Court denied
11 Southern Bell's petition for review. We received the
12 responses to those interrogatories this past Friday.

13 I should say most of the interrogatories.
14 There are still a few items outstanding. But we have,
15 I think, the bulk of the responses, and it's a very
16 large list of names of persons that we have never heard
17 of before, spanning the entire state and spanning a
18 variety of quality of service issues.

19 We anticipate that we have well over 100
20 depositions to take to find out with specificity what
21 these persons know.

22 Now, the actual names are, according to
23 Southern Bell, confidential, which raises just a whole
24 new problem on that. They are stating that the actual
25 names of the people who have knowledge about issues on

1 quality of service is confidential, and they filed a
2 request for a temporary protective order that we will
3 respond to early next week.

4 COMMISSIONER BEARD: I thought that was one
5 of the issues we dealt with -- that I dealt with.

6 MR. BECK: You've dealt with this. It seems
7 to me for years that we've been arguing this point.

8 COMMISSIONER BEARD: Now, the one that went
9 to the Supreme Court, I thought that was one of the
10 issues, was that the names were confidential, and I
11 said no.

12 MR. BECK: No, it was on whether they were
13 privileged. The Supreme Court looked at the threshold
14 issue about whether they'd have to produce the names at
15 all.

16 COMMISSIONER CLARK: I think, Commissioner
17 Beard, the Supreme Court only recently upheld your
18 order. They only recently agreed with you on --
19 February 4th is when they issued their order saying
20 that it is not privileged and it must be released.

21 COMMISSIONER BEARD: I thought we even went
22 to the confidentiality issue --

23 MR. BECK: Commissioner Beard, you issued
24 orders, I think, it was about two years ago that there
25 was a series of matters raised about this where

1 Southern Bell claimed confidentiality, and you turned it
2 down. It wasn't specifically on these interrogatories.

3 COMMISSIONER BEARD: Time flies when you're
4 having fun, I guess.

5 MR. BECK: But none the less, we have that
6 issue there. Confidentiality still exists. We filed
7 two sets of testimony on November 16. It took an order
8 by this Commission to get them even to file the request
9 for confidentiality. That has not been resolved. We
10 have Southern Bell's request and our response opposing
11 confidentiality on the testimony we filed November
12 16th.

13 In any event, notwithstanding the claims of
14 confidentiality permeating that, you know, we will be
15 taking well over hundred depositions based on the
16 information we received last Friday. We'll explore the
17 extent of falsification of repair records, the reports
18 that they filed to the Commission, and it will span the
19 entire geographic area of Florida.

20 We want to explore the time spent on these
21 activities and how the Company accounted for the time
22 these people spent that relates to falsifications.
23 That could relate to an accounting adjustment in this
24 case as far as whether that time should be charged to
25 regulated ratepayers. We further expect to explore the

1 impact of incentive regulation on these practices.

2 We've submitted testimony showing the
3 relationship between these practices and incentive
4 regulation. Bell opposes it, but we have our testimony
5 on it, and we expect to find more about it as we
6 proceed with these depositions.

7 In fact, we think all of this will go to the
8 credibility of the data that they submit to the
9 Commission in total.

10 Now, in addition to that, there is the
11 internal audits that you ordered them to produce about
12 two weeks ago. There's a written order issued February
13 23rd that related to the full Commission agenda
14 conference we had on that. I have been advised by
15 Southern Bell that they plan to ask the Florida Supreme
16 Court to review that order.

17 Those internal audits are matters that we
18 asked to one year ago. As soon as Southern Bell
19 refused to turn over those audits, we moved, through
20 this Commission, to issue an order forcing Bell to
21 produce those documents.

22 Now, the Prehearing Officer also issued an
23 order on February 23rd, and it ordered Southern Bell to
24 produce statements and summaries, a statistical
25 analysis and work notes concerning disciplinary

1 actions. I understand from Southern Bell that they
2 plan to ask the full Commission to review that, and if
3 the full Commission should uphold the Prehearing
4 Officer's ruling, that they would intend to take that
5 order as well to the Florida Supreme Court.

6 Finally, there are a number of motions that
7 are still pending. We filed a motion on July 2nd,
8 1992, regarding a deposition of Southern Bell's Vice
9 President of Network, whose name is Sanders, and their
10 head of personnel whose name's Cuthbertson.

11 We took that deposition on June 17th, 1992.
12 Those persons refused to answer, I think, 58 different
13 questions we posed during the deposition. We filed the
14 Motion to Compel on July 2nd. I expect the Prehearing
15 Officer's going to rule soon on that. There are other
16 motions as well pending that were filed more recently.
17 They go to other depositions as well as the reaudit of
18 the matters concerning the audit that you looked at a
19 few weeks ago.

20 Commissioners, it's unheard of to have a
21 trial with discovery still outstanding. And, quite
22 frankly, we think it's a violation of our rights to due
23 process to proceed with a hearing while all of this
24 information is outstanding. Southern Bell's entitled
25 to take your orders to the Florida Supreme Court.

1 Likewise, we're entitled to have the information before
2 we have to go to a trial on the issues in the case.

3 We need this information both to file testimony.
4 We did not file testimony in the investigation docket that
5 the Prehearing Officer ordered that we'd have to file
6 February 15th. We believe we should have a right to find
7 out the information and pursue the discovery we sought.
8 In fact, get the information that you've told them that
9 they have to produce to us before we file testimony. We
10 also need that information before we cross examine
11 Southern Bell's witness.

12 For example, their first witness Southern
13 Bell tends to put up claims that just a few persons
14 were involved in these matters. We already know that's
15 not true and we intend to pursue that with a lot of
16 diligence.

17 Okay. So much for the outstanding discovery and
18 why we believe that it mandates a delay of this case.

19 On top of that, there's the audit that's
20 pending that the Staff is attempting to conduct about
21 affiliated transactions. Commissioners, I know many of
22 you were at the NARUC conference earlier this week.
23 One of the matters you may have heard there was about a
24 report that was issued by the General Accounting Office
25 concerning audits at the FCC. As you know, about 75%

1 of Southern Bell's investment and expenses are
2 intrastate under your jurisdiction, about 25% of that
3 is under the FCC's jurisdiction.

4 Last week the General Accounting Office put
5 out a report concluding that a FCC had an insufficient
6 number of auditors on its staff to ensure that the
7 FCC's rules are protecting ratepayers from
8 cross-subsidization. The report stressed the
9 importance of on-site audits, noting that they had
10 detected instances of cross-subsidization that other
11 FCC safeguards implemented since 1987 had not
12 disclosed.

13 The GAO found that FCC auditors had found
14 over \$300 millions of misallocations, which carriers
15 charged expenses to the regulated side of their
16 business. And carriers' affiliates had overcharged
17 regulated carriers for services and supplies. And
18 those misallocations were not found by the CPAs doing
19 audits of the Company or the FCC's review of the CPAs'
20 audits.

21 Now, on the in-state side where 75% of the
22 investment and expenses are, we have this Commission.
23 And this Commission Staff is attempting to conduct
24 exactly the same type of audit that GAO audit discusses
25 about FCC audits. They are looking at affiliated

1 transactions.

2 It's necessary to have this Staff's audit of
3 affiliate transactions because, first of all, that's a
4 revenue requirements issue; it's an accounting issue
5 that should be in the rate case. The Commission has a
6 statutory obligation to review and prohibit
7 cross-subsidization, and you can't do this without
8 having that review of the affiliate transactions.

9 Southern Bell, in its response to our motions
10 to postpone the hearings, claims -- and I'll just read
11 directly from their motion, they say that "The Staff of
12 the Public Service Commission has already performed an
13 audit of affiliated transaction issues and has prefiled
14 testimony in the docket relating to this audit."
15 That's word for word from Southern Bell's pleading.

