

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint of FLORIDA TELEMESSAG-)	DOCKET NO. 900687-TL
ING COALITION against SOUTHERN BELL)	
TELEPHONE AND TELEGRAPH COMPANY for)	ORDER NO. 23801
alleged unfair marketing and technical)	
practices)	ISSUED: 11/26/90
)	

Pursuant to Notice, a Prehearing Conference was held on November 19, 1990, in Tallahassee, Florida, before Chairman Michael McK. Wilson, as Prehearing Officer.

APPEARANCES:

BRUCE W. RENARD and LAURA GILMORE, Esquires, Messer, Vickers, Caparello, French, Madsen & Lewis, P.A., 215 So. Monroe Street, Suite 701, Tallahassee, Florida 32302, on behalf of the FLORIDA TELEMESSAGING ASSOCIATION.

HARRIS R. ANTHONY and TIMOTHY F. COEN, Esquires, c/o Marshall M. Criser, III, 150 So. Monroe Street, Suite 400, Tallahassee, Florida 32301, on behalf of SOUTHERN BELL TELEPHONE AND TELEGRAPH COMPANY.

PATRICIA A. KURLIN, Esquire, Florida Public Service Commission, 101 East Gaines Street, Tallahassee, Florida 32399-0863, on behalf of COMMISSION STAFF.

PRENTICE P. PRUITT, Esquire, Florida Public Service Commission, 101 East Gaines Street, Tallahassee, Florida 32399-0850, on behalf of the COMMISSIONERS.

PREHEARING ORDERI. BACKGROUND

By Order No. 20521, issued December 27, 1988, the Commission approved Southern Bell Telephone and Telegraph Company's (Southern Bell) tariffs introducing two-way measured service on a trial basis, and a limited service offering (LSO) that provided for special features useful to Voice Messaging Service (VMS) and Telephone Answering Service (TAS) companies. Both tariffs were approved pending the outcome of the Information Services docket.

Concerns raised by TAS/VMS competitors of Southern Bell plagued the trial from its inception. The TAS/VMS providers have

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complained that Southern Bell's trial is not compatible with existing technology. Although Southern Bell and the answering service providers attempted to solve the existing problems, little progress was made. On August 10, 1990, the Florida Telemessaging Association (FTA), formerly the Florida Telemessaging Coalition, filed a formal complaint requesting that Southern Bell stop marketing its MemoryCall voice mail service until the problems are resolved.

By Order No. 23655, issued October 23, 1990, the Commission set the matter for hearing. At that time, Southern Bell agreed to Market MemoryCall in the residential marketplace only during the interim, allowing the TAS/VMS providers to maintain their primarily business customer market.

The evidentiary hearing is scheduled for November 26, 1990, at our headquarters in Tallahassee, Florida. At the Prehearing Conference on November 19, 1990, the procedures to govern the hearing were established.

II. TESTIMONY AND EXHIBITS

Upon insertion of a witness's testimony, exhibits appended thereto may be marked for identification. After opportunity for opposing parties to object and cross-examine, the document may be moved into the record. All other exhibits will be similarly identified and entered at the appropriate time during hearing. Exhibits shall be moved into the record by exhibit number at the conclusion of a witness's testimony.

Witnesses are reminded that on cross-examination, responses to questions calling for a yes or no answer shall be answered yes or no first, after which the witness may explain the answer.

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III. ORDER OF WITNESSES

<u>WITNESS</u>	<u>APPEARING FOR</u>	<u>DATE</u>	<u>ISSUES</u>
Mr. Jerold Stabler <u>Direct</u>	FTA		All issues
Mr. Paul N. Henning <u>Direct</u>	FTA		Technical & service oriented aspects of this docket
Robert D. Daniel <u>Direct</u>	So. Bell		1, 2, 3, 4, 5, 6, 7, 8, 9
Sharon A. Etheridge <u>Direct</u>	So. Bell		7
Mr. Jerold Stabler <u>Rebuttal</u>	FTA		All issues
Robert D. Daniel <u>Rebuttal</u>	So. Bell		1, 2, 3, 4, 5, 6, 7, 8, 9

