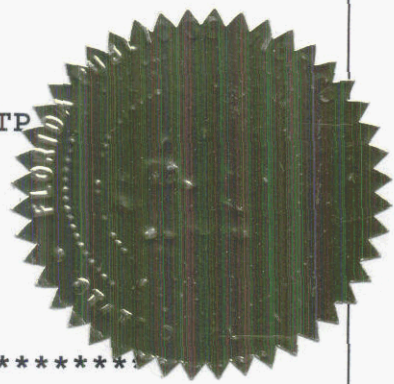


BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

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In the Matter of :  
Investigation into :  
pricing of unbundled :  
network elements. :  
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DOCKET NO. 990649-TP



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PROCEEDINGS: PREHEARING CONFERENCE

BEFORE: COMMISSIONER E. LEON JACOBS, JR.  
Prehearing Officer

DATE: Thursday, December 2, 1999

TIME: Commenced at 9:30 a.m.  
Concluded at 1:00 p.m.

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

REPORTED BY: KIMBERLY K. BERENS, CSR, RPR  
FPSC Commission Reporter

1 **APPEARANCES:**

2           **J. JEFFRY WAHLEN**, Ausley & McMullen, Post  
3 Office Box 391, Tallahassee, Florida 32302, appearing  
4 on behalf of **ALLTEL Communications, Inc.**

5           **NANCY WHITE** and **PHILLIP J. CARVER**, BellSouth  
6 Telecommunications, Inc., c/o Nancy Sims, 150 South  
7 Monroe Street, Suite 400, Tallahassee, Florida 32301,  
8 appearing on behalf of **BellSouth Telecommunications,**  
9 **Inc.**

10           **KIMBERLY CASWELL**, GTE Florida Incorporated,  
11 Post Office Box 110, FLTC0007, Tampa, Florida  
12 33601-0110, appearing on behalf of **GTE Florida**  
13 **Incorporated.**

14           **CHARLES REHWINKEL**, Sprint-Florida, Post  
15 Office Box 2214, Tallahassee, Florida 32316, appearing  
16 on behalf of **Sprint-Florida, Inc.** and **Sprint**  
17 **Communications Company, Limited Partnership.**

18           **JOSEPH A. McGLOTHLIN**, McWhirter, Reeves,  
19 McGlothlin, Davidson, Dekker, Kaufman, Arnold & Steen,  
20 117 South Gadsden Street, Tallahassee, Florida  
21 32301, appearing on behalf of **Florida Competitive**  
22 **Carriers Association.**

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1 **APPEARANCES CONTINUED:**

2 **RICHARD D. MELSON**, Hopping Green Sams and  
3 Smith, Post Office Box 6526, Tallahassee, Florida  
4 32314, appearing on behalf of **MCI WorldCom** and **Rhythms**  
5 **Links f/k/a ACI Corp.**

6 **TRACY HATCH**, AT&T Communications of the  
7 Southern States, Inc., 101 North Monroe Street, Suite  
8 700, Tallahassee, Florida 32301-1509, appearing on  
9 behalf of **AT&T Communications of the Southern States,**  
10 **Inc.**

11 **CHARLES PELLEGRINI** and **CHRISTOPHER V.**  
12 **GOODPASTER**, Covad Communications Company, 9600 Great  
13 Hills Trail, Suite 150 W., Austin, Texas 78759,  
14 appearing on behalf of **Covad Communications Company.**

15 **NORMAN H. HORTON, JR.**, Messer, Caparello &  
16 Self, P.A., P. O Box 1876, Tallahassee, Florida 32303,  
17 appearing on behalf of **Northpoint Communications, Inc.**

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1 **APPEARANCES CONTINUED:**

2           **MICHAEL GROSS**, Vice President of Regulatory  
3 Affairs & Regulatory Counsel, 310 North Monroe Street,  
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6           **MORTON J. POSNER**, Swidler Berlin, Shereff  
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8 Washington, D.C. 20007-5116, appearing on behalf of  
9 **Florida Digital Network Inc., KMC Telecom, Inc., KMC**  
10 **Telecom, II, Inc., and KMC Telecom, III, Inc.**

11           **SCOTT A. SAPPERSTEIN, SR.**, Intermedia  
12 Communications, 3625 Queen Palm Drive, Tampa, Florida  
13 33619, appearing on behalf of **Intermedia**  
14 **Communications.**

15           **LAURA L. GALLAGHER**, 101 North College  
16 Avenue, Suite 302, Tallahassee, Florida 32301,  
17 appearing on behalf of **MediaOne Florida**  
18 **Telecommunications. Inc.**

19           **DONNA CANZANO McNULTY**, MCI World Com, Inc,  
20 325 John Knox Road, The Atrium Building, Suite 105,  
21 Tallahassee, Florida 32301, appearing on behalf of **MCI**  
22 **Worldcom.**

23  
24  
25

1 **APPEARANCES CONTINUED:**

2 **MARK BUCHELE**, 2620 S.W. 27TH Avenue, Miami,  
3 Florida 333133-3001, appearing on behalf **Supra**  
4 **Telecommunications and Information Systems, Inc.**

5 **KAREN CAMECHIS**, Pennington, Culpepper,  
6 Moore, Wilkinson, Dunbar & Dunlap, P.A., Post Office  
7 Box 10095 Tallahassee, Florida 32302-2095, **appearing**  
8 **on behalf of Time Warner AxS d/b/a Time-Warner Telecom**  
9 **of Florida**

10 **DONNA M. CLEMONS**, Florida Public Service  
11 Commission, Division of Legal Services, 2540 Shumard  
12 Oak Boulevard, Tallahassee, Florida 32399-0870,  
13 appearing on behalf of the **Commission Staff.**

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## P R O C E E D I N G S

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

**COMMISSIONER JACOBS:** Call the hearing to order. Counsel read the Notice.

**MS. CLEMONS:** Good morning. By Notice issued November 9, 1999 this prehearing conference has been set for this time and place. The purpose is as set forth in the Notice.

**COMMISSIONER JACOBS:** Take appearances. Where shall we start?

**MS. WHITE:** Nancy White for BellSouth.

**MR. CARVER:** Phillip Carver for BellSouth.

**MS. CASWELL:** Kim Caswell for GTE.

**MR. GROSS:** Michael Gross, FCTA.

**MR. PELLEGRINI:** Charles Pellegrini, Covad Communications Company. I'd also like to make an appearance for Christopher Goodpaster.

**COMMISSIONER JACOBS:** He is on the phone, correct?

**MR. PELLEGRINI:** Yes, I believe he is.

**COMMISSIONER JACOBS:** Okay.

**MR. HATCH:** Tracy Hatch, AT&T Communications and Southern States, Inc.

**MR. MELSON:** Richard Melson representing both MCI WorldCom and Rhythms Links, Inc. On behalf

1 of Rhythms Link, Inc., I'll be joined at the hearing  
2 by Steven Bowen and Jeremy Marcus.

3 **MS. MCNULTY:** Donna McNulty for MCI  
4 WorldCom.

5 **MR. MCGLOTHLIN:** Joe McGlothlin, FCCA.

6 **MR. POSNER:** Morton Posner representing  
7 Florida Digital Network Inc., and KMC Telecom Inc.,  
8 KMC Telecom, II Inc., and KMC Telecom, III, Inc.

9 **COMMISSIONER JACOBS:** I'm sorry. Could you  
10 give me your last name? Spell that for me.

11 **MR. POSNER:** Certainly. Posner,  
12 P-O-S-N-E-R.

13 **MS. GALLAGHER:** Laura Gallagher representing  
14 Media One.

15 **MR. REHWINKEL:** Charles Rehwinkel and John  
16 Fons representing Sprint Florida Incorporated and  
17 Sprint Communications Company Limited Partnership.

18 **MR. WAHLEN:** Jeff Wahlen representing ALLTEL  
19 Communications Inc.

20 **MR. HORTON:** Norman H. Horton, Jr. on behalf  
21 of Northpoint Communications Inc.

22 **MR. BUECHELE:** Mark Buechele on behalf of  
23 Supra Telecom.

24 **COMMISSIONER JACOBS:** Supra.

25 **MR. SAPPERSTEIN:** Scott Sapperstein on

1 behalf of Intermedia Communications.

2           **COMMISSIONER JACOBS:** Is that all the  
3 parties? Staff.

4           **MS. CLEMONS:** Donna Clemons, Division of  
5 Legal Services.

6           **COMMISSIONER JACOBS:** Very well. I  
7 understand we have some preliminary matters. Staff,  
8 how would you like to proceed on those?

9           **MS. CLEMONS:** I'm sorry. What did you say,  
10 Commissioner?

11           **COMMISSIONER JACOBS:** I understand we have  
12 some preliminary matters. How would you suggest  
13 proceeding on those?

14           **MS. CLEMONS:** Commissioner, we're going to  
15 break so that the parties can discuss the proposed  
16 stipulation.

17           **COMMISSIONER JACOBS:** It's my understanding  
18 that all parties have received a copy of the draft  
19 proposal, and in light of the scope of it, and its  
20 impact potential only on how we conduct in docket, it  
21 would occur to me that there will be some use to that,  
22 but I'm willing to hear from the parties on that. But  
23 it occurred to me there would be some use for you all  
24 to take some time to consider it, see to what extent  
25 there can be a consistence reached on it, because if



1 there is some agreement on it I would think -- I would  
2 be under the belief that it would be -- have a  
3 significant impact on how we proceed with the rest of  
4 the prehearing. Anyone?

5 **MS. MCNULTY:** Commissioner Jacobs, I think  
6 that's a very good idea, and just for the record, I am  
7 trying to get a call in number for other members  
8 who -- with different companies who may not be able to  
9 participate in person in that meeting. I did -- I  
10 will see if I tried to get one for 10:00 o'clock.

11 **COMMISSIONER JACOBS:** Tell you what. I  
12 think we have some very knowledgeable experts over here  
13 who can help you with that and we'll let them work on  
14 that for a moment and we will figure out what maybe  
15 circumstances we can arrange, and then we'll come back  
16 to that.

17 **MS. MCNULTY:** I certainly appreciate it.

18 **COMMISSIONER JACOBS:** Mr. Melson anything?

19 **MR. MELSON:** No.

20 **COMMISSIONER JACOBS:** Anyone else?

21 **MR. MCGLOTHLIN:** Did I understand correctly  
22 that the plan is to huddle on the draft and then  
23 reconvene on the 3rd? Is that the thinking?

24 **COMMISSIONER JACOBS:** Well, quite frankly, I  
25 hadn't intended -- I didn't know how long the

1 consideration would take. I'm amenable, if you guys  
2 want to do it today, to being here and trying to get  
3 this resolved today.

4 **MS. WHITE:** BellSouth agrees. We weren't  
5 planning to be here tomorrow. We didn't understand  
6 that was it.

7 **COMMISSIONER JACOBS:** The best way to do it  
8 would be to try and get this resolved today. So, if  
9 that's adequate, we can move forward on those plans.

10 Here's what I'll do. I'm assuming that this  
11 will take at least the morning. Okay. There will be  
12 no need of us trying to reconvene before the  
13 afternoon. So, at the moment, why don't we schedule  
14 to reconvene at 2:00 o'clock. That's not long enough?

15 **MS. WHITE:** No, I think that's too long.  
16 Sorry. Nancy White for BellSouth.

17 **COMMISSIONER JACOBS:** I am glad to hear that  
18 level of optimism. Great.

19 **MS. WHITE:** How about 11:00 o'clock?

20 **COMMISSIONER JACOBS:** 11:00 is fine with me.  
21 Is that fine with Staff?

22 **MS. CLEMONS:** We were thinking more around  
23 2:00 o'clock.

24 **COMMISSIONER JACOBS:** If they're thinking  
25 11:00 o'clock, let's let them shoot for 11:00 o'clock.

1 I'll be available at 15 minutes notice if it takes  
2 until 2:00.

3 **MS. CLEMONS:** That's fine with us.

4 **COMMISSIONER JACOBS:** Is that sufficient?

5 Now, let's work on the issue of getting a  
6 call-in number. I'm -- I don't know if it can be done  
7 in this room. That's my only question. But, I guess,  
8 given the number of folks that want to participate,  
9 that probably is going to be necessary. Hold on.

10 **MS. KEATING:** Commissioner, it's my  
11 understanding I think the room is available. I think  
12 the problem we may run into is obtaining a call-in  
13 number is not up to us and this agency, it's up to the  
14 state operator and it depends on how long it takes for  
15 the state operator to get us back with us. We will  
16 certainly try to get one.