16 Now, let me read to you what the Staff audit
17 says, and this is from the Staff's rate case audit on
18 cost allocation manual. It says "Except for a review
19 of the Coopers & Lybrand work papers, the scope of this
20 audit did not include affiliated transactions. This
21 will be pursued in the NARUC multistate audit."

22 I think Southern Bell's statement is simply
23 wrong. You do not have the audit of the affiliated
24 transaction.

25 If you don't have that audit in this rate

1 case, the question we ask is what good is it? It seems
2 to me that if you go forward with a rate case without
3 having that audit, you're sending a message loud and
4 clear to Southern Bell that it pays to obstruct the
5 Staff. You heard a number of weeks ago about Southern
6 Bell's responses to the Staff in that audit. If you go
7 forward, we think you would be telling the Staff that
8 their audit is unimportant. The bottom line is are you
9 going to make Southern Bell produce that information
10 and have the benefit of the Staff's audit in this rate
11 case or will it be a matter that has no impact when it
12 comes to actually setting Southern Bell's rates.

13 Commissioners, let me summarize. We have
14 prehearing orders and one issued in November and one in
15 January. The one we -- and we appealed both of them
16 for review by the full Commission. According to the
17 notice, we're just looking at the second one, when, in
18 fact, our first Motion for Consideration by the
19 Commission has never been taken to the full Commission.
20 The two Prehearing Orders deny us due process by making
21 us go forward without having the information you've
22 told Southern Bell to provide us.

23 They make the Commission unable to carry out
24 its statutory obligations: to review quality of service
25 and cross-subsidization issues. We believe you should

1 postpone this case a sufficient amount of time so we
2 can get to discovery and you can get the audit from
3 your Staff on affiliated transactions.

4 It would seem to make sense to have Southern
5 Bell file new MFRs with the 1992 test year, that at
6 this point the 1991 test year is stale. In fact, I
7 can't think of a case where you would be setting rates
8 late in 1993 based upon a 1991 test year. It's already
9 hopelessly stale. So we think since Southern Bell will
10 be delaying the case by taking cases to the Supreme
11 Court, we should get a new test year and perhaps set
12 the case toward the end of this year for hearing.

13 Thank you.

14 CHAIRMAN DEASON: Mr. Anthony.

15 MR. ANTHONY: Mr. Chairman, I believe that
16 the Attorney General also filed a motion on this
17 matter. So if we could hear his argument first then
18 I'll respond to both, if that's agreeable.

19 CHAIRMAN DEASON: Mr. Twomey.

20 MR. TWOMEY: Thank you, Mr. Chairman. I'll
21 try and be brief.

22 The Attorney General's here to support Public
23 Counsel's motion that the hearings in this case
24 scheduled for March be continued until such time as the
25 Commission and its Staff, and the other parties to the

1 case, have the critical and necessary information to go
2 forward so that they can have a meaningful examination
3 of the issues.

4 The question is: Can you go to hearing
5 beginning March 17th on any aspect of this case and
6 adequately meet your statutory duties and
7 responsibilities? And it's the Attorney General's
8 position that you can't. That you cannot because
9 there's the lack of the critical, essential information
10 not yet discovered from this Company before you can
11 proceed.

12 Now, on the revenue side of the case, as
13 Mr. Beck pointed out, aside from the issues of quality
14 of service, you don't have the information necessary to
15 meet your statutory responsibilities to see if this
16 Company doesn't include in its rates the expenses
17 associated with unregulated affiliated activities.

18 Now, we all can recall just in a matter of
19 weeks past that you chastised this Company for its
20 failure to respond even remotely adequately to the
21 Staff's discovery in connection with the NARUC audit.

22 Notwithstanding, that chastisement is not
23 adequate as an excuse to going forward. The Commission
24 Staff, the Commission and the other parties have to
25 have that information that only the Commission can

1 order and that only Southern Bell can supply.

2 Before you can rest assured that you're not
3 making the customers of this Company bear unregulated
4 expenses of this Company. So you need that report.

5 You need to see that Southern Bell carries out your
6 earlier dictates to have their responses filed
7 adequately and you have to give your Staff and other
8 people, particularly your Staff, an adequate time to
9 analyze the responses and to seek additional
10 information from the Company if it's necessary.

11 Now, on the quality of service issue which
12 permeates not just the investigative dockets that this
13 Commission has opened on its own motion, but as Mr.
14 Beck said, it permeates the entire case as well.
15 Whether or not this Company has been truthful in
16 reporting its quality of service to this Commission
17 would permeate the credibility of everything the
18 Company says in all aspects of its case.

19 Now, in that regard, we're all aware that the
20 Commission has ordered Southern Bell to hand over, to
21 supply, to produce copies of its internal audit that it
22 performed, as I understand it, specifically for the
23 purpose or for the purpose of ascertaining what level
24 of compliance it had in providing its Schedule 11
25 reports to this Commission. Those reports dealing with

1 whether or not it timely met the Commission's quality
2 of service standards on fixing out-of-service phones.
3 The Commission Prehearing Officer ordered that. The
4 full Commission affirmed Commissioner Clark's decision
5 on that. The Company, as was noted by Mr. Beck, has a
6 right to appeal that, and we're not here to denigrate
7 that right.

8 I would suggest to the Commission, though,
9 that that information, if not available otherwise, it
10 is information that is essential before going forward
11 with any of the hearings in this case, and I would
12 suggest that the Commission consider ordering Southern
13 Bell, as Commissioner Clark has pointed out on a number
14 of occasions, ordering them to produce the same
15 information independent of the request of their
16 attorneys to conduct an internal audit.

17 Now, if Southern Bell chooses to replicate
18 the entire effort and waste additional time and money
19 that's their business. But I would suggest to you that
20 you have the authority to order that, and if you did
21 order it, it would shorten the time span before this
22 Commission would be prepared to go to hearing if, in
23 fact, Southern Bell chooses to appeal the decision and
24 doesn't turn over the audit. But the audit results are
25 critical.

1 Mr. Beck mentioned the discovery sought of
2 Southern Bell, asking which person Southern Bell was
3 aware of that had knowledge of the alleged -- not the
4 alleged but the repair record falsification.

5 That hasn't -- some of it has been provided.
6 You heard that the names are now being sought by Bell to
7 be kept confidential from the public. In an effort --

8 COMMISSIONER CLARK: Say that again? Names
9 are being sought to be kept confidential?

10 MR. BECK: Yes, Commissioner. The
11 interrogatory responses, we have them. Southern Bell
12 filed a Motion for Temporary Protective Order seeking
13 to keep them confidential.

14 COMMISSIONER CLARK: Not privileged.
15 Confidential.

16 MR. BECK: That's correct.

17 COMMISSIONER CLARK: All right.

18 MR. TWOMEY: In any event, Public Counsel has
19 not had time to adequately analyze those responses to
20 ascertain whether they're complete or not and determine
21 what, if any, additional discovery is required, not to
22 mention having an opportunity to file additional
23 discovery as is necessary.

24 At the -- on that issue, Commissioner Clark,
25 I apologize for the late written response to my

1 motions, but you had asked at the final prehearing
2 conference in this case that the Attorney General
3 address the issue of whether Southern Bell would be in
4 jeopardy, be in some jeopardy, by providing information
5 which, it was concerned, might contain data or
6 documents that would have gone before the statewide
7 grand jury.

8 I did so, and I've attempted to address in my
9 written motion the Attorney General's position as well
10 as that of the Statewide Prosecution, that Southern
11 Bell is at no risk at all. That they can turn over
12 information even if they knew that those documents had
13 gone before the grand jury so long as they do not
14 disclose that they knew.