IV. BASIC POSITIONS

FTA'S BASIC POSITION: Southern Bell's actions posed a direct threat to competition in the Information Age right out of the starting blocks in Florida. Southern Bell has ostensibly been working with the telephone answering (TAS) and competitive voice mail service (VMS) industries to develop network services necessary to compliment the operation of TAS and VMS businesses. For years the TAS industry has been attempting to obtain these services, and more recently VMS providers have made such an attempt as well. The services have formed the basis for the first so called "open network architecture" ("ONA") offerings of Southern Bell designated to usher in the Information Age. When actually unveiled, the services have not worked or worked well with competitors equipment, or DID lines obtained from Southern Bell. In addition to these serious service problems, Southern Bell's underlying SMDI architecture requires network interconnections on terms that economically preclude competition by non-Southern Bell TAS/VMS providers who do not have the vast customer base which MemoryCallSM

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has obtained through Southern Bell's monopoly LEC position. Southern Bell is either both: (a) under pricing its MemoryCallsm services; (b) overpricing the network access and interconnection required for competitors to offer MemoryCallsm type services. This is anticompetitive and unlawful.

In addition to these service and pricing discriminations, Southern Bell is abusing its monopoly telco position by marketing its competitive MemoryCallsm service at the point of contact on monopoly service sales, utilizing bill stuffers, yellow page and directory advertising privileges not enjoyed by competitors. The result of this combined service price and market scenario is that Southern Bell is using its monopoly LEC position to monopolize or seriously diminish competition in the Florida TAS/VMS markets.

The Commission should halt Southern Bell's actions and institute a system of full and fair competition for the electronic and line telephone answering businesses in Florida. This will require an active hand in assuring availability of true ONA services and the specific ordering of provision of MemoryCallsm service via an arms-length, fully separate affiliate. The affording of unbundled equal access to all competitors by Southern Bell must not just exist in theory, but in fact. Until this is the case, the current moratorium should continue on Southern Bell's business marketing activities in the state.

SO. BELL'S BASIC POSITION: MemoryCallsm is a voice messaging service ("VMS") provided by Southern Bell on an unregulated basis to Florida customers. Southern Bell uses several tariffed network services, for which it pays tariffed rates, in order to provide MemoryCall service to customers. In addition, customers must purchase one or more Southern Bell tariffed services in order for MemoryCall to operate to its full extent. The Florida Telemessaging Association ("FTA") allegations that the provision of MemoryCall by Southern Bell is not in the public interest and that Southern Bell discriminates in favor of MemoryCall are without merit.

MemoryCall has permitted thousands of Florida customers to have access to an affordable voice messaging service. The provision of MemoryCall offers those customers a choice of VMS service at reasonable prices that they did not previously have.

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Therefore, contrary to FTA's allegations, MemoryCall is in the public interest.

In addition, Southern Bell is not discriminating in its provision of network services to other voice mail providers or to telephone answering services. The network services purchased by MemoryCall are available to all voice mail providers on the same rates, terms and conditions as provided to MemoryCall. Other network services such as direct inward dialing ("DID") traditionally used by answering services are also available under the terms and conditions set forth in the relevant tariffs. A competitor can use whichever type of architecture that best suits its needs.

Contrary to FTA's allegations, Southern Bell has properly complied with the Commission's orders regarding collocation and marketing of MemoryCall. For instance, MemoryCall complies with the Commission's collocation requirements by paying rates for distance sensitive services as though it were located two miles from the serving central office. With respect to marketing, Southern Bell has instructed its sales employees not to attempt to market MemoryCall to customers that indicate to Southern Bell that they are customers of answering services. Also, Southern Bell complies fully with all Commission customer proprietary network information ("CPNI") requirements. In accord with a recent Commission order, Southern Bell does not use CPNI to mass market MemoryCall. Rather, Southern Bell purchases customer lists from outside vendors for this purpose.

Finally, with regard to the FTA's allegations that MemoryCall is priced below its relevant costs, Southern Bell has performed a cost study which shows that MemoryCall's price is well above the appropriate costs.