17 **MS. MCNULTY:** Actually -- this is Donna  
18 McNulty with MCI WorldCom, and MCI WorldCom is trying  
19 to get a call-in number to make it more convenient for  
20 everybody if that's all right.

21 **COMMISSIONER JACOBS:** Are you prepared to go  
22 ahead and proceed now or do you want to wait until you  
23 get that taken care of?

24 **MS. MCNULTY:** I would need to call in for  
25 that number and maybe we could meet in five minutes or

1 after the call and we could announce it to whoever is  
2 listening if that's all right.

3 **COMMISSIONER JACOBS:** Unless you need me to  
4 be here, I'll go ahead and leave you to that and if  
5 there's any need for me I'll be available at the end  
6 of a phone. But I'll go ahead and we'll adjourn.  
7 Adjourn is not the right word, is it? Recess. I know  
8 enough about lawyering to know it was wrong.

9 We'll recess the prehearing until a time  
10 certain that -- at the call of the prehearing officer  
11 and Staff will give me that advice, or at the earlier  
12 of the 11:00 o'clock or the call of the prehearing  
13 officer. Hopefully 11:00 o'clock.

14 **MS. CAMECHIS:** Excuse me, Commissioner. I'm  
15 sorry. I apologize for being late. I just wanted to  
16 state my presence. My name is Karen Camechis and I'm  
17 here on behalf of Time Warner Telecom.

18 **COMMISSIONER JACOBS:** All right.

19 **MS. CAMECHIS:** Thank you.

20 **COMMISSIONER JACOBS:** Great. We're in  
21 recess.

22 (Recess from 9:40 to 11:45 a.m.)

23

24 **COMMISSIONER JACOBS:** We'll reconvene. I'm  
25 informed that although hope springs eternal, it

1 doesn't hope today looks like. So, let's go ahead and  
2 proceed then with the prehearing conference today and  
3 complete that and see what comes after.

4 Preliminary matters.

5 **MS. CLEMONS:** Commissioner, we have a joint  
6 motion to strike portions of prefiled testimony of  
7 Witnesses Varner, Emmerson and Trimble and that was  
8 filed on September 10, 1999. And I believe the  
9 parties may want to do some oral argument on that.

10 **COMMISSIONER JACOBS:** Okay. Does everybody  
11 want to argue the motion? Otherwise, I'll set some  
12 time limits. If not, can we do one per side? Hearing  
13 none.

14 **MR. CARVER:** I think we feel that our  
15 position has been set out in the joint motion.

16 **COMMISSIONER JACOBS:** First of all, let me  
17 ask this. Is this motion still --

18 **MR. CARVER:** I'm confused as to which motion  
19 we're on. This would be the motion to strike the  
20 testimony of Mr. Varner.

21 **COMMISSIONER JACOBS:** Right. Sounds --  
22 first of all, you got -- there have been an offer made  
23 that some certain testimony would be stricken in light  
24 of the issuance of the order. Is that offer still on  
25 the table?

1           **MS. CLEMONS:** I think what Commissioner  
2 Jacobs is referring to is, BellSouth, in your response  
3 you stated that you would be willing to withdraw  
4 certain portions of the requested stricken testimony  
5 if the other parties were willing to stipulate that  
6 they would not bring up the issue of additional UNEs  
7 in Phase 1.

8           **MR. CARVER:** Yeah. And I guess whether or  
9 not the offer is still there sort of depends -- it's  
10 effected a little bit by something that I heard during  
11 our session earlier.

12           **COMMISSIONER JACOBS:** Oh, no.

13           **MR. CARVER:** So maybe I need a  
14 clarification.

15           **COMMISSIONER JACOBS:** Okay.

16           **MR. CARVER:** Essentially, Mr. Varner's  
17 testimony addresses the necessary and impaired  
18 standard and the motion to strike it, in essence,  
19 said, "Well, this is stuff for the FCC to consider,  
20 not this Commission." Our point was, that's true if  
21 all of the parties agree that nothing will be  
22 considered in this proceeding other than UNEs that  
23 have been ordered by the FCC.

24           If, however, parties are going to advocate  
25 that this Commission should order additional UNEs that

1 go beyond the FCC order, then our position is you can  
2 only do that through an application of the necessary  
3 and impaired standard, and that's what Mr. Varner's  
4 testimony addresses.

5 So, when it came up originally we were  
6 concerned because with the schedule being the way it  
7 was parties, for example, on Monday when they file  
8 their supplemental testimony, might file that and then  
9 we would not be able to address it.

10 So, in effect, we've put Mr. Varner's  
11 testimony in to give our policy position on that  
12 standard, knowing that it might or might not be an  
13 issue. I still haven't seen the testimony because  
14 obviously it's not going to be filed on until Monday  
15 if we go forward. So I don't know whether it's  
16 relevant to what parties are arguing in this  
17 proceeding or not.

18 So what I'd offered before was that if  
19 everyone would stipulate that in this entire  
20 proceeding, and by proceeding I meant Phase 1 and  
21 Phase 2, that there would be no request for UNEs other  
22 than those included in the 319 order, then we could  
23 withdraw Mr. Varner's testimony.

24 When I initially made that offer, no one was  
25 willing to agree to that. And the specific thing I

1 heard this morning was that counsel for Sprint I think  
2 raised the possibility that in Phase 2 they might be  
3 filing cost studies for additional UNES that they  
4 would advocate.

5           So, where all of that gets us, I guess, is  
6 this. If the parties will stipulate that there will  
7 be no argument about this or position taken either in  
8 testimony or in briefs in Phase 1, then we can  
9 withdraw Mr. Varner's testimony and refile it in Phase  
10 2, if necessary.

11           But, again, I think whether or not his  
12 testimony is relevant to the issues depends on the  
13 issues the other parties raise, so I think it's  
14 appropriate for them to either commit one way or the  
15 other and then I think we'll know whether or not it's  
16 relevant.

17           **COMMISSIONER JACOBS:** I see. Petitioners.

18           **MR. MCGLOTHLIN:** The basis for the motion at  
19 the time that it was filed was that as a result of  
20 issue identification conferences and discussions among  
21 the parties. Phase 1 was being approached from the  
22 standpoint of conforming to the order of the FCC and  
23 that, for that reason, it was inappropriate to receive  
24 or consider evidence on the necessary and impaired  
25 standard that was in front of the FCC at that time.



1           And in reacting to Mr. Carver, I believe,  
2 subject to input from others who were involved in  
3 objecting to the testimony, that if the offer is that  
4 that will be withdrawn if Phase 1 does not involve  
5 UNEs in addition to those in the order, that is  
6 something that we can agree to.

7           **MR. CARVER:** With the understanding that we  
8 can refile it in Phase 2. I guess, what  
9 Mr. McGlothlin is saying is that he views this as an  
10 issue that's appropriate for Phase 2 rather than Phase  
11 1. So if that's the case and that's the way everyone  
12 sees it, then we can withdraw it from Phase 1 and  
13 leave the refile in Phase 2.

14           **COMMISSIONER JACOBS:** Is that the  
15 understanding?

16           **MR. MCGLOTHLIN:** It may be appropriate in  
17 Phase 2 depending on circumstances. It's not  
18 appropriate in Phase 1.

19           **COMMISSIONER JACOBS:** Okay. Help me  
20 understand, Staff.

21           **MR. CARVER:** I just want to say that the  
22 reason why I wanted a stipulation from the parties is  
23 my concern is that someone will file something on  
24 Monday where they raise precisely this issue and then  
25 I'm going to have to come back the next week and argue

1 basically this -- then I'm going to have to file a  
2 motion to strike their testimony. And it seems to me  
3 like it makes sense for all parties to agree what the  
4 ground rules are and for everyone to agree with them.

5 **COMMISSIONER JACOBS:** I agree. I agree.

6 And I think -- sounds like we do have that  
7 understanding. Procedurally, is that a reasonable  
8 approach?

9 **MS. CLEMONS:** Yes. Yes. It's clear at this  
10 point that if we're going to go ahead with the Phase 1  
11 and the Phase 2, that in Phase 1 that we had not  
12 contemplated taking up any issues on additional UNEs.  
13 And if we do do that in Phase 2, then after an  
14 issue -- an appropriate issue ID, if that becomes an  
15 issue then the parties can -- you know, you can refile  
16 that testimony from Mr. Varner and Mr. Emmerson.

17 **MR. CARVER:** If I may, let me propose this.  
18 If we can wait and see what parties file on Monday.  
19 Assuming no one raises the argument that additional  
20 issues or additional UNEs should be identified, then  
21 we will voluntarily withdraw Mr. Varner's testimony at  
22 that time. If someone does file it, though, then I  
23 think this should probably be revisited at the  
24 beginning of the hearing.

25 **COMMISSIONER JACOBS:** My only concern is, we

1 leave that motion pending -- I assume that will be  
2 your request, to leave the motion pending.

3 **MR. CARVER:** Until we see what the other  
4 side files and then we'll know whether or not to --

5 **COMMISSIONER JACOBS:** Okay.

6 **MS. CLEMONS:** Commissioner, Staff believes  
7 that it's appropriate to strike the motion now. At  
8 this point in time, the testimony is not relevant to  
9 any of the issues in Phase 1.

10 **COMMISSIONER JACOBS:** Okay. Here's what  
11 I'll do. I'll delay -- I won't do a ruling from the  
12 bench. We will do a written motion. I'm sorry. A  
13 written order. And I'm thinking I'll do the order  
14 early next week. The order will come out early next  
15 week, and it's only to allow any confusion that might  
16 arise with the filing of supplemental to be resolved.  
17 I don't think the filing of supplemental will change  
18 necessarily Staff's recommendations and likely won't  
19 change with the ultimate ruling may be, but I want to  
20 make sure that we're clear on exactly what we are  
21 dealing with.

22 **MR. CARVER:** Yes, sir. I think that's fair.  
23 The only concern I have, again, is that we've  
24 requested the parties to stipulate to this and they're  
25 not really speaking up. So I'm not sure what to make

1 of that. But I mean, if everyone will represent that  
2 they won't file anything to that effect, then, you  
3 know, then I think we're okay. But, since, I guess  
4 they don't want to commit to that then it's  
5 appropriate to wait and see.

6 **MR. FONTS:** Well, Mr. Hearing Officer, this  
7 is John Fons for Sprint. Apparently I'm the one that  
8 raised it this morning. Sprint will not be filing any  
9 testimony in the supplemental portion of this -- in  
10 the supplemental testimony that speaks to any  
11 particular additional UNEs and asks for them to be  
12 considered in this phase of the proceeding. We'll  
13 only raise the issue and say that it should be  
14 addressed in Phase 2.

15 **MR. CARVER:** And if everyone else will  
16 stipulate to that then we will withdraw the testimony  
17 now.

18 **MR. MCGLOTHLIN:** FCCA can stipulate that its  
19 witness will not try to add UNEs beyond what is  
20 contemplated by the FCC's order.

21 **MS. MCNULTY:** MCI WorldCom agrees as well.

22 **MR. MELSON:** Rhythms agrees, and let me give  
23 just a slight qualification or clarification. Our  
24 supplemental testimony will address things we believe  
25 are required by the 319 order. We're not asking for

1 things beyond it. There may be a disagreement as to  
2 whether the order requires something or not, but the  
3 fight is going to be about what the 319 order  
4 requires. We're not asking for things that we believe  
5 are additional to the 319 order.

6 **COMMISSIONER JACOBS:** As to differences in  
7 interpretation, is that to be an issue? Is that an  
8 issue to be resolved in Phase 2 or are we going to  
9 resolve that in Phase 1?

10 **MR. CARVER:** I believe interpretation of 319  
11 is a Phase 1 issue.

12 **MR. MELSON:** We're all shooting in the dark  
13 a little bit. We're going to be putting forward  
14 testimony that puts out our interpretation of that  
15 order and what's required. I assume BellSouth is  
16 going to do the same. Because of the time table, if  
17 Phase 1 goes forward as scheduled, we don't have an  
18 opportunity for rebuttal, so some of that will be done  
19 live on cross. But to the extent there are disputes,  
20 I think it's within the scope of the issues that you  
21 would decide.