15 COMMISSIONER CLARK: Let me make it clear.
16 Public Counsel's interrogatory said, "Give us all the
17 information you gave to the Attorney General's office
18 and the Statewide Prosecutor."

19 MR. TWOMEY: Yes.

20 COMMISSIONER CLARK: And now the Statewide
21 Prosecutor and the Attorney General has said it will
22 not be a violation of --

23 MR. TWOMEY: 905.27.

24 COMMISSIONER CLARK: -- if that information
25 is turned over because as long as Southern Bell doesn't

1 disclose, to the extent it may know, what was actually
2 provided. They could provide the whole ball of wax but
3 no information as to what actually went.

4 MR. TWOMEY: Yes, Commissioner Clark, that's
5 correct. They had said, if I understood their filings
6 correctly, that they're not aware of what documents
7 might have -- if any, had gone before the grand jury.
8 But our position is they can give all of them so long
9 as they don't disclose which documents they knew were
10 presented to the grand jury while they were in session.

11 COMMISSIONER CLARK: Thank you for doing that.

12 MR. TWOMEY: Yes, ma'am.

13 Now, in addition, you asked me to investigate
14 the possibility of the Attorney General and the Office
15 of Statewide Prosecution supplying evidence obtained
16 during their investigations that led to the settlement
17 with Southern Bell so as to assist the process. It
18 being our previous position that those documents could
19 not be made available because they were the result of
20 an ongoing active investigation.

21 Now, we had previously taken the position in
22 the filing that the -- it was the agency's right, if
23 you will, to determine whether documents that are
24 subject to the 119 exemption, whether they could be
25 provided to the public.

1 Notwithstanding the refusal to turn them over
2 on public request demands, if the agency found that
3 doing so would not impair the ongoing investigation,
4 and it also believed that doing so would be in the
5 public interest.

6 Based upon your request in the prehearing
7 conference, I took the question back to the agency.
8 I've attempted to address that in my written motions.
9 And what I say in summary is that the agency's
10 position, that of the Attorney General and the Office
11 of Statewide Prosecution, that the documents of which I
12 have the first installment here, the original copies,
13 and I've given you and the parties an inventory, if you
14 will, a memorandum. And this is merely the first
15 installment. I just got these late yesterday
16 afternoon. That we can provide these documents. It's
17 not a waiver, understand. It is our position that we
18 can provide these documents to attempt to assist the
19 Commission's investigation that will not -- and,
20 therefore, would be in the public interest by assisting
21 you and that it will also in no way impair the ongoing
22 investigation.

23 So, in summary, I'd like to say I think the
24 Commission is in a position now where through no fault
25 of its own, and through a reluctance on behalf of

1 Southern Bell in some cases to provide discovery and to
2 provide it fully, and to provide it in a timely manner,
3 it is at a juncture in which, because of its calendar,
4 it has time scheduled and it has to make the decision
5 to go forward.

6 I would urge that you not move in haste, that
7 you not -- that you go to the trouble of rearranging
8 your calendar and your schedule, and that you not
9 proceed in any aspect of hearing this case until you
10 have full and complete discovery from the Staff that is
11 responsive to Public Counsel's concerns that is
12 responsive to the concerns of your own Staff, and that
13 will allow you comfortably to go forward and feel that
14 you can meet your statutory responsibilities in this
15 case. So I would urge you to consider continuing this
16 case until such time as all the discovery has been
17 forthcoming. There has been adequate time to analyze
18 it, conduct additional discovery as required, and to
19 file responsive testimony.

20 Thank you.

21 CHAIRMAN DEASON: Mr. Anthony.

22 MR. ANTHONY: Thank you.

23 Commissioners, first let me note that
24 Southern Bell has acted in good faith throughout these
25 proceedings. When Southern Bell has interposed an

1 objection or has asserted a claim of privilege,
2 Southern Bell has done it in good faith. I think in
3 the argument that was presented about a week and a half
4 ago, the Commissioners themselves noted these were
5 difficult issues and Southern Bell has not interposed
6 any of these for the purpose of delay. Far from it.

7 We would like to get this matter resolved as
8 I noted some time ago. We think this has been pending
9 for some time and there's a cloud that hangs over the
10 Company's head and we would be the first to like to get
11 this revolved and move this case along. But I do think
12 it's necessary to note that we have acted in good
13 faith, and any delays have been as a result of our
14 asserting what we believe to be our proper and
15 appropriate legal rights, and we'll see whether or not
16 any appeals are granted or denied, but we are acting in
17 good faith.

18 With respect to the investigation dockets
19 regarding trouble reporting, sales and so on, the
20 Company doesn't have an objection to postponing the
21 hearings. We recognize that given the Supreme Court's
22 recent denial of our petition seeking review, as well
23 as some of the orders that have come out of this
24 Commission within the last few weeks, that Public
25 Counsel has additional information that they have the

1 right to review, to take discovery, and we don't object
2 to the postponement of that portion of the hearings.

3 With respect, though, to the rate case
4 portion of the hearings, we don't see any need to
5 postpone those hearings. We think that the rate case
6 itself can be tried as scheduled, although we think
7 that it needs to be the rate case in its entirety. I
8 don't think you can separate out issues such as what
9 have been referred to as plain vanilla issues, what is
10 the appropriate rate base, what are appropriate
11 expenses, those sorts of things, without also
12 considering incentive regulation. And we think that
13 all of that ought to proceed at the same time. And if
14 the investigation portion is postponed, we think that
15 the rate case, as an entirety, ought to be tried in the
16 near future.

17 I think if the Commission does decide to
18 postpone the investigation hearings, that we have right
19 now testimony scheduled to be filed a week from Monday,
20 on the 15th of March.

21 Southern Bell is in the process of preparing
22 that testimony, but we think that it would probably be
23 appropriate, if you decide to postpone that aspect of
24 the hearings, to also postpone the filing date for
25 testimony for the reasons that Public Counsel and

1 Attorney General have noted, there's going to be
2 additional discovery. There are going to be perhaps
3 additional questions that are raised, and it doesn't
4 seem to be efficient to file one set of testimony, go
5 through additional discovery, and have to file yet
6 again another set of testimony.

7 That's particularly the case -- I wasn't
8 going to mention that until we received this document
9 that Mr. Twomey handed out, which is a list of
10 statements. It's possible that some of the people who
11 are listed on here are also listed in some of the
12 testimony that's already been filed in the case, and
13 it's possible that a number of these people may file
14 rebuttal testimony, and I don't think that it would be
15 appropriate them to be required to file rebuttal
16 testimony until they were able to obtain a copy of
17 their statements.

18 Up until now we have been under the belief
19 that we could not obtain those, but apparently that's
20 changed and so I would request that if you do decide to
21 postpone the hearings in that aspect, that we also have
22 additional time in which to file testimony so that
23 potential witnesses can have a chance to review their
24 statements and not being subject to being whipsawed.

25 I'd be happy to answer any questions you

1 might have.

2 CHAIRMAN DEASON: Mr. Beck, do you wish to
3 close? You're finished? Thank you. Staff, are you
4 prepared to make an argument?

5 MR. HATCH: Staff is not going to make an
6 argument one way or the other. There are pros and cons
7 no matter what you do. We're here, if you wish, to try
8 and discuss what happens if you do one thing, what
9 happens if you do another, and the way we think it
10 ought to be organized in order to handle it on an
11 efficient and effective basis.

12 We don't have a burning desire or a burning
13 position to either postpone the whole thing or split it
14 out, but we certainly -- there are some things you need
15 to consider whichever way you chose to go.