FTA members are clearly concerned that Southern Bell is a new competitor in the voice messaging service market. The service provided by Southern Bell, however, is proper in all respects and FTA's allegations are unsubstantiated. Southern Bell has gone the extra mile to ensure that competitive and alternative services are treated fairly. As a result, Southern Bell believes that the Commission should dismiss FTA's Complaint and permit Southern Bell to resume the sale of MemoryCall to business customers.

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STAFF'S BASIC POSITION: None pending discovery.

V. ISSUES AND POSITIONS:

ISSUE 1: Is Southern Bell Telephone and Telegraph Company (Southern Bell) providing comparable interconnection to the Florida Telemessaging Association (FTA) members for the provisioning of MemoryCall-type voice mail service?

FTA'S POSITION: No. The telco network services supporting MemoryCallsm do not function properly with DID service utilized by the TAS/VMS industry. Southern Bell has given itself a head start and has caused competitors to fall behind or get off to a rocky start with customers. The enormous growth in MemoryCallsm customers attests to this fact. In addition to the service problems explained in Mr. Stabler's testimony, the discriminatory pricing of network interconnection versus MemoryCallsm retail prices to end users also fails the "comparable interconnection" test of this issue. On top of the serious failures of Southern Bell's ONA network services to function properly with competitors DID architectures, Southern Bell wants to charge the competitors extra for the costs incurred to make the features work in the first place. This traversity should not be allowed to prevail in the industry or at the public expense. Southern Bell's SMDI architecture requires costly duplication of facilities and will be rendered obsolete with the advent of SS#7 and ISDN network enhancements. Less costly DID architecture users should not be penalized in the interim.

SO. BELL'S POSITION: Yes. The network services used by MemoryCall are available at the same rates, terms and conditions to all other customers, including FTA members, who order such services.

Currently, answering services and VMS providers purchase a network architectures different from that used by MemoryCall. Each network architecture operates differently and each has its own advantages and disadvantages. Because Southern Bell markets MemoryCall to large numbers of residential and business subscribers, Southern Bell has decided to use the SMDI tariffed network architecture to provide MemoryCall. In the market that Southern Bell has targeted, primary competition comes from answering machines, which provide an indicator that a message has

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been left. The SMDI architecture allows MemoryCall to provide a similar feature. It also allows customers to use their regular telephone number and their voice mail box, thereby conserving available telephone numbers. The FTA members have historically purchased DID network architecture. DID is different from SMDI and provides certain advantages not available with SMDI, which advantages are primarily cost related. Each of these factors must be considered when a VMS provider makes a decision about which service to use.

Regardless of which network architecture is chosen, Southern Bell makes each network architecture available on the same technical terms and conditions just as it does with all its network services. Thus, if a Telephone Answering Service ("TAS") wished to use SMDI, it could do so in the same manner as Southern Bell's MemoryCall service.

STAFF'S POSITION: No position pending further discovery.

ISSUE 2: What is the industry consensus regarding direct-in-dialing versus multiline hunt groups as the emerging standard for the provisioning of voice mail service?

FTA'S POSITION: To date, no Florida competitor has ordered SMDI. Only MemoryCallsm users can afford SMDI and still manage to offer end users VMS at incredibly low prices. While multiline hunt group configurations may work with voice mail applications, DIDs will continue to be necessary on a going forward basis for TAS offerings. DIDs have been the industry standard in the past, and any transition to SMDI must be affected so as not to harm or penalize existing DID customers who have been pursuing these very network features for years. This is especially true absent a clear industry consensus favoring SMDI.

SO. BELL'S POSITION: There is no industry consensus regarding whether DID or SMDI will be the emerging standard for VMS providers. Because SMDI only recently became available as an ONA service, it is too early to know if its use will increase among the VMS providers.

STAFF'S POSITION: No position pending further discovery.

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ISSUE 3: What are the technical constraints surrounding the provisioning of the Call Forward Busy/No Answer features? How and when can they be corrected?

FTA'S POSITION: As discussed in FTA's testimony, there are several key constraints surrounding the provisioning of Call Forward Busy/No Answer features. First, the service features do not work with DID lines out of 1AESS offices. This may be corrected by implementing software changes and should be corrected within three months time for all offices. Second, for 5E offices, busy DID lines go into ring space and continue ringing. The problem could be solved by providing a busy signal or allowing call completion when a trunk opens up and is capable of correction within a very short timeframe. Third, an 8 second delay in the transfer process occurs when this function is used in conjunction with DID lines. Either a recording indicating that the call is being transferred or a false ring may be used to correct this problem. These are relatively simple solutions requiring little time to implement. Southern Bell should not be allowed to charge extra for the required fixes but should take these expenses below the line.