22 **COMMISSIONER JACOBS:** Okay. That sounds  
23 like it's within the purview of your statement. There  
24 will be a decision made on what our position, its  
25 interpretation of 319 -- of that 319 order should be,

1 and then the fallout of that will be whether or not  
2 your positions -- your position as to UNEs is  
3 consistent with what the Commission's interpretation  
4 would be. I don't think that causes you any grief,  
5 does that?

6 **MR. CARVER:** No, I don't think so. I think  
7 that's --

8 **COMMISSIONER JACOBS:** Okay.

9 **MR. CARVER:** I mean, assuming that the issue  
10 is just what does 319 say as opposed to a substantive  
11 discussion of anything that goes beyond 319 and  
12 whether or not you should order that, then I think  
13 we're fine.

14 **COMMISSIONER JACOBS:** Okay. Ms. Caswell.

15 **MS. CASWELL:** Commissioner Jacobs, I would  
16 just not that the motion to strike involved a very  
17 small portion of Mr. Trimble's testimony. Mr. Trimble  
18 is a GTE witness and I think the nature of the  
19 testimony was somewhat different from BellSouth's and  
20 I don't know if any of the CLECs care about it that  
21 much at this point, but I think it was different in  
22 that we didn't -- I think we clearly acknowledged that  
23 the FCC was going to set the UNE list under the  
24 necessary and impaired standard and we didn't go into  
25 any argument about that, just what GTE's view was. So

1 I'm not sure where we are on the GTE part of the  
2 motion.

3 **MR. MCGLOTHLIN:** Well, based upon on our  
4 stipulation I would ask Ms. Caswell to withdraw her  
5 testimony as well, otherwise that motion stands.

6 **COMMISSIONER JACOBS:** Do I --

7 **MS. CASWELL:** Okay. That's fine.

8 **COMMISSIONER JACOBS:** Okay. Great. So then  
9 the resolution of -- we will not rule on the motion to  
10 strike in difference to the withdrawal of the  
11 testimony.

12 **MS. CLEMONS:** Commissioner, I just wanted to  
13 clarify what portions of Witness Varner's and Witness  
14 Emmerson's testimony we were talking about having  
15 BellSouth withdraw. In their response they had  
16 asked -- they had accepted certain portions of the  
17 testimony that they felt was relevant and should not  
18 be characterized with the testimony regarding  
19 necessary and impaired.

20 **MR. CARVER:** Yes. I think the part we're  
21 talking about is fairly limited. There is a question  
22 and answer on Page 4, Line 17 through 24 of  
23 Mr. Varner's testimony, and the question is what  
24 relevance does the 319 proceeding have in this docket.  
25 He answered the question, it looks like in about six

1 lines. They've moved to strike that also. And we  
2 think it's appropriate for him to give -- very briefly  
3 give an opinion as to the relevance of that proceeding  
4 to this one. That's different than the substantive  
5 discussion of the necessary and impaired standard.  
6 And I think, in the other witnesses' testimony there  
7 are comparable statements in -- that address how that  
8 proceeding relates to this one. So I don't think  
9 their argument that that should be stricken is really  
10 appropriate.

11 **COMMISSIONER JACOBS:** Do we need to confirm  
12 exactly pages and line numbers?

13 **MS. CLEMONS:** I have those pages,  
14 Commissioner. It's -- for Witness Varner it's Page 4,  
15 Lines 17 through 24; Page 40, Line 22 through Page 41  
16 Line 12. And for Witness Emmerson, it's Page 6,  
17 Lines 16 through 19.

18 **MS. CASWELL:** Excuse me, Donna. Could you  
19 tell me which Trimble testimony is at issue?

20 **MS. CLEMONS:** Yes. Kim, I believe that  
21 would be all of it.

22 **MS. CASWELL:** No. No, it's not all of it.

23 **MS. CLEMONS:** I'm sorry. Hang on one  
24 second.

25 **MS. CASWELL:** As I recall, it's just a few



1 sentences.

2 **MS. CLEMONS:** For Trimble it's Page 4, Line  
3 5 through Page 6 Line 19.

4 **MS. CASWELL:** Thank you.

5 **COMMISSIONER JACOBS:** Everyone in agreement?  
6 Very well.

7 The next preliminary matter.

8 **MS. CLEMONS:** Commissioner, the next  
9 preliminary matter is the joint motion of GTE Florida  
10 Incorporated and BellSouth Telecommunications, Inc. to  
11 strike the surrebuttal testimony of Don J. Wood on  
12 behalf of AT&T Communications of Southern  
13 States, Inc., and MCI WorldCom, Inc., and it was filed  
14 on November 18, 1999.

15 **COMMISSIONER JACOBS:** Ms. Caswell.

16 **MS. CASWELL:** Yeah, Commissioner. We  
17 clearly believe this is direct testimony. At the  
18 beginning of the proceeding the parties knew what the  
19 issues list was. AT&T and MCI chose not to submit  
20 specific testimony on cost methodology in their direct  
21 testimony or in their rebuttal testimony. Instead  
22 they waited until surrebuttal when no one else had a  
23 chance to reply to that testimony to load the record  
24 with 178 page input portfolio in addition to text in  
25 the testimony itself about cost methodology.

1           This testimony is meant to reenforce the  
2 testimony of another AT&T and MCI witness; that would  
3 be Dr. Ankum. And it clearly states that that its  
4 purpose. That's improper purpose for surrebuttal  
5 testimony.

6           AT&T sets forth a whole list of what the  
7 surrebuttal purportedly responds to in rebuttal and  
8 says the directly -- the testimony is directly  
9 responsive to the rebuttal of other parties.

10           Well, if that were true that would be  
11 apparent in the surrebuttal itself. Never does the  
12 testimony mention any other witnesses' names or the  
13 specific points they brought up. And I submit to you  
14 that the best way to decide this motion is to look at  
15 their testimony. Surrebuttal is a little like an  
16 obscenity. We know it when we see it, and this isn't  
17 it. This is not surrebuttal testimony. It's direct  
18 testimony.

19           And just -- AT&T's response is, all of their  
20 arguments rest on the assumption that it is direct  
21 testimony. So, you know, the response just assumes  
22 something that is not true and then argues against all  
23 the points we've made.

24           So, and at this point we have no opportunity  
25 to reply to it. So, it's compromised our due process

1 rights and our rights to discovery as well.

2 COMMISSIONER JACOBS: Okay.

3 MR. CARVER: May I add one or two points?

4 MS. CASWELL: Yeah. It was a joint motion  
5 by GTE and BellSouth.

6 COMMISSIONER JACOBS: Go ahead.

7 MR. CARVER: And I'll keep this brief, but I  
8 just wanted to note a couple of things. Attached to  
9 Mr. Wood's testimony is several hundred pages of  
10 documentation that has to do with the HAI5.1 model  
11 which I assume is the model he will sponsor in Phase 2  
12 of the proceeding.

13 In their response AT&T said that they're  
14 really not providing new inputs; they're really not  
15 trying to put in evidence improperly. That they're  
16 simply providing this to sort of give the Commission  
17 an example of the way a cost study should look. So,  
18 their response, I think, is basically that this really  
19 isn't substantive evidence. It's just something that  
20 they put there as, I guess, sort of an illustrative or  
21 demonstrative aid.

22 And if that's the -- if that is really what  
23 they're about here, then it shouldn't be attached to  
24 the testimony. And I think, also, if you look at the  
25 testimony, their contention as to what this is and

1 what it does is really rebutted by the testimony  
2 itself.

3 Beginning on Page 29 of the testimony and  
4 going on for several pages afterwards, this is just  
5 one example, Mr. Wood advocates the Hatfield model at  
6 great length. He talks about how he believes that it  
7 comports with the FCC's ruling and he talks about why  
8 he believes the Commission should accept it.

9 That, I think, is clearly advocacy of a cost  
10 model and is the advocacy of the model that is  
11 attached to his testimony. We just had a discussion  
12 about whether or not Mr. Varner's testimony belonged  
13 in Phase 1 or Phase 2. I think this is an even  
14 clearer example of testimony that absolutely does not  
15 belong in Phase 1. It belongs in Phase 2 and it  
16 should be filed as direct testimony, because then  
17 parties would have a fair opportunity to respond to  
18 it. Instead, for reasons that are not entirely clear,  
19 AT&T has filed it as surrebuttal and raised new issues  
20 that really aren't addressed by any witness at all.

21 In terms of the substance of the testimony,  
22 one other point I wanted to make is, if this is  
23 rebuttal testimony, then I have to say it is unlike  
24 any rebuttal testimony I've ever seen because he goes  
25 on for 57 pages, and when I read it, I could not find

1 one reference to any opposing witness that he is  
2 actually rebutting.

3 He makes a very brief witness -- a very  
4 brief reference to something that a BellSouth witness  
5 said in Georgia, something that's not even part of  
6 this proceeding, but he doesn't identify by name  
7 anyone that he is rebutting at all. What he does say  
8 specifically on Page 4 of his testimony is that one of  
9 the points of his surrebuttal is to give what he  
10 refers to as practical illustrations of the testimony  
11 of Dr. Ankum and of Mr. Gillan. If that's the point,  
12 then clearly in his own words he is supplementing  
13 their testimony and that's not proper surrebuttal.

14 The last point I want to make is that AT&T  
15 has tried, I think, to sort of bolster the argument  
16 that this is surrebuttal by appending to their motion  
17 an index and they say, well, here are all the places  
18 where Mr. Wood is responding to something that someone  
19 else has said.

20 If you look at them closely, though,  
21 there'll be situations where they will identify a  
22 general topic, identify 8 or 10 pages of testimony by  
23 Mr. Wood and say, he's really rebutting two lines in  
24 the testimony of Ms. Caldwell with these 10 pages that  
25 he's filed.

1 Well, my first point, again, is that in the  
2 testimony itself he doesn't say at all that he is  
3 rebutting her. He simply gives this testimony as if  
4 it were direct testimony. But, even if you accept  
5 that his testimony addresses the same subject matter  
6 as these other witnesses, that doesn't make it  
7 rebuttal and it doesn't make it surrebuttal.

8 If you have an issue list and witnesses  
9 address that issue list through their direct  
10 testimony, you would assume that they would talk about  
11 the same general subject matter. And that's all Mr.  
12 Wood's testimony does. He gives what is, in effect,  
13 direct testimony that happens to be on the same  
14 subject matter as covered by some other witnesses.  
15 There's nothing in that fact that makes it  
16 surrebuttal. And for that reason, we've joined in the  
17 motion to strike. Thank you.

18 **COMMISSIONER JACOBS:** Thank you.

19 **MS. MCNULTY:** I'm Donna McNulty on behalf of  
20 MCI WorldCom and at this point arguing for AT&T as  
21 well.

22 The purpose of surrebuttal is to allow  
23 parties to respond to other parties' rebuttal  
24 testimony. We believe the test is that the testimony  
25 falls within the scope of the rebuttal testimony upon

1 which it comments. By Attachment A we believe we have  
2 shown that Mr. Wood's testimony meets this test. We  
3 are not required by any rule to specify in the  
4 rebuttal testimony what we are rebutting to and whose  
5 testimony we are rebutting. Upon challenge we have  
6 provided that information in Attachment A.

7 By its very nature, rebuttal testimony  
8 provides more detail than direct testimony. The fact  
9 there is additional detail is irrelevant to the test.  
10 And in response to an issue raised by GTE, we are not  
11 limiting any discovery rights by GTE. GTE is free to  
12 serve discovery upon any party in this proceeding.  
13 Accordingly, the joint movants' motion should be  
14 denied.

15 **COMMISSIONER JACOBS:** Anyone else? Staff.

16 **MS. CLEMONS:** Commissioner Jacobs, Staff has  
17 taken a look at the motion and we believe that it  
18 would be appropriate to strike the HAI input  
19 portfolio. The parties have conceded that its only  
20 purpose is to provide -- is to represent the level of  
21 support that should accompany a cost study, and in  
22 light of the fact that BellSouth agreed to withdraw  
23 its earlier testimony on cost of capital and  
24 depreciation, we believe that it would be appropriate  
25 to strike the HAI input portfolio.

1           With regards to the rest of the testimony,  
2 Staff believes that it should be allowed to stay and  
3 just given the appropriate weight. We do believe that  
4 it has some relevance to the issues.

5           **COMMISSIONER JACOBS:** Very well. I want to  
6 take just a moment and confer with Staff. (Brief  
7 pause.) Okay. Back on the record. Having reviewed  
8 the testimony that's at issue I am -- let's see. I'm  
9 going to follow the recommendation of Staff and strike  
10 in part.