16 CHAIRMAN DEASON: Commissioner, questions?

17 COMMISSIONER CLARK: Mr. Hatch, what are the
18 things that we need to consider in making our decision?
19 (Laughter)

20 MR. HATCH: Okay, here we go

21 COMMISSIONER CLARK: What?

22 MR. HATCH: Here we go.

23 The Commission had voted to consolidate these
24 cases for hearing purposes, for decisional purposes and
25 for appellate purposes, even though there are some

1 discrete parts of cases. If you do them all together,
2 that seems to be the most efficient way to reach the
3 end of whole the thing.

4 The problem with doing it all together is it
5 appears, from my perspective, that you must move the
6 investigation, certainly to accommodate existing
7 discovery, and there's also the potential for Supreme
8 Court rulings in favor of Public Counsel, in favor of
9 the Commission's decision clearing that those materials
10 are not privileged and they would have to be produced.
11 Those would also have to be taken into consideration.
12 If the Commission loses on that decision, then those
13 materials would be unavailable and you would proceed to
14 hearing anyway. But you won't know that until the
15 appeals are over and those appeals are certainly
16 coming.

17 COMMISSIONER CLARK: Let me ask you a
18 question on that point. Since this would be an appeal
19 of an interlocutory order, what -- is there a different
20 time frame for filing and hearing the cases in the
21 Supreme Court?

22 MR. HATCH: I do not believe there's a
23 separate time track for these things in the Supreme
24 Court. I do believe that the Supreme Court would be
25 amenable to expediting it to a certain degree. I do

1 not know what that time frame would be. The decision
2 that just came down, came down -- it took approximately
3 eight to ten months to get that decision back, about
4 ten months, really.

5 COMMISSIONER CLARK: Let me ask a question of
6 Southern Bell. Do you intend to take to the full
7 Commission my ruling that the statements and summaries
8 have to be disclosed?

9 MR. ANTHONY: We filed that petition for
10 review yesterday, so we've already brought it to the
11 full Commission.

12 CHAIRMAN DEASON: Well, let me make a comment
13 at this point. I'm sorry, you're not finished Tracy?
14 Go ahead.

15 MR. HATCH: There's a whole lot to do but if
16 you want to jump in --

17 CHAIRMAN DEASON: No, go ahead.

18 MR. HATCH: -- it's a continuous process.

19 If you decide to continue with the
20 proceedings linked as a single entity, then you'd have
21 to move out the rate case with the investigations. In
22 Staff's view moving it out much beyond where it is now
23 would require refiling of the MFRs because that data is
24 approaching the end of its useful life already.
25 Anything further in time would require them to refile.

1 That would require new MFRs, new testimony, certainly
2 new discovery, perhaps not as extensive, but perhaps
3 so. It's hard to say.

4 In addition to that, you're looking at a
5 calendar that's rather clogged as usual, so pushing it
6 out to where you'd prefer to have it isn't always
7 possible. The time frames on the calendar are pretty
8 tight. Basically, the only large block of time
9 available to hear a consolidated proceeding, based on
10 the existing calendar is in January if you decide to
11 move everything out.

12 To the extent that you wish to split them
13 out, then you run into problems of which part of the
14 rate case issues do you need to split out in order to
15 accommodate the rate case, but not affect the
16 investigations themselves?

17 Both Public Counsel and Southern Bell have
18 talked about incentives. They've also talked about
19 quality of service. Those are the two largest single
20 issues.

21 Another problem that you have to worry about
22 is we currently have an agreement from Southern Bell to
23 make the effects of this rate case effective 1-1-93.
24 If you push the rate case out any further in time, then
25 we would need a continued commitment from Southern Bell

1 to protect the revenues that are currently at stake.
2 It's unknown what that is but Southern Bell's petition
3 proposes rate reductions somewhere in the neighborhood
4 of \$60, \$66 million, whatever that number is going to
5 be. So you're looking at a rate decrease, in any
6 event, based on what we currently have and the further
7 you go out in time, you'd have to protect those
8 revenues, either with an agreement from Southern Bell
9 or perhaps some sort of an interim proceeding from the
10 Commission.

11 COMMISSIONER BEARD: I'm just doing a little
12 mental arithmetic here. Given the expeditious
13 treatment that my order got with the Supreme Court, we
14 can assume that the one that just got filed with the
15 Supreme Court, ten months from now is January. There's
16 another one before the full Commission. If I just take
17 some rudimentary logic, that runs into February, March
18 by the time we get around to that probably. We really
19 don't know when the investigations are going to be
20 ripe, do we?

21 MR. HATCH: Well, the problem is it's
22 possible that we could expedite out of the court. The
23 other one was not as expeditious and the request for
24 expeditious treatment actually came later in the
25 process rather than up front. When the appeal was

1 filed, we were still -- the AG was still involved in
2 its investigation so there did not appear to be the
3 kind of rush to get it done.

4 COMMISSIONER BEARD: My point is this: at
5 this stage, we don't really know when it's going to be
6 ripe, do we?

7 MR. HATCH: I cannot guarantee you a specific
8 date, no, sir.

9 COMMISSIONER CLARK: Let me ask you a
10 question. Mr. Lackey and Mr. Anthony, are you likewise
11 appealing the order that requires you to disclose the
12 names of the people you talked to in that
13 investigation?

14 MR. ANTHONY: No, ma'am. We are not
15 appealing the order, the list of names.

16 COMMISSIONER CLARK: Yes.

17 MR. ANTHONY: No, we're not appealing that
18 order.

19 COMMISSIONER CLARK: Okay. Well, one of the
20 things I would point out is that it's not absolutely
21 essential that all of that -- all of the orders with
22 respect to discovery have been ruled on because, to
23 some extent, they cover the same areas, and Public
24 Counsel, no doubt, will be deposing from the list of
25 names that will be disclosed as to those people who did

1 give statements. So some of that information will come
2 out in advance of the Supreme Court's ruling.

3 The other alternative I think, and one thing
4 I would expect us to pursue is a request that these
5 interim orders be reviewed by the court as soon as
6 possible. And my recollection is they've been pretty
7 responsive when we've told them we have something that
8 needs to be handled expeditiously. And it's my
9 understanding that the discovery in those, with respect to
10 your order, there was not a request because we were still
11 sort of in the process of discovery.

12 MR. HATCH: That's correct.

13 COMMISSIONER BEARD: My only concern, this is
14 the -- I'm trying to think, this would be the third
15 time we've postponed this case. The rate case. If my
16 memory -- there was one that was done this was
17 originally scheduled -- I want to say from mid-'92, or
18 fall of '92, October --

19 MR. HATCH: The original schedule was for
20 October --

21 COMMISSIONER BEARD: -- and it got pushed
22 back to January and there was a further delay to March,
23 and I'm not quibbling about that because I think at
24 least one of those delays was at my hands. It was a
25 ruling I did, I believe. I could be wrong; I lost

1 track of who did what to who now. But the point is
2 that we really don't know. This investigation may be
3 ripe by the time the next rate case comes around the
4 way it seems to be going. I mean, that's facetious but
5 my point is that there's an unknown here that we're
6 dealing with.

7 MR. ANTHONY: Commissioners, to the extent I
8 might help a little bit. On the petition for review
9 that we filed yesterday on Commissioner Clark's order
10 regarding the statements themselves, we'd be willing to
11 waive oral argument on that so that you could decide it
12 on a more expeditious basis. It seems to me the faster
13 we get the ruling on that one, if it should go against
14 me, then I can combine that appeal with the other
15 appeal and get this moving on a faster track. So I'd
16 be willing to waive the oral argument.

17 COMMISSIONER BEARD: I can't imagine missing
18 an oral argument. That's tragic. (Laughter)

19 COMMISSIONER CLARK: Are you going to rule
20 with me?

21 MR. ANTHONY: There are only so many times in
22 a month I can get beat up.

23 CHAIRMAN DEASON: And this is a new month.
24 (Laughter)

25 MR. ANTHONY: There are only so many times in

1 a career I can get beat up.