SO. BELL'S POSITION: As explained in detail in the testimony of Southern Bell's witness, the technical constraints of Call Forward Busy/No Answer in conjunction with DID are primarily associated with the 1AESS switch. Southern Bell is the first company in the country to contract with AT&T to modify the 1AESS to allow Call Forward Busy/No Answer to work on an interoffice basis. Testing of the service will begin in Palm Beach County in November, 1990. A delay is also perceived when calls are transferred to a DID number in a no answer situation. In addition, Southern Bell has filed a new ONA tariff which offers Dual-Tone Multifrequency and multifrequency, which will reduce the delay time perceived by end-users accessing a VMS provider using a DID architecture.

STAFF'S POSITION: No position pending further discovery.

ISSUE 4: [Legal] Is Southern Bell in compliance with the Commission's policy regarding collocation?

FTA'S POSITION: No. The evidence available to FTA indicates that Southern Bell has not made available effective virtual collocation provisions required by the Commission's orders.

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SO. BELL'S POSITION: Yes. In accord with the Commission's Information Service orders, MemoryCall purchases distance sensitive local loop rate elements as though its VMS equipment were located two miles from the central office.

STAFF'S POSITION: Staff takes no position at this time, pending submission and analysis of the parties' post hearing briefs.

ISSUE 5: [Legal] Is Southern Bell in compliance with the Commission's policy regarding Customer Proprietary Network Information?

FTA'S POSITION: No. The evidence available to FTA indicates that Southern Bell personnel supporting and marketing Memorycall services have had access to Customer Proprietary Network Information contrary to the Commission's orders.

SO. BELL'S POSITION: Yes. Southern Bell follows the Commission's orders regulating the use of CPNI.

STAFF'S POSITION: Staff takes no position at this time, pending submission and analysis of the parties' post hearing briefs.

ISSUE 6: Are Southern Bell's marketing practices for MemoryCall fair and reasonable?

FTA'S POSITION: No. Southern Bell's marketing practices are unreasonable, anticompetitive, and unlawful. For example, by marketing MemoryCallsm services in conjunction with monopoly telephone services, Southern Bell has siphoned off existing customers and greatly diminished new business inquiries for competitors. Such practices must be stopped. Also, preferential use of telephone book covers, bill inserts, and the like must not be permitted. Discounts to Memorycallsm customers for regulated features must likewise be prohibited by the Commission. A full structural separation will be the only effective start to a solution on these problems.

SO. BELL'S POSITION: Yes. Southern Bell implemented procedures to ensure that it will not market MemoryCall to customers that it knows are answering service customers. In addition, VMS providers

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may place orders with Southern Bell on behalf of their customers who require a Southern Bell service such as call forwarding.

STAFF'S POSITION: No position pending further discovery.

ISSUE 7: Are Southern Bell's prices for its MemoryCall service covering the service's relevant costs, including the costs other voice mail providers must pay for interconnection with Southern Bell to provide MemoryCall-type features?

FTA'S POSITION: No. The evidence available to FTA suggests that Southern Bell's prices for MemoryCallsm services do not cover the service's relevant costs. Southern Bell's MemoryCallsm prices only cover incremental costs rather than the embedded fully allocated costs of the service as is proper to promote universal service. Otherwise, monopoly services are cross subsidiary Southern Bell's competitive VMS business. There exists a combination of predatory, below cost pricing of MemoryCallsm service at retail to end users and/or an excessive inflation of prices of monopoly components to voice mail providers for interconnection. Southern Bell has priced underlying network services in a manner that favors the very large VMS provider and economically disadvantages the smaller provider. This cost/price problem must be corrected by the Commission in this docket for competition to stand a chance against Southern Bell.

SO. BELL'S POSITION: Yes. As shown by its cost study, Southern Bell's MemoryCall prices are above the service's relevant costs, including the tariffed rates for network services.