11           We will strike the attachments as described  
12 and one section beginning on Page 29, then the  
13 question and answer beginning at Line 12 on Page 29  
14 going over to, I believe, Page 35, Line 17.

15           The reason that it does not appear to be  
16 surrebuttal, more the tone of comparison and advocacy  
17 of one model versus the other. With that, the other  
18 testimony will be admitted.

19           **MS. CASWELL:** Commissioner Jacobs, can I ask  
20 a question?

21           **COMMISSIONER JACOBS:** Yes.

22           **MS. CASWELL:** Can we have sufficient leeway  
23 in our rebuttal testimony and in the summaries at the  
24 hearing to address Mr. Wood's points, because  
25 otherwise we will have had no opportunity to do so.



1           **COMMISSIONER JACOBS:** He's anticipated to be  
2 on the stand; is that correct?

3           **MS. CASWELL:** Yes, he's going to be on the  
4 stand. Our witnesses will be on the stand too, but --

5           **COMMISSIONER JACOBS:** You asking for your  
6 witnesses to do it on their direct?

7           **MS. CASWELL:** Our witnesses have had no  
8 opportunity to reply to it, so at least in their  
9 summaries they could --

10           **COMMISSIONER JACOBS:** Is that going to be a  
11 contentious issue at trial?

12           **MR. HATCH:** I'm not sure that I object as  
13 long as everybody gets the same opportunity to file  
14 rebuttal testimony to all the other parties'  
15 surrebuttal that's been filed.

16           **COMMISSIONER JACOBS:** Staff, any  
17 recommendation?

18           **MS. CLEMONS:** Staff believes that the whole  
19 pleading rebuttal, surrebuttal, supplemental, the  
20 cycle has to stop at some point, and we believe that  
21 just striking the testimony, the parts that we've  
22 discussed and just leaving the rest would suffice and  
23 then the other parties will have the opportunity to  
24 cross examine at hearing.

25           **COMMISSIONER JACOBS:** Well, here's my view

1 on it. You have -- Ms. Caswell, you have an admission  
2 at least by the parties here of these portions of your  
3 witnesses' testimony where this testimony would apply.

4 To the extent that, and those sections that  
5 have been acknowledged here, that witness in my mind  
6 could address -- again, I address that point that  
7 they've acknowledged in their motion. I'm not saying  
8 that you add testimony. But only that you -- they can  
9 bring out the point that was cited in the motion.  
10 Okay.

11 **MS. CASWELL:** Yeah. We're not seeking to  
12 add testimony, so that would be fine. Thank you.

13 **MR. HATCH:** I'm not sure that I understand,  
14 Commissioner Jacobs.

15 **COMMISSIONER JACOBS:** In attachment to your  
16 motions, you cited the sections where --

17 **MR. HATCH:** To which the testimony of  
18 Mr. Wood was responsive.

19 **COMMISSIONER JACOBS:** Was responsive. What  
20 I'm saying to them, their witness can bring out that  
21 section that you cited. In the --

22 **MR. HATCH:** I'm sorry.

23 **COMMISSIONER JACOBS:** They can't seek to add  
24 to that anymore than what is there already.

25 **MR. HATCH:** I believe the request of

1 Ms. Caswell is in the course of her witness' summary,  
2 she would elicit additional response to Mr. Wood's  
3 testimony in the course of her summary which becomes  
4 live sur-surrebuttal.

5 **COMMISSIONER JACOBS:** And my response is  
6 that, no, that is not what is to happen. What is to  
7 happen is that their witness can emphasis the point  
8 that is already in their testimony, but which you  
9 cited Mr. Wood's testimony responds to.

10 **MR. HATCH:** I think I understand.

11 **COMMISSIONER JACOBS:** Okay. So no, they  
12 cannot add additional response to Mr. Wood. They can  
13 only emphasis the points that are there already.

14 Okay. Very well. Anything else?

15 **MS. CLEMONS:** Commissioner, the next  
16 preliminary matter is Staff's motion for leave to file  
17 prehearing statements late. We do not believe that --

18 **COMMISSIONER JACOBS:** Any objections to  
19 that? Granted.

20 **MR. HATCH:** No. No objections.

21 **MS. CLEMONS:** The next preliminary matter is  
22 BellSouth's request for confidential classification,  
23 and from my understanding you don't have to make a  
24 ruling on that unless someone -- unless Staff decides  
25 to use the information at hearing and at this time we

1 don't, or if another party requests the information.

2 **COMMISSIONER JACOBS:** But it will be handled  
3 by Staff?

4 **MS. CLEMONS:** Uh-huh, at that time.

5 **COMMISSIONER JACOBS:** Okay. And are there  
6 any other preliminary matters?

7 **MR. POSNER:** Commissioner, Morton Posner  
8 representing Florida Digital Network. I don't know if  
9 you want to hear this now, but Florida Digital will be  
10 withdrawing its rebuttal testimony of Jeanne Senatore.

11 **COMMISSIONER JACOBS:** Okay.

12 **MR. POSNER:** 319 order has overtaken us for  
13 the most part.

14 **COMMISSIONER JACOBS:** The weight of logic.  
15 That's -- why don't we deal with that definitively.  
16 We can go ahead and acknowledge that now, that you  
17 will be withdrawing?

18 **MR. POSNER:** That's correct. Thank you.

19 **COMMISSIONER JACOBS:** The witness' name  
20 again?

21 **MR. POSNER:** Jeanne Senatore.

22 **COMMISSIONER JACOBS:** Okay. Very well. Any  
23 others?

24 **MR. HORTON:** Commissioner, e.spire was a  
25 party initially to this proceeding, but we withdraw

1 about three weeks ago so to the extent that the  
2 appearances show me with e.spire, they are not  
3 participating in this.

4 And we would also -- Mr. Falvey is shown as  
5 a witness for e.spire and he should be removed from  
6 the witness list.

7 **MR. MCGLOTHLIN:** Does that mean you're not  
8 really here?

9 **MR. HORTON:** I'm here, but not really.

10 **COMMISSIONER JACOBS:** I'm sorry. Your  
11 witness' name again?

12 **MR. HORTON:** Jim Falvey was the witness for  
13 e.spire.

14 And if I could switch hats. I am appearing  
15 for Northpoint Communications today, and on Page 4  
16 with reference to the joint prehearing statement filed  
17 by the FCCA, Northpoint should be included in that  
18 list. They were part of a joint parties -- one of the  
19 joint parties. That's Page 4 of the second paragraph.

20 **MR. MCGLOTHLIN:** While everyone is looking  
21 at that paragraph, I believe there are a couple of  
22 others who are inadvertently omitted; Supra and  
23 Florida Digital Network.

24 **COMMISSIONER JACOBS:** Why don't we go ahead  
25 and get into the prehearing order. We're going to go

1 section by section, and to make it as quickly as  
2 possible, if no one has any modifications, we won't go  
3 through each party's position.

4 Very well. Section 1.

5 **MR. MELSON:** Before you get to Section 1,  
6 I'd like to add an additional appearance for Stephen  
7 Bowen of Blumenfeld and Cohen on behalf of Rhythms  
8 Links. That would go at the top of Page 2 right in  
9 front of Jeremy Marcus.

10 **COMMISSIONER JACOBS:** I'm sorry. Steven --

11 **MR. MELSON:** Steven Bowen, B-O-W-E-N. And  
12 we're trying to get the paperwork to have him admitted  
13 in order. I've got one more piece I need to file.

14 **COMMISSIONER JACOBS:** Very well. That takes  
15 care of that. Section 1. No modifications? Well, we  
16 almost, I guess, had a modification.

17 Section 2. Background. Other than the  
18 modifications identified on Page 4 adding Northpoint,  
19 Supra and Florida Digital as joint petitioners, no  
20 others?

21 Move on to Section 3. That's boilerplate.  
22 Modifications.

23 Section 4. Again, standard boilerplate.

24 And Section 5.

25 That takes us to Section 6.

1           **MS. WHITE:** Section 6, I don't know whether  
2 this is the right section, but Dr. Emmerson is going  
3 to have to be put up either late on the 13th or  
4 sometime on the 14th so that we may have to have a  
5 special setting.

6           **COMMISSIONER JACOBS:** Dr. Emmerson?

7           **MS. WHITE:** Dr. Emmerson, yes.

8           **COMMISSIONER JACOBS:** That will be for both  
9 direct and rebuttal?

10          **MS. WHITE:** Yes.

11          **COMMISSIONER JACOBS:** First of all, is there  
12 any -- are the parties in agreement as to whether  
13 direct and rebuttal will be both presented as once?

14          **MS. WHITE:** BellSouth believes there should  
15 be the rebuttal, direct, surrebuttal, supplemental  
16 direct, all of it at once.

17          **COMMISSIONER JACOBS:** Okay. That helps.

18          **MR. PELLEGRINI:** Commissioner Jacobs,  
19 Witness Murray for Covad and Rhythms would like to  
20 appear on the 15th.

21          **COMMISSIONER JACOBS:** Okay.

22          **MR. MELSON:** And, Commissioner Jacobs, the  
23 same is true for Witness Williams for Rhythms. Both  
24 Mr. Williams and Ms. Murray are testifying in New York  
25 earlier that week and we'd like to have them both on

1 the 15th. Since they're sort of at the bottom of the  
2 list --

3 **COMMISSIONER JACOBS:** I'm wondering, and  
4 this really, I guess, has to do with the parties. My  
5 experience is that Mr. Varner and Ms. Caldwell's time  
6 on the stand tends to be rather extensive, so if -- I  
7 don't have a problem with changing the order, but we  
8 may need to acknowledge that now so that all -- in  
9 case it comes in as a matter of interrupting your  
10 schedule of witnesses for BellSouth.

11 **MS. WHITE:** Why don't we -- if we can go  
12 ahead and set Dr. Emerson maybe for the 14th.

13 **COMMISSIONER JACOBS:** Okay.

14 **MR. MELSON:** Commissioner Jacobs, the  
15 request on Murray and Williams was for the last day of  
16 the hearing and hopefully we'll be finished with  
17 Mr. Varner by then.

18 **COMMISSIONER JACOBS:** Okay. Very well. I  
19 don't think those will be a problem.

20 **MR. GROSS:** Commissioner Jacobs, on behalf  
21 of FCTA I would like to point out that Terry Murray in  
22 the direct witnesses is listed as FCTA's witness. I  
23 believe that's just a typographical error. I think  
24 he's Covad's and Rhythms'.

25 **COMMISSIONER JACOBS:** Okay.



1           **MR. GROSS:** And Mr. Barta, witness for FCTA,  
2 Time Warner and Media One, he would not be available  
3 until the 14th.

4           **COMMISSIONER JACOBS:** I'm sorry. Mr. Barta?

5           **MR. GROSS:** William Barta.

6           **COMMISSIONER JACOBS:** Okay. That probably  
7 will -- very well.

8           **MR. MELSON:** Commissioner Jacobs, in terms  
9 of witness order, I know Mr. Williams did not file  
10 direct testimony. I don't know if we've got any other  
11 witnesses that filed rebuttal or surrebuttal and did  
12 not file direct, but would the intention be to order  
13 the people in the order they're shown under the  
14 direct?

15           **COMMISSIONER JACOBS:** That would be my  
16 intent unless schedules are really pressing and we  
17 can -- and if that -- I would hope that midway the  
18 first day we can have some understanding of that and  
19 determine what ramifications that might be, but I'm  
20 thinking just go down the list of witnesses here.  
21 Does any other party have a different preference?  
22 Okay.

23           **MR. MELSON:** And in that case, Mr. Chairman,  
24 we ask that Mr. Williams be inserted in the lineup  
25 between Mr. Barta and Ms. Murray. While he filed only

1 rebuttal, when you read the testimony as a whole it  
2 makes more sense to take him before Ms. Murray.

3 **COMMISSIONER JACOBS:** Very well. So that  
4 sounds fine. And they're both here on the 15th?

5 **MR. MELSON:** Yes, sir.

6 **COMMISSIONER JACOBS:** Now -- I'm sorry.  
7 Ms. McNulty.

8 **MS. MCNULTY:** Commissioner Jacobs, Mr. Wood,  
9 as we know, filed just surrebuttal testimony, so he  
10 would be in a similar situation. And --

11 **COMMISSIONER JACOBS:** I see. And your  
12 contention is that he will be better suited after or  
13 before Mr. Murray?