2 COMMISSIONER BEARD: I see you brought
3 re-enforcements with you today.

4 MR. ANTHONY: But he's not helping much.

5 (Laughter)

6 CHAIRMAN DEASON: Staff raised a question or
7 a point which we need to address. And that is the fact
8 that Southern Bell has agreed to make the decision in
9 this case, for lack of a better term, retroactive to
10 January 1, '93. And, of course, I assume that that
11 accommodation was made, that agreement was made, with
12 the understanding that this case was going to be
13 concluded sometime during '93.

14 MR. ANTHONY: Yes, sir.

15 CHAIRMAN DEASON: And if this case is
16 continued, and it appears that there seems to be
17 agreement that as far as the investigation dockets are
18 concerned, that those dockets probably should be
19 continued.

20 If the Commission were to decide to also
21 continue the rate case, what affect does that have upon
22 the agreement to make the decision retroactive to
23 January 1, '93?

24 MR. ANTHONY: Southern Bell would be willing
25 to abide by that agreement within a reasonable period

1 of time. I don't think we could agree to it to the
2 Year 2000, obviously, but for a reasonable period of
3 time. We would be agreeable to making it retroactive
4 to the first of 1993. If we could get this heard and
5 concluded at the end of this year, early next year, we
6 would be agreeable to that.

7 What we would ask, though, is that, to the
8 extent that that were to occur, that any decisions that
9 are made are applied for 1993 on an actual financial
10 result basis. In other words, we've asked, for
11 example, in our case that you leave the rate-setting
12 point at 13.2. That you don't touch that. Other
13 parties have objected to that and want to do something
14 different. But that's what we've asked to. If, for
15 example, during the course of 1993 we would earn at
16 13.5, let's say, and you were -- you upheld our request
17 that 13.2 be left as the rate setting point, that those
18 30 basis points would be what we're dealing with. If
19 the Company were to earn 12, 12.5, we would be willing
20 to absorb that loss, but we would ask that you look at
21 actual financial results in making this retroactive,
22 rather than using a budget or --

23 COMMISSIONER CLARK: But isn't that what we
24 do in interim rates, anyway, when you go back and apply
25 it and you take your actuals?

1 MR. ANTHONY: If that's what would normally
2 be done, then that's what I'm asking for.

3 MR. DEVLIN: Normally in an interim
4 proceeding when you establish a new rate of return -- I
5 didn't hear all of the argument of Mr. Anthony -- you
6 would use that new rate of return and go back to the
7 point of time that you had jurisdiction and apply that.

8 COMMISSIONER CLARK: Well, when you do that,
9 do you do it on the basis of actuals?

10 MR. DEVLIN: Actuals?

11 COMMISSIONER BEARD: Actual expense versus
12 budget.

13 COMMISSIONER CLARK: Thank you, Tom. (Pause)

14 MR. HATCH: What we have typically done is
15 used a budget in determining the refund. That is what
16 we did with the recent United case, which was outside
17 the interim statute. That's where we are now. If you
18 wanted to use actuals, or if you wanted to use a
19 budget, that would have to be clarified as part of our
20 agreement here today, whatever that may be.

21 COMMISSIONER BEARD: That's exactly what
22 Mr. Anthony is asking for.

23 MR. ANTHONY: Yes, sir.

24 COMMISSIONER BEARD: At least that's what I
25 heard when I was listening.

1 MR. ANTHONY: Yes, sir, that's exactly it.
2 That's my point.

3 MR. HATCH: You want actuals as compared to
4 budget.

5 MR. ANTHONY: Because we've pushed this off
6 so far, and if you decide to postpone it again, we
7 don't have any objection to make it retroactive. But,
8 you know, if the budget shows more than what we
9 actually earned, it seems to me we're being hit twice
10 by first making it retroactive, which we don't have an
11 objection to, that's fair enough. But we ought to use
12 the actual earnings of the Company in determining what
13 effect that should have. That's my only request

14 COMMISSIONER CLARK: That gets to your point
15 that the data is getting old.

16 MR. DEVLIN: Commissioners, I think that
17 would be agreeable to use actuals up to the point of
18 the hearing and then use of the new rate of return that
19 is established as we hold the hearing.

20 And then there is one other facet to this
21 that hasn't been discussed. And I didn't notice in the
22 letter that was written a year ago agreeing to the
23 retroactive treatment, there was no mention of interest
24 being accrued. And I think to keep this on a level
25 playing field where there isn't any harm or benefit

1 through a delay in a case, interest ought to be
2 accrued.

3 We have a rule that speaks to interest that
4 accrues when monies are subject to refund, and it
5 utilizes the commercial paper rate, 30-day commercial
6 paper rate.

7 I would suggest -- and the rule also
8 provides, that the Commission can order some other
9 rate, if they so desire. I would suggest that if the
10 Commission decides to defer the rate case, I think,
11 one, we need to have interest; and, two, I suggest we
12 use the short-term interest rate that is found
13 reasonable in the rate case, because the commercial
14 paper rate, at this point in time, is unreasonably low
15 in my estimation. It's around 3%. So, that's just one
16 other facet I think needs consideration. If the rate
17 case is deferred, we need to establish an interest
18 rate.

19 MR. ANTHONY: Commissioners, we don't have an
20 objection to having interest applied.

21 Part of what is subject to disposition is the
22 40-some-million dollars that had the customer credit
23 during the course of 1992, and I think probably next
24 week Southern Bell is going to file a motion asking
25 that you reinstitute that, so that a large amount of

1 this money will be returned to customers, if you agree
2 with our motion, in the form of a credit, in effect,
3 continue the credit through 1993. And what we would
4 propose is that for any months, if you do agree to
5 that, that the credit was not in effect, for example,
6 January, February, March, that we would double up the
7 credit for the next three months, so that the customers
8 are kept whole in that respect. And that way, any
9 money subject to disposition at the end of the case
10 would be kept to a minimum.

11 COMMISSIONER CLARK: So, in effect you're
12 agreeing to the refund in advance of the case?

13 MR. ANTHONY: Well, this is the money the
14 Commission has already set aside for the 1988 case,
15 only that money.

16 COMMISSIONER CLARK: Do you have a comment on
17 that?

18 MR. BECK: No. As I understand it, if the
19 Commission determines, say, the 12% is a reasonable
20 return on equity and Southern Bell's earnings in 1993,
21 with the Commission adjustments, are 13.5, that they
22 are willing to refund the difference between 13.5 and
23 12, as I understand Southern Bell's commitment?

24 CHAIRMAN DEASON: And that is the
25 understanding?

1 MR. ANTHONY: That's correct.

2 CHAIRMAN DEASON: Now, you understand he said
3 "with Commission adjustments", actuals with Commission
4 adjustments?

5 MR. ANTHONY: Yes, sir.

6 COMMISSIONER BEARD: Commissioners, I don't
7 think there is any debate. It seems to be common
8 agreement that the investigation be postponed. I, as
9 one, would like to see the rate case go forward. There
10 is -- aside from the investigations issues, which are
11 significant, aside from the standard plain vanilla,
12 whatever you want to call them, revenue and expense
13 issues that occur in any rate case -- I haven't read
14 the testimony, but it's my understanding there's some
15 fairly significant conceptual ideas associated with
16 this case; some that I have a great deal of interest in
17 and have had for sometime. The issue of price caps.
18 And it's the debate that I would like to hear. It's a
19 debate that I'd like to be a part of. And if for no
20 other than selfish reasons, I'd like to see that go
21 forward.