STAFF'S POSITION: No position pending further discovery.

ISSUE 8: Are Southern Bell's introduction and offering of MemoryCall in the public interest?

FTA'S POSITION: The manner in which Southern Bell has introduced and offered MemoryCallsm services runs directly contrary to the public interest. The public interest cannot be served when ratepayers are forced to subsidize Southern Bell's voice mail services. Nor is that interest served by Southern Bell's use of its monopoly position to monopolize adjunct competitive

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telecommunication markets. Only by adopting measures which will stimulate diversity and competitive benefits will the public interest be served as Florida enters the Information Age. A start to making MemoryCallsm in the public interest will be to require that its offering in Florida be only through a full structural separation in accord with the 9th Circuit's recent Computer Inquiry III decision. FTA is not seeking protection from competition, but only a fair chance to compete against the monopoly telco.

SO. BELL'S POSITION: Yes. Prior to the introduction of MemoryCall, business and residential customers were limited to the services offered by answering machines and providers of answering services. The services of the latter were focused on those customers who required a live operator and were generally priced higher than the average customer was willing to pay, while the former involved the purchase and operation of additional equipment such as an answering machine. MemoryCall provided the mass market a VMS option that has been long awaited and, as evidenced by the growing number of customers purchasing the service, is a service in great demand by Florida's citizens.

FTA is requesting that the Commission protect them from competition. Southern Bell has treated the FTA members fairly and is competing properly for customers desiring a VMS-type service. MemoryCall is in the public interest since it is bringing customers a new service at a reasonable price and in a fair manner, which is the goal of a competitive market.

STAFF'S POSITION: No position pending further discovery.

ISSUE 9: [Legal] Does the evidence established in this docket suggest that some relief be granted to the FTA, or that any other action be taken? If so, what relief should be granted or other action taken?

FTA'S POSITION: Yes. The evidence established that serious wrongs have occurred which merit the full relief requested in FTA's testimony. Placement of Memorycallsm services into a fully separate subsidiary would best provide the safeguards necessary to levelize the current operating environment between the monopoly and competitive services in the TAS and VMS industries. As an alternative, certain minimum service, marketing, and price

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guidelines must be established to ensure that Southern Bell does not subvert its monopoly advantage into unfair competitive gains. Until such service deficiencies, market discrimination and pricing problems are corrected, there must continue to be a moratorium on Southern Bell's marketing of MemoryCallSM services to both business and residential customers.

SO. BELL'S POSITION: No. The evidence established in this docket clearly indicates that the public interest is being served, that Southern Bell is complying with the Commission's orders, and that Southern Bell is marketing MemoryCall fairly. FTA's complaint contains baseless allegations. As a result of the evidence to be introduced, the Commission should permit Southern Bell to resume its sale of MemoryCall to business customers.

STAFF'S POSITION: Staff takes no position at this time, pending submission and analysis of the parties' post hearing briefs.

VI. EXHIBIT LIST

<u>WITNESS</u>	<u>PROFFERING PARTY</u>	<u>EXHIBIT NO.</u>	<u>TITLE</u>
Jerold Stabler	FTA	JS-1	August 16, 1990 Southern Bell letter to Mr. Stabler with SMDI/MemoryCall price list
		JS-2	Southern Bell Delray Beach Advertisement

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<u>WITNESS</u>	<u>PROFFERING PARTY</u>	<u>EXHIBIT NO.</u>	<u>TITLE</u>
Jerold Stabler	FTA	JS-3	September 26, 1990 Washington Utilities Transportation Commission letter to George A. Walker with Attorney General Opinion attached
		JS-4	November 1, 1990 from Mr. Stabler to Bruce W. Renard regarding discounted Southern Bell services
Robert D. Daniel	Staff	Staff-1	Deposition
	So. Bell	RD-1	MemoryCall Rates
Paul Henning	Staff	Staff-3	Deposition
	Staff	Staff-2	Deposition
Sharon A. Etheridge	So. Bell	SE-1	Cost Study
	Staff	Staff-4	Deposition
(Witness to be named)	Staff	Staff-5	Staff's First Set of Interrog. to Southern Bell
(Witness to be named)	Staff	Staff-6	Staff's Second Set of Interrog. to Southern Bell

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<u>WITNESS</u>	<u>PROFFERING PARTY</u>	<u>EXHIBIT NO.</u>	<u>TITLE</u>
(Witness to be named)	Staff	Staff-7	Florida Teleessaging Association's First Set of Interrog. to Southern Bell

VII. STIPULATIONS:

There are no issues that have been stipulated at this time.