14 **MS. MCNULTY:** Or after Ankum.

15 **COMMISSIONER JACOBS:** Ankum. Okay. You're  
16 right. Of course.

17 **MS. MCNULTY:** Thank you.

18 **MS. CASWELL:** Can we have a moment to think  
19 about that order?

20 **COMMISSIONER JACOBS:** Okay.

21 **MS. MCNULTY:** Now, Wood would go after  
22 Ankum?

23 **COMMISSIONER JACOBS:** That's the request  
24 by --

25 **MS. MCNULTY:** Do you have another proposal?

1           **COMMISSIONER JACOBS:** We'll take a moment.

2           **MS. CASWELL:** Since we're combining all of  
3 the direct and rebuttal testimony, I think it's a  
4 little unfair to have all the ILEC witnesses first and  
5 all the ALEC witnesses at the end. So maybe we could  
6 at least mix them up a little and have an ILEC witness  
7 and then maybe some ALEC witnesses and then have GTEs  
8 and the rest of the ALECs.

9           **MS. WHITE:** BellSouth would agree from the  
10 standpoint of, as you pointed out, the other parties  
11 do tend to take a long time with certain witnesses and  
12 in which case it limits the amount of time that GTE  
13 and BellSouth will have to cross their witnesses. So  
14 maybe if we can group the witnesses in terms of topic  
15 and have all the witnesses on one topic and then all  
16 the witnesses on another topic.

17           **MR. HATCH:** When you've only got one witness  
18 testifying to multiple topics, it just doesn't work  
19 that way.

20           **MS. CASWELL:** Yeah, I think it does --

21           **MS. WHITE:** I'm just trying to make sure  
22 it's fair to everybody.

23           **MS. CASWELL:** -- because you generally have  
24 policy witnesses and then you have more specific maybe  
25 cost methodology witnesses. And, I think we can do it

1 in a better way than we've done it here, even if it's,  
2 you know, less than scientific.

3 While you're considering that,  
4 Commissioner --

5 **COMMISSIONER JACOBS:** Where is Mr. -- he's  
6 not in here. Why did I think Mr. Gillan was in here?  
7 There he is. He only does rebuttal.

8 My thought was, if he had a lead off kind of  
9 summary kind of witness, to bring that person on after  
10 Mr. Reid, and here's the rationale.

11 Dr. Emmerson can't be here until the 14th  
12 anyway, so even if we were to follow this list I  
13 wouldn't want to be in a situation where we get to a  
14 point in the testimony first day -- although, unlikely  
15 the prospect may be; we get to a point in the  
16 proceedings the first day and Mr. Emmerson is not  
17 here, and we're at his point in the list here and we  
18 got to skip over him anyway. So the thought occurs  
19 that since he can't be here on -- wait a minute.  
20 What's the first day of this hearing?

21 **MS. WHITE:** The 13th.

22 **COMMISSIONER JACOBS:** Since he can't be here  
23 until the 14th, what if we put -- you put a witness at  
24 that spot before Dr. Emmerson. That's a suggestion  
25 only. Please don't feel any burden to follow that.

1           **MS. CLEMONS:** Commissioner, Staff suggests  
2 that we might want to get with the parties afterwards  
3 to make sure that we have the order of the witnesses  
4 correct. It's kind of hard to follow with all of the  
5 changes.

6           **COMMISSIONER JACOBS:** Sounds like a good  
7 solution to me. And present it to me and I can  
8 incorporate it.

9           **MS. CASWELL:** Commissioner Jacobs, I do have  
10 one last request and that would be for witnesses  
11 Trimble and Doane to testify as a panel. Mr. Trimble  
12 presents GTE's primary recommendation in this  
13 proceeding. Mr. Doane presents its secondary  
14 recommendation, but both of those recommendations rest  
15 on the same rationale and they will probably get  
16 similar cross questions. I think it will go more  
17 efficiently and quickly if they testify as a panel.  
18 This Commission has customarily allowed panels.

19           **COMMISSIONER JACOBS:** What say ye?

20           **MR. HATCH:** It's okay with AT&T.

21           **COMMISSIONER JACOBS:** Okay. Sounds like  
22 then that will be agreeable.

23           **MS. CASWELL:** Thank you.

24           **COMMISSIONER JACOBS:** Here's what we'll do.  
25 We'll leave Section 6 of the prehearing order in

1 abeyance until the parties and Staff have a chance to  
2 sit down and work through the sequencing issues in  
3 terms of what issues parties testify to. I'd like to  
4 make sure that that's clear, though. No changes there  
5 in terms of a final order of appearance, and we'll  
6 leave that for final agreement and we'll incorporate  
7 it into the final order.

8 **MS. WHITE:** Commissioner Jacobs, if we could  
9 go back a minute. I just noticed that in the  
10 Section 4 the brief has been limited to 40 pages.  
11 This is an awfully big proceeding and even though I  
12 don't like to cut down more trees than necessary, I  
13 have a feeling it's going to take more than 40 pages  
14 to address all the issues, and I was wondering if  
15 anybody had any objections to raising that limit to  
16 50.

17 **MS. CASWELL:** I don't have an objection.  
18 But can I ask Staff, does that rule say 40 pages? I  
19 thought it was 50 or 60. I don't remember 40. Oh,  
20 this could be an effect of the uniform rule. Is  
21 that --

22 **UNIDENTIFIED SPEAKER:** Yes. I think that's  
23 right.

24 **MS. WHITE:** So do we have to ask for a  
25 waiver?

1           **MS. CLEMONS:** The rule says 40.

2           **MS. CASWELL:** Yes. I think that's the new  
3 rule. Can we --

4           **MS. CLEMONS:** We don't have any objection to  
5 50. If the parties want 50, 50 it is, assuming the  
6 Commissioner agrees.

7           Commissioner, the rule says 40, but Staff  
8 has no objection if the parties want 50.

9           **COMMISSIONER JACOBS:** Petitioners. I'm  
10 sorry.

11          **MR. MELSON:** No objection.

12          **COMMISSIONER JACOBS:** I know because of the  
13 motions. I got in the frame of calling you all  
14 petitioners because of the motion. That's what it  
15 was. Sounds like it is agreeable. 50. 50 pages for  
16 the briefs.

17  
18          **MR. MCGLOTHLIN:** As one who spends a lot of  
19 time trying to delete prepositions and otherwise find  
20 ways to word a position in 50 words or less, can we  
21 have a little relief from that as well?

22          **COMMISSIONER JACOBS:** This is pushing my  
23 English here a bit much. What would be your  
24 suggestion?

25          **MR. MCGLOTHLIN:** 75.

1           **MR. FONS:** I would certainly agree. 50  
2 words is impossible for some of these issues.

3           **MR. MCGLOTHLIN:** The intent of that measure  
4 was understandable because we've all seen instances  
5 where a party just goes a page and a half on a  
6 position and that's obviously --

7           **COMMISSIONER JACOBS:** Only because the skill  
8 of the lawyers here and knowing that they will be  
9 concise and direct, I think that will be fine. 75  
10 words. Very well. Takes care of Section 4 again.

11           On to Section 7. Any modifications of basic  
12 positions? Okay.

13           Section 8. Issues and positions. Issue 1.  
14 Actually, Issue 1A.

15           **MR. MELSON:** I believe under the joint  
16 statement, Item 8, it's on the bottom of Page 12,  
17 should be DS-3.

18           **COMMISSIONER JACOBS:** Okay. Any others.

19           **MR. POSNER:** Top of the next page a typo in  
20 the first line. It says cDSL. I think it should be  
21 xCSL.

22           **COMMISSIONER JACOBS:** Okay. Issue 1B. Very  
23 well. Great.

24           Issue 1C. Issue 1D.

25           Issue 1E. No changes there.



1 Issue 1F. No modifications.

2 Issue 1G.

3 **MS. WHITE:** The only thing I noticed -- this  
4 is Nancy White for BellSouth -- is that BellSouth's  
5 position under 1G was just typed up twice. It was  
6 typed up twice.

7 **MR. WAHLEN:** Does that mean you really mean  
8 it?

9 **MS. WHITE:** If that's for emphasis, that's  
10 fine.

11 **COMMISSIONER JACOBS:** Is it clear -- the FCC  
12 requirement of deaveraging, is it clear that there  
13 must be three zones?

14 **MS. WHITE:** No.

15 **COMMISSIONER JACOBS:** Can we get at the  
16 question here? Does this prior issue, does that get  
17 at the question of whether or not there should be  
18 three zones or not? 1E, I think it was. I'm sorry.  
19 1 -- no. 1C. I think that covers that. But I want  
20 to be clear.

21 **MR. MELSON:** Commissioner, I think it covers  
22 it in broad terms. I think the parties probably do  
23 not agree as to -- as to precisely what the FCC order  
24 requires. And I believe the -- if you ask the parties  
25 their position on how many numbers, Rhythms, for

1 example, would say you have to see the cost studies  
2 first and see where the natural break points are to  
3 determine how many zones. Other parties might say  
4 something different. I don't think there's a  
5 specification of a particular number of zones.

6 **COMMISSIONER JACOBS:** Okay. We left off at  
7 1F. No modifications of 1F? Other than -- now, was  
8 that a -- Ms. White --

9 **MS. WHITE:** That was 1G.

10 **COMMISSIONER JACOBS:** 1G. I'm sorry. Okay.  
11 Did you get that Staff?

12 **MS. CLEMONS:** Uh-huh.

13 **COMMISSIONER JACOBS:** That completes  
14 Issue 1.

15 Issue 2. Any modifications?

16 Issue 3. 3A. Issue 3B. Issue 3C.

17 Issue 3D. And 3F. All right. That takes care of  
18 Section 8, was it? Yes.

19 On to Section 9, the exhibit list. Any  
20 modifications to the exhibits?

21 **MR. MELSON:** Mr. Chairman, on Page 29 of the  
22 last witness, Eric H. Geis, Mr. Williams is adopting  
23 his testimony so that probably should say Witness  
24 Robert Williams, and I think we said adopting the  
25 testimony of Eric H. Geis up in the witness list.

1 That probably should be phrased the same way here.  
2 And we would withdraw Exhibit EHG-1. We don't need  
3 Mr. Geis' biography if Mr. Williams is going to be  
4 testifying.

5 **COMMISSIONER JACOBS:** Great.

6 **MR. HATCH:** Commissioner Jacobs, consistent  
7 with your prior ruling on Mr. Wood's testimony, we  
8 probably need to extract the exhibit in the list of  
9 Mr. Wood.

10 **COMMISSIONER JACOBS:** DJW-2?

11 **MR. HATCH:** Yes.

12 **COMMISSIONER JACOBS:** No other revisions.

13 **MR. MCGLOTHLIN:** That will be true of  
14 Mr. Varner's exhibits as well on Page 25. Certain of  
15 those related to the motion to strike that was ruled  
16 on or rather that to which they withdrew testimony.

17 **COMMISSIONER JACOBS:** Which exhibit?

18 **MR. MCGLOTHLIN:** 1, 2 and 3, I believe.

19 And 4. 1 through 4.

20 **COMMISSIONER JACOBS:** Agreed.

21 **MR. CARVER:** No, I think Exhibit 4 is the  
22 Florida Fact Report. I don't think -- it was part of  
23 the FCC filing.

24 **MR. MCGLOTHLIN:** It wasn't part of the FCC  
25 filing, but it was offered in support of the necessary

1 and impaired testimony.

2 **MR. CARVER:** No, I don't think it was.

3 **COMMISSIONER JACOBS:** What is the Florida  
4 Fact Report? What is that? What is the date of that?

5 **MR. CARVER:** I don't have it in front of me.  
6 In effect, it was sort of a white paper that talked  
7 about particular facts relating to competition in the  
8 state of Florida. It was not part of an FCC filing.  
9 It was something that he put in. In Phase 1 we have  
10 taken the position that the deaveraging should be  
11 taken -- done or structured in light of market  
12 conditions. But that's a factor to be considered.

13 This particular factor for it goes  
14 specifically to market conditions and it's something  
15 that does not address the necessary impaired standard  
16 and it really -- although it was the subject of the  
17 original motion, in our response we stated that it  
18 should not be stricken because they confused it with  
19 something that it wasn't and we hold to that position.

20 **MR. MCGLOTHLIN:** I'm looking at Page 6 of  
21 Mr. Varner's testimony. At Line 22 he makes a  
22 statement in terms of justifying HAV-4.