22 Now, I think you add to that the burden of,
23 obviously, if you pump bash, really, any further at
24 all, you're going to have to go entirely through the
25 rate case expense, a brand new set of MMFRs, or MFRs.

1 You've redoubled the work that's already been done
2 there.

3 COMMISSIONER CLARK: Let me ask you a
4 question along those lines. Would you propose that the
5 outcome of a plain vanilla case may be a continuation
6 of incentive regulation or the institution of price
7 caps and that sort of thing, in advance of any decision
8 on the investigation?

9 COMMISSIONER BEARD: I think that you will --
10 you're going to get some redundancy, because I have all
11 degree of confidence that you're going to get testimony
12 about what could occur under that, just as we did in
13 the incentive regulation case in '88. We had ample
14 testimony about the possibility of service quality
15 deterioration, those kinds of things. You're going to
16 get the theoretical debate on that anyway. And I think
17 we can make the decisions on what risk is there or is
18 not there. And then, if we need to set aside some
19 monies, hold in abeyance a penalty, those options are
20 available.

21 COMMISSIONER CLARK: My only concern is this:
22 I can understand where back in 1988 you had the
23 theoretical or speculation on what may or may not occur
24 with respect to incentive regulation, but we're five
25 years into that, four years into that, and it appears

1 we have some experience on that, and that's what the
2 investigation involves.

3 COMMISSIONER BEARD: I don't have anything
4 before me on that. And -- let me say that --

5 COMMISSIONER CLARK: I don't either, but we
6 certainly had -- well, let me put it this way: We do
7 have a settlement with respect to the statewide
8 prosecutor, and, certainly, sufficient allegation in my
9 mind that there is something that needs to be looked
10 at.

11 COMMISSIONER BEARD: Commissioner, I don't
12 think there's any question that illegal or
13 inappropriate actions took place within the Company.
14 The question is in my mind to be resolved is what
15 actions were taken by the Company to resolve that once
16 it was found out.

17 I worked in a company. We found shade tree
18 meter readers, and we fired them. If we let them keep
19 reading meters under a shade tree, then we're at fault.
20 If we fired them, then we did what we should have done
21 to protect our customers. That's what would be at
22 debate. I don't think there is any question that there
23 were things done wrong. The employees did bad things.

24 COMMISSIONER CLARK: Well, I think there are
25 two things in that debate. You know, what were the

1 circumstances under which they occurred? So you can
2 make a judgment as to the management of the company
3 under the incentive regulation. And I certainly think
4 that goes to whether or not you would want to continue
5 the incentive regulation.

6 I guess my whole problem is I have difficulty
7 separating the issues from the rate case, but I have
8 considered in my own mind doing what I would call a
9 plain -- has been called a plain vanilla rate case, and
10 just go back to rate of return regulation until we do
11 resolve the investigation.

12 One of my thinkings on that is that it
13 provides the appropriate incentive to Southern Bell to
14 move forward and provide the information and facilitate
15 the discovery to the extent we can, so we can get it
16 done.

17 CHAIRMAN DEASON: Well, about 10 or 15
18 minutes ago I was going to make a comment. I guess
19 I'll make it now.

20 It seems to me that there has been some
21 discussion about having a plain vanilla rate case.
22 It's certainly appealing, since we do have some time
23 set aside on our very busy calendar. And I've come to
24 appreciate the difficulty that is involved in setting
25 the hearing dates.

1 But the difficulty I have is I don't think
2 we're dealing with a plain vanilla rate case here.
3 This Company is not under traditional rate base
4 regulation, and there are issues in the rate case
5 proceeding, which are directly linked to issues that
6 are in the investigation dockets, and I don't know
7 where you draw that line. If that line could be drawn,
8 and we could go ahead and hear the rate case, and have
9 adequate protections and safeguards that we -- whatever
10 remedy or whatever determination we make as a result of
11 the investigation dockets, that that could be
12 implemented, I would be in favor of that. I just don't
13 know at this point how we go about doing that.

14 COMMISSIONER BEARD: I need to comment. This
15 Company is under traditional rate base regulation.
16 Absolutely and explicitly. What they have that's
17 different is a sharing point for earnings which has
18 never been achieved. In fact, if they had had the
19 purer standard return on equity setting, whether you
20 agree with the point or not of 13.2, plus or minus a
21 hundred basis points, they have never gotten close to
22 14.2, as far as I know from Staff's evaluations. So in
23 every sense of the word, they have had traditional rate
24 base regulation for all intents and purposes. We've
25 done nothing different in our regulation, other than we

1 allowed for the opportunity that never occurred for
2 some sharing, and it never happened.

3 MR. ANTHONY: Commissioners, could I be heard
4 for just a moment?

5 CHAIRMAN DEASON: Yes, please.

6 MR. ANTHONY: When I argued before for
7 hearing the rate case issues today, it was with the
8 idea that we would hear all of those issues, including
9 the incentive regulation issues that we have proposed.
10 I think they are inextricably tied together. And if
11 we're contemplating here today splitting those off so
12 that we have the plain vanilla this month, and the rest
13 of the issues sometime in the future, then I think
14 Southern Bell's preference would be let's push the
15 whole thing back, so we can hear the whole thing
16 together. As much as I would like to get the thing
17 resolved quicker, I would rather have it heard in its
18 entirety, because I think it's important to put it all
19 in its entirety. And I think it disadvantages us to
20 separate them out like that.

21 CHAIRMAN DEASON: Well, let me ask you a
22 practical question: How long do we need to delay this
23 case to do that? I know it's a difficult question to
24 answer, but in your judgment, how long do we need to
25 delay?

1 MR. ANTHONY: I think this case could be
2 heard in the fall, late fall of this year. I think
3 that Public Counsel has -- there are still things that
4 are going to be going up to the Supreme Court, but as a
5 practical matter, other than perhaps the audits,
6 everything that is going to be needed to conduct
7 discovery can be done in the next couple of months.
8 The audits can probably, if -- I think if the
9 Commission asks for expedited treatment by the Supreme
10 Court, it will be a lot more likely to occur than if I
11 were to ask for it. But if we can get all of that
12 resolved, I think all of that discovery can be had and
13 the case ready to be tried towards the end of this
14 year.

15 COMMISSIONER CLARK: Let me ask you a
16 question. Assume for a minute the Commission's
17 calendar is completely clear. That you could hold it
18 at any time. Is your estimate still the late fall?

19 MR. ANTHONY: I was looking at what the
20 calendar showed previously. I would guess, as a
21 practical matter, given the appeals and whatnot, you're
22 probably looking at sometime in the September, October
23 time frame, somewhere in that range.

24 MR. DEVLIN: Mr. Chairman, could I speak on
25 that.

1 CHAIRMAN DEASON: Yes, please.

2 MR. DEVLIN: A couple of things, to the
3 extent that you feel like the Staff audit, the NARUC
4 audit is relevant to this proceeding, postponing it to
5 the fall probably wouldn't serve a lot of purpose,
6 because we're running into a lot of legal impediments.
7 January, there probably would be value, and I could see
8 a good opportunity for us to have something to put on
9 the table by January.

10 And the other point is, if we're talking
11 about deferring it for six months or even a year
12 period, again I'd like to mention earlier, the
13 information that we're relying on today is stale. It's
14 1991 information. If we're talking about the fall, I
15 would suggest we're going to have to again require
16 refiling of the MFRs, look at 1992 data. And if we do
17 that, you know, we're not given the Staff or
18 intervenors a lot of time to do its proper discovery.
19 If Southern Bell wouldn't be able to make that filing
20 until let's say May of '93, and that gives us a very
21 short window to discovery.

22 So I think if we're going to defer the
23 proceeding ,it's sort of like all are none. We're
24 going to give adequate time for discovery, adequate
25 time to Southern Bell to prepare its case, and the fall

1 just wouldn't get it, in my estimation.