VIII. PENDING MOTIONS:

Southern Bell has filed a Request for Confidential Classification and Motion for Permanent Protective Order and FTA has filed a corresponding objection.

IX. RULINGS:

There have been no rulings at this time.

X. PROCEDURE FOR HANDLING CONFIDENTIAL INFORMATION:

In the event it becomes necessary to handle confidential information, the following procedure will be followed:

1. The Party utilizing the confidential material during cross examination shall provide copies to the Commissioners and the Court Reporter in envelopes clearly marked with the nature of the contents. Any party wishing to examine the confidential material shall be provided a copy in the same fashion as provided to the Commissioners subject to execution of any appropriate protective agreement with the owner of the material.

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2. Counsel and witnesses should state when a question or answer contains confidential information.
3. Counsel and witnesses should make a reasonable attempt to avoid verbalizing confidential information and, if possible, should make only indirect reference to the confidential information.
4. Confidential information should be presented by written exhibit when reasonably convenient to do so.
5. At the conclusion of that portion of the hearing that involves confidential information, all copies of confidential exhibits shall be returned to the owner of the information. If a confidential exhibit has been admitted into evidence, the copy provided to the Court Reporter shall be retained in the Commission Clerk's confidential files.

If it is necessary to discuss confidential information during the hearing the following procedure shall be utilized.

After a ruling has been made assigning confidential status to material to be used or admitted into evidence, it is suggested that the presiding Commissioner read into the record a statement such as the following:

The testimony and evidence we are about to receive is proprietary confidential business information and shall be kept confidential pursuant to Section 364.093, Florida Statutes. The testimony and evidence shall be received by the Commissioners in executive session with only the following persons present:

- a) The Commissioners
- b) The Counsel for the Commissioners
- c) The Public Service Commission staff and staff counsel
- d) Representatives from the office of public counsel and the court reporter
- e) Counsel for the parties
- f) The necessary witnesses for the parties
- g) Counsel for all intervenors and all necessary witnesses for the intervenors.

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All other persons must leave the hearing room at this time. I will be cutting off the telephone ties to the testimony presented in this room. The doors to this chamber are to be locked to the outside. No one is to enter or leave this room without the consent of the chairman.

The transcript of this portion of the hearing and the discussion related thereto shall be prepared and filed under seal, to be opened only by order of this Commission. The transcript is and shall be non-public record exempt from Section 119.07(1), Florida Statutes. Only the attorneys for the participating parties, Public Counsel, the Commission staff and the Commissioners shall receive a copy of the sealed transcript.

(AFTER THE ROOM HAS BEEN CLOSED)

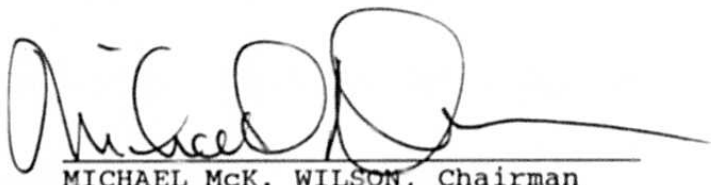
Everyone remaining in this room is instructed that the testimony and evidence that is about to be received is proprietary confidential business information, which shall be kept confidential. No one is to reveal the contents or substance of this testimony or evidence to anyone not present in this room at this time. The court reporter shall now record the names and affiliations of all persons present in the hearing room at this time.

It is therefore,

ORDERED by Chairman Michael McK. Wilson, as Prehearing Officer, that this Prehearing Order shall govern the conduct of the proceedings as set forth above unless modified by the Commission.

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By ORDER of Chairman Michael McK. Wilson, as Prehearing
Officer, this 26th day of NOVEMBER, 1990.



MICHAEL MCK. WILSON, Chairman
and Prehearing Officer

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