23 "In addition, I have attached as Exhibit  
24 HAV-4, the Florida Fact Report which demonstrates the  
25 significant level of competition and alternative

1 sources of UNEs that are available to ALECs in  
2 Florida. Now, the reference to alternative sources of  
3 UNEs relates directly to the arguments on necessary  
4 and impaired.

5 **MR. CARVER:** And the reference to  
6 significant level of competition relates specifically  
7 to market conditions for deaveraging. So my point is  
8 that it does not solely address the necessary and  
9 impaired standard, and if you look at the exhibit in  
10 substance, it is relevant. It relates to market  
11 conditions. It was not part of the FCC filing and it  
12 doesn't relate in a direct sense to the necessary and  
13 impaired.

14 **COMMISSIONER JACOBS:** Staff. Do you have  
15 any chance to review that exhibit?

16 **MS. CLEMONS:** Commissioner, Staff doesn't  
17 see any need for the Florida Fact Report.

18 **MR. CARVER:** I'm not sure what no need for  
19 it means. It is relevant. It addresses the issues.  
20 It is not in reference to the necessary and impaired  
21 standard.

22 **COMMISSIONER JACOBS:** I'll strike it. A  
23 couple things that jump out at me. One is the  
24 testimony in which this is referenced is a  
25 specifically -- where Mr. Varner summarizes the

1 position regarding necessary and impaired standards on  
2 network elements. If he had another reference or it  
3 had some other context then perhaps, but the -- it is  
4 solely mentioned in this testimony in response to that  
5 question.

6 **MR. CARVER:** I don't think there is another  
7 reference. And my point was just that the state of  
8 competition in Florida has relevance to more than one  
9 issue. Certainly it has relevance to whether the  
10 necessary and impaired standard has been met, and if  
11 that were the only relevance, then it would be proper  
12 to strike it. But there is a great deal of testimony  
13 by Mr. Varner and also by Mr. Hendrix about market  
14 conditions, how those should be factored into any sort  
15 of deaveraging, how deaveraging needs to be done in  
16 conjunction with rate rebalancing and with universal  
17 service because if you don't do that then there'll be  
18 arbitrage, and all of these have to do with  
19 competitive -- well, basically the state of  
20 competition in the state of Florida, and that's what  
21 this relates to.

22 **COMMISSIONER JACOBS:** On Page 8 of  
23 Mr. Varner's testimony, do you have that  
24 Mr. McGlothlin?

25 **MR. MCGLOTHLIN:** What was the reference

1 again?

2 **COMMISSIONER JACOBS:** Page 8.

3 **MR. MCGLOTHLIN:** Yes, I do have it.

4 **COMMISSIONER JACOBS:** This -- as soon as I  
5 said that there is no other reference I looked down  
6 and there is another reference. This -- what's your  
7 -- (interference from microphone) -- Mr. Varner.

8 This in my mind is not relating to the  
9 question previous -- to the prior question which has  
10 specifically to do with necessary and impaired. This  
11 is the difference. Is it your contention that this  
12 reference as well is relating to the necessary and  
13 impaired?

14 **MR. MCGLOTHLIN:** Yes. If you continue on  
15 Page 8 and over on Page 9 in context you'll see,  
16 again, that the discussion of the witness regarding  
17 HAV-4 is that it provides overwhelming evidence in the  
18 alternatives of several UNEs that exist in Florida and  
19 demonstrates not only significant self-provisioning,  
20 but also the extensive variety of alternative sources  
21 in network capabilities for ALECs. In context, I just  
22 don't think you can form any conclusion other than  
23 that HAV-4 relates to the necessary and impaired  
24 testimony.

25 **MR. CARVER:** I'd just like to point out that

1 GTE has filed an exhibit that is very similar and that  
2 also addresses competitive alternatives. It's DBT-4.  
3 It's the exhibit to Mr. Trimble's testimony and no one  
4 has moved to strike that.

5 Again, the motion was originally to strike  
6 testimony going to the necessary and impaired  
7 standard. If the evidence, though, has an independent  
8 basis for relevance, it should remain in the case.  
9 And that's the case here.

10 .Again, GTE has filed the same thing and they  
11 haven't tried to strike that. In effect, I think  
12 what's happening now is they're trying to bootstrap  
13 their other motion and BellSouth's agreement to  
14 withdraw the testimony into a whole different sort of  
15 motion to strike.

16 **MR. MCGLOTHLIN:** No --

17 **MR. CARVER:** If I could just finish.

18 **COMMISSIONER JACOBS:** Just one --

19 **MR. CARVER:** I don't think that's  
20 appropriate, particularly in light of the fact that  
21 other witnesses have filed precisely the same type of  
22 testimony and no one's moved to strike that, to  
23 rebuttal.

24 **MR. MCGLOTHLIN:** Two comments. First of  
25 all, you'll find that we referred to this exhibit in



1 our original motion to strike. So there's nobody  
2 bootstrapping. On the other hand, someone is trying  
3 to backfill.

4 Secondly, we may move to strike now that  
5 Mr. Carver's alerted us to the possibility of other  
6 inappropriate exhibits. And that reference, in and of  
7 itself, is no support for an exhibit that is clearly  
8 inappropriate.

9 **MS. CASWELL:** Commissioner Jacobs, I'd like  
10 to point out that our witness made no reference to  
11 necessary and impaired standard. When that came in it  
12 was solely about competitive alternatives, what's  
13 going on now in the marketplace and how it will become  
14 worse if you deaverage UNEs without deaveraging retail  
15 rates. And if they want to move to strike it then  
16 file a formal motion so I can reply to it in writing.

17 **MR. MCGLOTHLIN:** Well, you're replying to it  
18 before we filed a motion. I'm just making a point  
19 that reference to GTE exhibit is no basis for leading  
20 an exhibit of BellSouth that is within the scope of  
21 the motion to strike and within the scope of the  
22 stipulation of the parties and withdrawal of certain  
23 evidence.

24 **COMMISSIONER JACOBS:** Who authors this data?  
25 Who is the author of this data; of this report?

1           **MR. MCGLOTHLIN:** I don't have it in front of  
2 me, Commissioner, and quite frankly, so much time has  
3 passed from the time we first dealt with that, I don't  
4 remember who authored it. It was -- as I recall, it  
5 was another example of an exhibit that Mr. Varner did  
6 not author but was sponsoring.

7           **COMMISSIONER JACOBS:** There are a couple --

8           **MR. CARVER:** That's not true.

9           **COMMISSIONER JACOBS:** -- things that are  
10 troubling me here. One is, I'm operating off of, I  
11 don't want to say conjecture because I accept what  
12 your arguments are as fact. But it was not a part --  
13 as my -- if I'm not mistaken, this particular exhibit  
14 was not a part of the motion to strike. The argument,  
15 however, I think has merit. Your argument has merit  
16 that it is used largely to support testimony that you  
17 asked to be stricken.

18           **MR. MCGLOTHLIN:** Commissioner, forgive me  
19 for not being able to answer immediately, but my  
20 recollection is that it was part of the motion to  
21 strike.

22           **MS. CLEMONS:** Commissioner, he's right. It  
23 was part of the original motion.

24           **COMMISSIONER JACOBS:** Okay. Then it's  
25 stricken.

1           That takes care of -- are there any others?  
2   Okay. That takes care of Section 9.

3           Section 10. No stipulations.

4           And finally Section 11. Dealt with the two  
5   motions. Very well. Are there any other matters to  
6   come before us today?

7           **MR. HATCH:** There's one question that rises,  
8   Commissioner Jacobs. Is there going to be any limit  
9   placed on the duration for summaries so that we can  
10   get our witnesses to prepare them accordingly?

11           **COMMISSIONER JACOBS:** I don't want to limit  
12   the discretion of the Chair at hearing. I suggest  
13   that we do look at some matter of limitation and the  
14   first criteria being conciseness.

15           In terms of time, I won't impose a time  
16   limit today, but it will be my recommendation at  
17   hearing, if the Chairman asks, that we do so. I just  
18   leave that at your discretion. But I won't -- I think  
19   all reason would prevail. I couldn't imagine somebody  
20   having a summary less than five minutes.

21           **MR. HATCH:** It's not less than five minutes,  
22   that's the problem.

23           **COMMISSIONER JACOBS:** I think you guys have  
24   a right to argue that -- for your -- at hearing that  
25   your witnesses will have a certain limit of time

1 testimony. What I'm saying today is I don't want to  
2 take discretion away from the Chairman at hearing as  
3 to what that time limit ought to be. But if asked at  
4 hearing I will get a recommendation that there be a  
5 limit.

6 **MS. WHITE:** Do you have an idea of what that  
7 recommendation would be in terms of minutes?

8 **COMMISSIONER JACOBS:** It depends on the  
9 witness, actually. I'm thinking eight to ten. That's  
10 long. Ten minutes is long for a summary. You know,  
11 I'm -- actually I reconsider it to five to eight.

12 I'm thinking those are reasonable ranges and  
13 I can't see why someone can't get said what they need  
14 to -- in terms of a summary, can't get said what they  
15 need to be said in that kind of a time limit.

16 **MR. MELSON:** Commissioner Jacobs, our only  
17 concern is we have in the past thought we were going  
18 to have five minutes and the Chair has given us two  
19 and that has operated as a surprise to some witnesses.

20 **COMMISSIONER JACOBS:** I can represent to you  
21 today that I will tell the Chair that I suggested five  
22 to eight.

23 **MR. MELSON:** Thank you.

24 **COMMISSIONER JACOBS:** Without question, I'll  
25 say that. Anything else? If there are no other

1 matters to come before us today, this prehearing is  
2 adjourned.

3 (Thereupon, the hearing concluded at  
4 1:00 p.m.)

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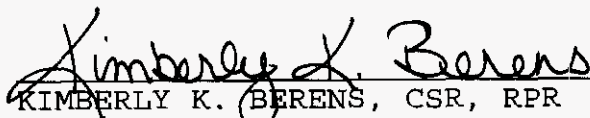
CERTIFICATE OF REPORTER

I, KIMBERLY K. BERENS, CSR, RPR FPSC  
Commission Reporter,

DO HEREBY CERTIFY that the Prehearing  
Conference in Docket No. 990649-TP was heard by the  
Prehearing Officer at the time and place herein  
stated; it is further

CERTIFIED that I stenographically reported  
the said proceedings; that the same has been  
transcribed by me; and that this transcript,  
consisting of 61 pages, constitutes a true  
transcription of my notes of said proceedings

DATED this 8th day of December, 1999.