2 CHAIRMAN DEASON: Mr. Shreve, when do you
3 think, from a practical standpoint, if the cases are
4 going to be heard together, what type -- how long does
5 this case need to be delayed to allow parties full
6 opportunity to conduct discovery and have all
7 information gathered and prepared for a hearing?

8 MR. BECK: Mr. Chairman, we support the
9 Staff's view of January as being an appropriate time.
10 I think if the Commission will ask the Supreme Court to
11 expeditiously treat whatever appeal Southern Bell is
12 going to take, I think a realistic expectation is we
13 would get rulings by the Supreme Court sometime in the
14 fall, hopefully. It would seem to me with the 1992
15 information that we would need in a January time period
16 for the hearings.

17 I will commit to you we will diligently
18 proceed with everything we have now. We're going to
19 proceed regardless of what the appeals do. But I think
20 we ought to look forward to having those appeals
21 completed and the information provided, hopefully, if
22 the appeals are unsuccessful. And it seems to me that
23 January is the realistic view toward that. It also
24 goes along with the Staff's desire to conduct an audit
25 of affiliated transactions, which is, of course, part

1 of a plain vanilla issue in any event.

2 MR. SHREVE: I agree completely and I think
3 one thing we have been concerned about all the time is
4 having to come back in and revisit this. I think we
5 all need to, even if it's a January date, I think we
6 need to continue and expedite things as much as we
7 possibly can, because I can see us coming up just
8 before the hearings in the fall, and being back in the
9 same situation, and I don't think any of us want that.

10 As far as there being -- I understand where
11 Commissioner Beard's coming from, saying that the other
12 case is a typical rate base regulation. It is not.
13 For one thing, incentive regulation is very much a part
14 of this case at Bell's request. It's just a part of
15 it. If it had been typical rate base regulation, we
16 would have been back in here two years ago when we
17 requested to come in and lower their rates at that
18 time, because you gave them an extension of the case
19 that you had given them before. And that wasn't
20 typical rate base regulation. At that time, it was a
21 trial period that was extended.

22 I think I agree with the Staff and I don't
23 see -- I just think we ought to go ahead and get the
24 information and do it right and not come up to another
25 point where we're arguing for a delay again.

1 CHAIRMAN DEASON: Mr. Twomey, I'll ask you
2 the same question: From a practical standpoint how
3 long does this case need to be delayed?

4 MR. TWOMEY: Mr. Chairman, the best I can do
5 is concur with the analysis of your Staff and the
6 Office of Public Counsel.

7 CHAIRMAN DEASON: Mr. Anthony, if the cases
8 were delayed until January, were heard, all the issues,
9 all dockets heard together, would the January 1, 1993
10 agreement by Southern Bell still be in place if the
11 hearings were not held until January of 1994?

12 MR. ANTHONY: Yes, sir. They would be.
13 Again, with the proviso that any changes be based on
14 actual financial results for 1993.

15 CHAIRMAN DEASON: Any further questions,
16 Commissioners?

17 COMMISSIONER CLARK: Has Southern Bell taken
18 into account the fact that you'll need to refile?

19 MR. ANTHONY: We have considered that, yes,
20 ma'am.

21 MR. LACKEY: So that I'm not another pretty
22 face.

23 COMMISSIONER BEARD: That was never a
24 problem. (Laughter)

25 MR. LACKEY: We have considered that, and we

1 have considered the position that the Staff would take,
2 that the data was stale. My recollection is that the
3 MFR process is a four-month one, which means we're
4 looking at the end of June, first of July to get the
5 MFRs refiled. And you've got to remember that the '92
6 separated data won't be available until --

7 MR. HATCH: May 1 for your separations.

8 MR. LACKEY: I think that the raw data for
9 separations is not available. Obviously, it's not
10 available on January 1st. It takes two-and-a-half
11 months to get the separated data. So it's going to
12 take us four months to do the MFRs after that. It's a
13 time-consuming process. There is no question about it.
14 We'll have to strike all the testimony and file it
15 again. But on the other hand, you know, we just don't
16 see how these things can be separated.

17 CHAIRMAN DEASON: Do any of the other
18 intervenors have comments concerning these matters?

19 COMMISSIONER BEARD: Oh, come on, Mr. Tye.

20 CHAIRMAN DEASON: We're looking for help.

21 COMMISSIONER CLARK: Are there no objections
22 to putting it off?

23 MR. TYE: No.

24 MR. DUNBAR: Commissioner, we agree. I think
25 it's the right conclusion, absolutely.

1 MR. TYE: Commissioners, I guess AT&T and the
2 other IXCs are probably in a different position here,
3 in that there are some access charge proposals on the
4 table that would certainly benefit us. We would hope
5 that whatever time the case is finally heard that we
6 can make some appropriate arguments about how those
7 ought to be handled, if they are ultimately approved.
8 It's a difficult question. If I've got to vote, I'd
9 say let's go to trial with the case next week, but
10 we're not involved in all these other issues and I
11 don't think we can necessarily take a position on it.

12 CHAIRMAN DEASON: Mr. Hatch.

13 MR. HATCH: I just have two questions for
14 clarification. One is the filing date for MFRs, if we
15 can get a better handle on what the time is.

16 MR. LACKEY: All I can say is -- and I could
17 be wrong about this. I need to be careful. I don't
18 believe we have '92 separated data until March 15th at
19 the earliest, and it's going to take a minimum, minimum
20 of four months to get the MFRs done. Now, we're
21 getting more experienced at it. This will be the third
22 set we have filed in 18 months now, but it still takes
23 a long time to grind those numbers out.

24 MR. HATCH: You filed May 1 last time. I was
25 wondering why it's different this time.

1 MR. LACKEY: The MFRs?

2 MR. HATCH: Yes.

3 MR. LACKEY: I don't know. I can't answer
4 that.

5 MR. DEVLIN: Mr. Chairman, again, last year
6 it was May 1. Of course, they had more time to
7 prepare, so that might be an issue. But May 1 they
8 filed the MFRs for 1991, and we gave the Company more
9 time to file its testimony and exhibits. And last year
10 it was July 15th, so you might want to consider
11 stratification of MFRs and testimony.

12 CHAIRMAN DEASON: Well, I'm reluctant to do
13 this because we have another hearing today that was
14 supposed to have started 20 minutes ago. But I'm going
15 to take break, and I'd request the parties to discuss,
16 assuming the case is going to be deferred until
17 January, and that's not a foregone conclusion, but
18 assuming what type schedule would be involved with MFRs
19 and those type things and see if you could come -- if
20 the parties could come to any type of agreement as to
21 what an appropriate schedule would be.

22 And I assume ten minutes would be enough to
23 discuss that. We'll come back at 10:30.

24 (Brief recess.)

25

1 CHAIRMAN DEASON: We'll go back on the
2 record.

3 Tracy, have you all had a chance to discuss
4 what a schedule would look like if the Commission were
5 inclined to delay the hearings to a January 1994 time
6 frame?

7 MR. HATCH: According to Southern Bell,
8 according to the comptroller, it's a three to
9 four-month process to refile MFRs. That means three
10 months. If you assume a three-month period, that's
11 June 15th for filing your MFRs. Presumably, that would
12 include testimony at the same time. That's
13 traditional. It's unlikely that most -- certainly, the
14 numbers part of the testimony would change, but the
15 substantive proposals I doubt would change. I'm not
16 sure that would create any problems. There was a delay
17 in filing testimony last time, because there were some
18 problems that needed to be worked out before it could
19 be filed. We don't anticipate that those problems
20 still exist.