  
KIMBERLY K. BERENS, CSR, RPR  
FPSC Commission Reporter  
(850) 413-6736

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& 2/2, 2/19, 3/15, 4/3, 5/6	3D 50/17 3F	answer 23/22, 32/13, 58/19 answered 23/25
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i	5 5 25/3, 38/24 50 46/16, 46/19, 47/5, 47/8, 47/15, 47/20, 48/1 57 28/25	arbitrage 54/18 argue 13/11, 17/25, 59/24 argues 26/22 arguing 15/16, 30/20 argument 13/9, 16/7, 18/19, 22/25, 24/9, 29/15, 50/14, 58/15 arguments 26/20, 53/3, 58/12 arise 19/16 Arnold 2/19 arrange 9/15 Association 2/22, 4/5 assumption 26/20 AT&T 3/6, 3/9, 6/22, 25/12, 25/19, 26/2, 26/6, 27/13, 28/19, 29/14, 30/20, 45/20 AT&T's 26/19 Atrium 4/20 Attached 27/8, 27/23, 28/11, 52/23 Attachment 31/1, 31/6, 34/15 attachments 32/11 Ausley 2/2 Austin 3/13 author 57/25, 58/6 authored 58/4 authors 57/24 available 11/1, 11/11, 12/5, 41/2, 53/1 Avenue 4/16, 5/2 AxS 5/8
1 14/7, 15/20, 16/8, 16/21, 17/4, 17/11, 17/12, 17/18, 18/10, 18/11, 19/9, 21/9, 21/11, 21/17, 28/13, 28/15, 38/4, 38/5, 38/15, 48/13, 49/19, 50/14, 51/18, 51/19, 52/9	6 6 24/16, 25/3, 38/25, 39/1, 45/25, 52/20 60 46/19 6526 3/3	arbitrage 54/18 argue 13/11, 17/25, 59/24 argues 26/22 arguing 15/16, 30/20 argument 13/9, 16/7, 18/19, 22/25, 24/9, 29/15, 50/14, 58/15 arguments 26/20, 53/3, 58/12 arise 19/16 Arnold 2/19 arrange 9/15 Association 2/22, 4/5 assumption 26/20 AT&T 3/6, 3/9, 6/22, 25/12, 25/19, 26/2, 26/6, 27/13, 28/19, 29/14, 30/20, 45/20 AT&T's 26/19 Atrium 4/20 Attached 27/8, 27/23, 28/11, 52/23 Attachment 31/1, 31/6, 34/15 attachments 32/11 Ausley 2/2 Austin 3/13 author 57/25, 58/6 authored 58/4 authors 57/24 available 11/1, 11/11, 12/5, 41/2, 53/1 Avenue 4/16, 5/2 AxS 5/8
10 13/8, 29/22, 29/24, 59/3 10095 5/7 101 3/7, 4/15 105 4/20 10:00 9/10 11 59/4 110 2/11 117 2/20 11:00 10/19, 10/20, 10/25, 12/12, 12/13 11:45 12/22 12 24/16, 32/13, 48/16 13th 39/3, 44/21 148 1/19 14th 39/4, 40/12, 41/3, 44/11, 44/23 15 11/1 150 2/6, 3/13 15th 39/20, 40/1, 42/4 16 24/17 17 23/22, 24/15, 32/14 178 25/24 18 25/14 1876 3/16 19 24/17, 25/3 1999 1/16, 6/6, 13/8, 25/14 1:00 1/17, 61/4 1A 48/14 1B 48/22 1C 48/24, 49/19 1D 48/24 1E 48/25, 49/18 1F 49/1, 50/7 1G 49/2, 49/5, 50/9, 50/10	7 7 48/11 700 3/8 75 47/25, 48/9 78759 3/13	arbitrage 54/18 argue 13/11, 17/25, 59/24 argues 26/22 arguing 15/16, 30/20 argument 13/9, 16/7, 18/19, 22/25, 24/9, 29/15, 50/14, 58/15 arguments 26/20, 53/3, 58/12 arise 19/16 Arnold 2/19 arrange 9/15 Association 2/22, 4/5 assumption 26/20 AT&T 3/6, 3/9, 6/22, 25/12, 25/19, 26/2, 26/6, 27/13, 28/19, 29/14, 30/20, 45/20 AT&T's 26/19 Atrium 4/20 Attached 27/8, 27/23, 28/11, 52/23 Attachment 31/1, 31/6, 34/15 attachments 32/11 Ausley 2/2 Austin 3/13 author 57/25, 58/6 authored 58/4 authors 57/24 available 11/1, 11/11, 12/5, 41/2, 53/1 Avenue 4/16, 5/2 AxS 5/8
2	8 8 29/22, 48/13, 48/16, 50/18, 54/22, 55/2, 55/15	arbitrage 54/18 argue 13/11, 17/25, 59/24 argues 26/22 arguing 15/16, 30/20 argument 13/9, 16/7, 18/19, 22/25, 24/9, 29/15, 50/14, 58/15 arguments 26/20, 53/3, 58/12 arise 19/16 Arnold 2/19 arrange 9/15 Association 2/22, 4/5 assumption 26/20 AT&T 3/6, 3/9, 6/22, 25/12, 25/19, 26/2, 26/6, 27/13, 28/19, 29/14, 30/20, 45/20 AT&T's 26/19 Atrium 4/20 Attached 27/8, 27/23, 28/11, 52/23 Attachment 31/1, 31/6, 34/15 attachments 32/11 Ausley 2/2 Austin 3/13 author 57/25, 58/6 authored 58/4 authors 57/24 available 11/1, 11/11, 12/5, 41/2, 53/1 Avenue 4/16, 5/2 AxS 5/8
3	9 9 6/6, 50/19, 55/15, 59/2 9600 3/12 990649-TP 1/4, 62/5 9:30 1/17, 6/2 9:40 12/22	arbitrage 54/18 argue 13/11, 17/25, 59/24 argues 26/22 arguing 15/16, 30/20 argument 13/9, 16/7, 18/19, 22/25, 24/9, 29/15, 50/14, 58/15 arguments 26/20, 53/3, 58/12 arise 19/16 Arnold 2/19 arrange 9/15 Association 2/22, 4/5 assumption 26/20 AT&T 3/6, 3/9, 6/22, 25/12, 25/19, 26/2, 26/6, 27/13, 28/19, 29/14, 30/20, 45/20 AT&T's 26/19 Atrium 4/20 Attached 27/8, 27/23, 28/11, 52/23 Attachment 31/1, 31/6, 34/15 attachments 32/11 Ausley 2/2 Austin 3/13 author 57/25, 58/6 authored 58/4 authors 57/24 available 11/1, 11/11, 12/5, 41/2, 53/1 Avenue 4/16, 5/2 AxS 5/8
A	a.m 1/17, 6/2, 12/22 abeyance 46/1 accept 28/8, 30/4, 58/11 accepted 23/16 accompany 31/21 ACI 3/5 add 20/19, 27/3, 34/8, 34/12, 34/23, 35/12, 38/6 adding 38/18 address 15/9, 20/24, 24/7, 30/9, 32/24, 34/6, 46/14, 52/15, 53/8 addressed 20/14, 28/20 addresses 14/17, 15/4, 30/5, 53/19, 56/2 adequate 10/9 adjourn 12/6, 12/7 adjourned 61/2 admission 34/1 admitted 32/18, 38/12 adopting 50/22, 50/24 advice 12/11 advocacy 28/9, 28/10, 32/16 advocate 14/24, 16/4 advocates 28/5 Affairs 4/3 afternoon 10/13 afterwards 28/4, 45/2 agency 11/13 agree 14/21, 15/25, 17/6, 18/3, 18/4, 18/5, 43/9, 48/1, 49/23 agreeable 45/22, 47/15 agreed 31/22, 51/20 agreement 9/1, 25/5, 39/12, 46/6, 56/13 agrees 10/4, 20/21, 20/22, 47/6 aid 27/21 ALEC 43/5, 43/7 ALECs 43/8, 53/1, 55/21 alerted 57/5 allow 19/15, 30/22 allowed 32/2, 45/18 ALLTEL 2/4, 7/18 alternative 52/25, 53/2, 55/20 alternatives 55/18, 56/2, 57/12 amenable 10/1 amount 43/12	arbitrage 54/18 argue 13/11, 17/25, 59/24 argues 26/22 arguing 15/16, 30/20 argument 13/9, 16/7, 18/19, 22/25, 24/9, 29/15, 50/14, 58/15 arguments 26/20, 53/3, 58/12 arise 19/16 Arnold 2/19 arrange 9/15 Association 2/22, 4/5 assumption 26/20 AT&T 3/6, 3/9, 6/22, 25/12, 25/19, 26/2, 26/6, 27/13, 28/19, 29/14, 30/20, 45/20 AT&T's 26/19 Atrium 4/20 Attached 27/8, 27/23, 28/11, 52/23 Attachment 31/1, 31/6, 34/15 attachments 32/11 Ausley 2/2 Austin 3/13 author 57/25, 58/6 authored 58/4 authors 57/24 available 11/1, 11/11, 12/5, 41/2, 53/1 Avenue 4/16, 5/2 AxS 5/8
B	B B-O-W-E-N 38/11 backfill 57/3 Background 38/17 Barta 41/5 based 23/3 basis 16/18, 56/8, 57/19 belief 9/2 BellSouth 2/5, 2/8, 6/11, 6/12, 10/4, 10/16, 14/2, 21/15, 23/15, 25/10, 27/5, 29/4, 31/22, 39/14, 40/10, 43/9, 43/13, 49/4, 57/20 BellSouth's 22/19, 35/22, 49/4, 56/13 bench 19/12 BERENS 1/21, 62/3 Berlin 4/6 Betty 1/18 big 46/11 biography 51/3 bit 14/10, 21/13, 47/23 Blumenfeld 38/7 boilerplate 38/21, 38/23 bolster 29/15 bootstrap 56/12 bootstrapping 57/2 bottom 40/1, 48/16 Boulevard 5/12 Bowen 7/2, 38/7, 38/11 Box 2/3, 2/11, 2/15, 3/3, 3/16, 5/7 break 8/15, 50/2 brief 27/7, 29/3, 29/4, 32/6, 46/10 briefs 16/8, 47/16 bring 14/6, 34/9, 34/20, 44/9 broad 49/22 brought 26/13 BUECHELE 5/2, 7/22 Building 4/20 burden 44/25	arbitrage 54/18 argue 13/11, 17/25, 59/24 argues 26/22 arguing 15/16, 30/20 argument 13/9, 16/7, 18/19, 22/25, 24/9, 29/15, 50/14, 58/15 arguments 26/20, 53/3, 58/12 arise 19/16 Arnold 2/19 arrange 9/15 Association 2/22, 4/5 assumption 26/20 AT&T 3/6, 3/9, 6/22, 25/12, 25/19, 26/2, 26/6, 27/13, 28/19, 29/14, 30/20, 45/20 AT&T's 26/19 Atrium 4/20 Attached 27/8, 27/23, 28/11, 52/23 Attachment 31/1, 31/6, 34/15 attachments 32/11 Ausley 2/2 Austin 3/13 author 57/25, 58/6 authored 58/4 authors 57/24 available 11/1, 11/11, 12/5, 41/2, 53/1 Avenue 4/16, 5/2 AxS 5/8
C	C c/o 2/6 Cable 4/5 Call 6/3, 9/7, 11/24, 12/1, 12/10, 12/12 call-in 11/6, 11/12, 11/19 came 9/15, 15/5, 57/11 CAMECHIS 5/5, 12/16 CANZANO 4/19	arbitrage 54/18 argue 13/11, 17/25, 59/24 argues 26/22 arguing 15/16, 30/20 argument 13/9, 16/7, 18/19, 22/25, 24/9, 29/15, 50/14, 58/15 arguments 26/20, 53/3, 58/12 arise 19/16 Arnold 2/19 arrange 9/15 Association 2/22, 4/5 assumption 26/20 AT&T 3/6, 3/9, 6/22, 25/12, 25/19, 26/2, 26/6, 27/13, 28/19, 29/14, 30/20, 45/20 AT&T's 26/19 Atrium 4/20 Attached 27/8, 27/23, 28/11, 52/23 Attachment 31/1, 31/6, 34/15 attachments 32/11 Ausley 2/2 Austin 3/13 author 57/25, 58/6 authored 58/4 authors 57/24 available 11/1, 11/11, 12/5, 41/2, 53/1 Avenue 4/16, 5/2 AxS 5/8