21 CHAIRMAN DEASON: Mr. Anthony, I assume you
22 agree with that?

23 MR. LACKEY: Close. What the comptroller has
24 told us -- well, they confirmed that March 15th would
25 be when you have -- we have the separated data. They

1 said three to four months. We've got a little problem
2 in '92. Andrew has, you know, really messed everything
3 up. I would like to suggest July 2nd, which is the
4 Friday before the July holiday, as the filing date.
5 That would be three-and-a-half months, and split the
6 difference between the three and the four.

7 COMMISSIONER BEARD: We're going to be using
8 -- oh, Lord. '92 data?

9 MR. LACKEY: We haven't talked -- we talked
10 about '92 for the MFRs but not the test year. We
11 haven't talked about what an appropriate test year
12 would be.

13 COMMISSIONER BEARD: The MFRs are going to
14 contain the essence of Andrew.

15 MR. LACKEY: If we file MFRs for '92, yes,
16 sir, it's going to have to -- it's going to have Andrew
17 embedded in it. There's no way of avoiding it.

18 COMMISSIONER BEARD: I'm sure that will
19 simplify everything.

20 CHAIRMAN DEASON: Commissioners, what is your
21 pleasure?

22 COMMISSIONER BEARD: I've told you mine.

23 COMMISSIONER JOHNSON: I think based upon all
24 the information that we've heard, the arguments set
25 forth by Public Counsel as to the necessity to keep the

1 rate case and the investigation dockets together, and
2 that combined with the statement set forth by Southern
3 Bell, that if we were to indeed extract and begin on
4 the rate case, that we should keep that whole and not
5 try to separate that out any more.

6 Given the equities of the argument set forth
7 by Public Counsel, I move that we go ahead and delay
8 the proceedings. That we put together a schedule that
9 would sufficiently cover all the issues and that we
10 just have to deal with a procedural MFR refiling
11 nightmares, but this is the only choice, and this is
12 the right way to proceed.

13 COMMISSIONER CLARK: I second that motion.

14 CHAIRMAN DEASON: We have a motion and a
15 second.

16 Let me ask one question before we take a vote
17 on the motion. I assume that motion contemplates the
18 essence of the discussion we have had here today with
19 Southern Bell agreeing to the 1-1-93 implementation
20 date or effective date of the final decision, with the
21 discussion which Staff had concerning interest, and
22 that the -- if any refund, that it would be based upon
23 actuals as adjusted by the Commission, that that motion
24 contemplates that general discussion we have had.

25 COMMISSIONER JOHNSON: Yes.

1 CHAIRMAN DEASON: I have a motion and second,
2 all in favor says "aye".

3 COMMISSIONER JOHNSON: Aye.

4 COMMISSIONER CLARK: Aye.

5 CHAIRMAN DEASON: Aye. Opposed, "nay".

6 COMMISSIONER BEARD: Nay.

7 CHAIRMAN DEASON: Motion carries 3-to-1.

8 MR. ANTHONY: We have in the investigation
9 docket scheduled right now, as I mentioned earlier,
10 testimony due on March 15th, as well as prehearing
11 statements. I assume that it will also be postponed.

12 COMMISSIONER CLARK: Mr. Chairman, I would
13 expect that you would get with Nanette and look at the
14 filing, look at an appropriate date. I looked at the
15 calendar. I think January is clear, and it makes sense
16 to schedule it for next January. And I will, as
17 Prehearing Officer, put out an order on prehearing
18 procedure that complies with the scheduling of the
19 hearings, and I will alert the parties that we're going
20 to be having status conferences throughout this whole
21 process, and we will not get behind in any orders or
22 discovery, and confidential matters must be requested
23 in a timely manner and responded to in a timely manner.
24 And those things will be done by the hearing date.

25 CHAIRMAN DEASON: I agree with that. Pending

1 a procedural order from the Prehearing Officer, I would
2 assume that all the previous dates would not be in
3 effect until the new procedural order is issued. But I
4 would encourage, and I think this -- all the parties
5 stated on the record here in this argument, would
6 encourage the parties to continue all of the discovery
7 aspects that are going on and try to expedite that as
8 quickly as possible. And that I believe we also have
9 an agreement that there's going to be an effort made at
10 the appropriate time to communicate to the Court, to
11 make a request, however those things are handled, to
12 request expedited treatment. And that if the
13 Commission needs to also join in that request, I assume
14 that would be appropriate also; is that correct, Tracy?

15 MR. HATCH: That would be correct.

16 CHAIRMAN DEASON: Okay.

17 COMMISSIONER CLARK: Mr. Chairman, one other
18 thing. My expectation would be that the MFRs are due
19 July 2nd.

20 CHAIRMAN DEASON: It would be my
21 understanding that that would be an appropriate date,
22 unless there's a complication that develops as we
23 review the actual hearing dates and that sort of thing.
24 But it would be my desire for that to be the target
25 date. Tim.

1 MR. DEVLIN: Mr. Chairman, just to clarify
2 some of the statements you made about truing up the
3 interim, we would not have probably actuals for '93 at
4 the time of the hearing, even in January '94. So I
5 would try to clarify that. It would be the actuals or
6 information for '93 we have at time of hearing, which
7 may be, let's say, 10 months actual, two months
8 forecast, or something like that. That would be
9 satisfactory to us as opposed to, again, prolonging the
10 process and waiting for the '93 actuals to come in,
11 which may be April of '94. Do you understand?

12 CHAIRMAN DEASON: Is that agreeable, Mr.
13 Anthony?

14 MR. ANTHONY: Yes.

15 MR. DEVLIN: And then the other point would
16 be the interest rate. As I suggested before and I
17 believe Southern Bell agreed, I wanted to make sure
18 that we would use the short-term debt rate that was
19 found reasonable again in the proceeding in January of
20 '94.

21 MR. ANTHONY: That's agreeable.

22 MR. DEVLIN: Thank you.

23 CHAIRMAN DEASON: Very well. Any other
24 matters to be brought before the Commission at this
25 time? Hearing none, this hearing is adjourned. Thank

1 you all.

2 MR. HATCH: One housekeeping matter,
3 Mr. Chairman, just briefly. You can stay off the
4 record that's fine.

5 (Whereupon, the hearing ended at 10:55 a.m.)

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1 F L O R I D A)
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3 COUNTY OF LEON)

CERTIFICATE OF REPORTER

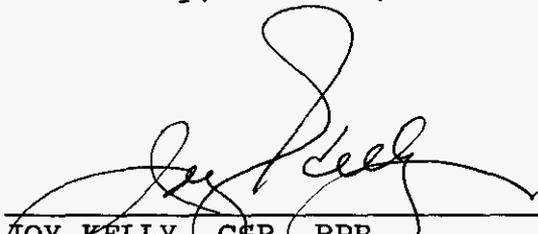
3 I, JOY KELLY, CSR, RPR, Commission Reporter,
4 DO HEREBY CERTIFY that the hearing in this
5 cause, Docket No. 920260-TL, 900960-TL, 910163-TL and
6 910727-TL was heard by the Florida Public Service
7 Commission at the time and place herein stated; it is
8 further

9 CERTIFIED that I reported in shorthand the
10 said proceedings; that the same has been transcribed
11 under my direct supervision, and that this transcript,
12 consisting of 65 pages, constitutes a true and accurate
13 transcription of my notes of said proceedings; it is
14 further

15 CERTIFIED that I am neither of counsel nor
16 related to the parties in said cause and have no
17 interest, financial or otherwise, in the outcome of
18 this docket.

19 IN WITNESS WHEREOF, I have hereunto set my
20 hand at Tallahassee, Leon County, Florida, this 8th day
21 of March, A. D., 1993

22
23
24
25


JOY KELLY, CSR, RPR
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