capabilities 55/21  
 Caparelo 3/15  
 capital 31/23  
 care 11/23, 22/20, 38/15, 48/10, 50/17, 59/1, 59/2  
 Carriers 2/22  
 CARVER 2/5, 6/12  
 case 17/11, 40/9, 41/23, 43/12, 56/8, 56/9  
 Caswell 6/13  
 CASWELL, GTE 2/10  
 causes 22/4  
 cDSL 48/20  
 Center 1/18  
 CERTIFICATE 62/1  
 CERTIFIED 62/7  
 CERTIFY 62/4  
 Chair 59/12, 60/18, 60/21  
 Chairman 59/17, 60/2  
 challenge 31/5  
 chance 25/23, 46/1, 53/15  
 change 19/17, 19/19  
 changes 45/5, 46/4, 48/25  
 changing 40/7  
 characterized 23/18  
 CHARLES 2/14, 3/11, 6/15, 7/15  
 chose 25/19  
 CHRISTOPHER 3/11, 6/17  
 circumstances 9/15, 17/17  
 cited 34/9, 34/16, 34/21, 35/9  
 clarification 14/14, 20/23  
 clarify 23/13  
 classification 35/22  
 clear 18/9, 19/20, 28/18, 46/4, 49/11, 49/12, 49/20  
 clearer 28/14  
 clearly 22/22, 25/17, 26/3, 28/9, 29/12, 57/7  
 CLECs 22/20  
 CLEMONS 5/10, 8/4  
 Cohen 38/7  
 College 4/15  
 Com 4/19  
 combining 43/2  
 Commenced 1/17  
 comments 31/1, 56/24  
 COMMISSION 1/1, 1/21, 5/11, 5/13, 14/20, 14/25,  
 27/16, 28/8, 45/18, 62/3  
 Commission's 22/3  
 COMMISSIONER 1/14, 6/3, 6/9, 6/18, 6/21, 7/9,  
 7/24, 8/2, 8/6, 8/10, 8/11, 8/14, 8/17, 9/5, 9/11, 9/18,  
 9/20, 9/24, 10/7, 10/17, 10/20, 10/24, 11/4, 11/10,  
 11/21, 12/3, 12/14, 12/18, 12/20, 12/24, 13/5, 13/10,  
 13/16, 13/21, 14/1, 14/12, 14/15, 16/17, 17/14, 17/19,  
 18/5, 18/25, 19/5, 19/6, 19/10, 21/6, 21/22, 22/8,  
 22/14, 22/15, 23/6, 23/8, 23/12, 24/11, 24/14, 25/5,  
 25/8, 25/15, 25/16, 27/2, 27/6, 30/18, 31/15, 31/16,  
 32/5, 32/19, 32/21, 33/1, 33/5, 33/10, 33/16, 33/25,  
 34/14, 34/15, 34/19, 34/23, 35/5, 35/11, 35/15, 35/18,  
 36/2, 36/5, 36/7, 36/11, 36/14, 36/19, 36/22, 36/24,  
 37/10, 37/24, 38/10, 38/14, 39/6, 39/8, 39/11, 39/17,  
 39/18, 39/21, 39/22, 40/3, 40/13, 40/14, 40/18, 40/20,  
 40/25, 41/4, 41/6, 41/8, 41/15, 42/3, 42/6, 42/8, 42/11,  
 42/15, 42/20, 42/23, 43/1, 44/4, 44/5, 44/22, 45/1,  
 45/6, 45/9, 45/19, 45/21, 45/24, 46/8, 47/6, 47/7, 47/9,  
 47/12, 47/22, 48/7, 48/18, 48/22, 49/11, 49/15, 49/21,  
 50/6, 50/10, 50/13, 51/5, 51/6, 51/10, 51/12, 51/17,  
 51/20, 52/3, 53/14, 53/16, 53/22, 54/22, 55/2, 55/4,  
 56/18, 57/9, 57/24, 58/2, 58/7, 58/9, 58/18, 58/22,  
 58/24, 59/8, 59/11, 59/23, 60/8, 60/16, 60/20, 60/24  
 commit 16/14, 20/4  
 Communications 2/4, 2/17, 3/6, 3/9, 3/12, 3/14,  
 3/17, 4/12, 4/14, 6/16, 6/22, 7/17, 7/19, 7/21, 8/1,  
 25/12, 37/15  
 companies 9/8  
 Company 2/17, 3/12, 3/14, 6/16, 7/17  
 comparable 24/7  
 comparison 32/16  
 competition 52/7, 52/25, 53/6, 54/8, 54/20  
 Competitive 2/21, 54/19, 56/2, 57/12  
 complete 13/3  
 completes 50/13  
 comports 28/7  
 compromised 26/25  
 conceded 31/19  
 concern 17/23, 18/25, 19/23, 60/17  
 concerned 15/6  
 concise 48/9  
 conciseness 59/14  
 Concluded 1/17, 61/3  
 conclusion 55/22  
 conditions 52/12, 52/14, 53/7, 53/11, 54/14  
 conduct 8/20  
 confer 32/6  
 CONFERENCE 1/12, 1/18, 6/6, 13/2, 62/5  
 conferences 16/20  
 confidential 35/22

confirm 24/11  
 conforming 16/22  
 confused 13/18, 52/18  
 confusion 19/15  
 conjecture 58/11  
 conjunction 54/16  
 consideration 10/1  
 consistence 8/25  
 consistent 22/3, 51/6  
 contemplated 18/12, 20/20  
 contention 27/25, 42/12, 55/11  
 contentious 33/11  
 context 54/3, 55/15, 55/21  
 continue 55/14  
 CONTINUED 3/1, 4/1, 5/1  
 convened 6/2  
 CONVENIENCE 1/9  
 convenient 11/19  
 COPY 1/9, 8/18  
 correct 6/19, 33/2, 36/18, 45/4  
 correctly 9/21  
 cost 16/3, 25/20, 25/25, 27/17, 28/9, 31/21, 31/23,  
 43/25, 50/1  
 Counsel 4/3, 6/4, 16/1  
 COUNTY 62/2  
 couple 27/8, 37/21, 53/23, 58/7  
 course 35/1, 35/3, 42/16  
 Covad 3/12, 3/14, 6/15, 39/19  
 Covad's 40/24  
 covered 30/14  
 covers 49/19, 49/21  
 criteria 59/14  
 cross 21/19, 33/24, 43/13, 45/16  
 CSR 1/21, 62/3  
 Culppepper 5/5  
 cut 46/12  
 cycle 33/20

**D**

D.C 4/8  
 d/b/a 5/8  
 dark 21/12  
 data 57/24, 57/25  
 DATE 1/16, 52/4  
 Davidson 2/19  
 day 40/15, 41/18, 44/14, 44/16, 44/20  
 DBT-4 56/2  
 deal 36/15, 54/12  
 dealing 19/21  
 dealt 58/3, 59/4  
 deaverage 57/14  
 deaveraging 49/12, 52/10, 53/7, 54/15, 57/14  
 December 1/16  
 decide 21/21, 26/14  
 decides 35/24  
 decision 21/24  
 Dekker 2/19  
 delay 19/11  
 delete 47/19  
 demonstrates 52/24, 55/19  
 demonstrative 27/21  
 denied 31/14  
 depends 11/14, 14/9, 16/12, 60/8  
 depreciation 31/24  
 described 32/11  
 detail 31/8, 31/9  
 determine 41/19, 50/3  
 difference 23/10, 55/11  
 differences 21/6  
 Digital 4/9, 7/7, 36/8, 36/9, 37/23, 38/19  
 direct 25/17, 25/20, 26/17, 26/20, 28/16, 30/4, 30/9,  
 30/13, 31/8, 33/6, 39/9, 39/13, 39/15, 39/16, 40/22,  
 41/10, 41/12, 41/14, 43/3, 48/9, 53/12  
 disagreement 21/1  
 discovery 27/1, 31/11, 31/12  
 discretion 59/12, 59/18, 60/2  
 discuss 8/15  
 discussed 33/22  
 discussion 22/11, 24/5, 28/11, 55/16  
 discussions 16/20  
 disputes 21/19  
 Division 5/11, 8/4  
 DJW-2 51/10  
 Doane 45/11  
 DOCKET 1/4, 8/20, 23/24, 62/5  
 documentation 27/10  
 doesn't 13/1, 29/6, 30/2, 30/6, 30/7, 43/18, 53/12,  
 53/16  
 Don 25/11  
 DONNA 4/19, 5/10, 7/3, 8/4, 11/17, 24/18, 30/19  
 Dr. Ankum 26/3, 29/11  
 Dr. Emerson 39/2, 39/6, 39/7, 40/12, 44/11, 44/24

draft 8/18, 9/22  
 Drive 4/12  
 DS-3 48/17  
 Dunbar 5/6  
 Dunlap  
 duration 59/9  
 during 14/10

**E**

e.spire 36/24, 37/2, 37/5, 37/13  
 Easley 1/18  
 effect 15/10, 20/2, 30/12, 46/20, 52/6, 56/11  
 effected 14/10  
 efficiently 45/17  
 EHG-1 51/2  
 eight 60/9, 60/11, 60/22  
 ELECTRONIC 1/8  
 elements 1/6, 54/2  
 elicit 35/2  
 Emerson 13/7, 24/16  
 Emerson's 23/14  
 emphasis 35/7, 35/13, 49/9  
 end 12/5, 43/5  
 English 47/23  
 Eric 50/22, 50/25  
 error 40/23  
 Esplanade 1/19  
 essence 14/18  
 eternal 12/25  
 evidence 16/24, 27/15, 27/19, 55/17, 56/7, 57/23  
 examine 33/24  
 Excuse 12/14, 24/18  
 exhibit 50/19, 51/2, 51/8, 51/17, 51/21, 52/23, 53/9,  
 53/15, 56/1, 56/3, 56/25, 57/7, 57/19, 57/20, 58/5, 58/13  
 exhibits 50/20, 51/14, 57/6  
 exist 55/18  
 experience 40/5  
 experts 9/12  
 extract 51/8

**F**

f/k/a 3/5  
 fact 30/15, 31/8, 31/22, 51/22, 52/4, 52/24, 53/17,  
 56/20, 58/12  
 factor 52/12, 52/13  
 factored 54/14  
 facts 52/7  
 fair 19/22, 28/17, 43/22  
 fallout 22/1  
 falls 30/25  
 Finvey 37/12  
 FCC 14/19, 14/23, 15/1, 16/22, 16/25, 22/23, 49/11,  
 49/23, 51/23, 51/24, 52/8, 53/11  
 FCC's 20/20, 28/7  
 FCCA 7/5, 20/18, 37/17  
 FCTA 6/14, 40/21, 41/1  
 FCTA's 40/22  
 fight 21/3  
 figure 9/14  
 file 15/7, 15/8, 17/23, 18/1, 18/18, 18/22, 20/2, 33/13,  
 35/16, 38/13, 41/9, 41/12, 57/16  
 filed 13/8, 15/14, 16/19, 25/13, 28/16, 28/19, 29/25,  
 33/15, 37/16, 41/11, 41/25, 42/9, 56/1, 56/10, 56/21,  
 57/18  
 files 19/4  
 filing 16/3, 19/16, 19/17, 20/8, 51/23, 51/25, 52/8,  
 53/11  
 find 28/25, 47/19, 56/25  
 fine 10/20, 10/21, 11/3, 22/13, 23/7, 34/12, 42/4,  
 48/9, 49/10  
 finish 56/17  
 finished 40/16  
 five 11/25, 59/20, 59/21, 60/11, 60/18, 60/21  
 FLORIDA 1/1, 1/20, 2/3, 2/7, 2/10, 2/11, 2/12,  
 2/15, 2/20, 2/21, 3/3, 3/8, 3/16, 4/4, 4/5, 4/9, 4/12,  
 4/16, 4/17, 4/21, 5/3, 5/7, 5/9, 5/10, 5/12, 7/7, 7/16,  
 25/9, 36/8, 36/9, 37/23, 38/19, 51/22, 52/3, 52/8,  
 52/24, 53/2, 53/17, 54/8, 54/20, 55/18, 62/1  
 FLTC0007 2/11  
 folks 11/8  
 follow 32/9, 44/12, 44/25, 45/4  
 Fons 7/16, 20/7  
 forgive 58/18  
 form 55/22  
 formal 57/16  
 FPSC 1/21, 62/3  
 frame 47/13  
 free 31/11  
 Friedman 4/7  
 front 16/25, 38/9, 52/5, 58/1

001148



**G**

Gadsden 2/20  
**GALLAGHER** 4/15, 7/13  
 Geis 50/22, 50/25  
 Georgia 29/5  
 glad 10/17  
**GOODPASTER** 3/12, 6/17  
 Granted 35/19  
 Green 3/2  
 grief 22/4  
**GROSS** 4/2, 6/14  
 ground 18/4  
 group 43/14  
**GTE** 2/12, 6/13, 22/18, 23/1, 25/9, 27/5, 31/10,  
 31/11, 43/12, 56/1, 56/10, 57/19  
**GTE's** 22/25, 45/12  
**GTEs** 43/7  
 guess 11/7, 14/8, 16/5, 17/8, 20/3, 27/20, 38/16, 40/4  
 guys 10/1, 59/23

**H**

**HAI** 31/18, 31/25  
**HAI5.1** 27/10  
 half 48/5  
 hand 57/2  
 handled 36/2  
 Hang 24/23  
 hard 45/4  
**HATCH** 3/6, 6/22  
 Hatfield 28/5  
 hats 37/14  
**HAV-4** 52/22, 52/24, 55/17, 55/23  
 help 9/13, 17/19  
 helps 39/17  
 Hills 3/13  
 Hold 11/9, 52/19  
 hope 12/25, 13/1, 41/17  
 Hopping 3/2  
**HORTON** 3/15, 7/20  
 huddle 9/22  
 hundred 27/9

**I**

**ID** 18/14  
 idea 9/6, 60/6  
 identification 16/20  
 identified 18/20, 38/18  
 identify 29/6, 29/21, 29/22  
**II** 4/10, 7/8  
**III** 4/10, 7/8  
**ILEC** 43/4, 43/6  
 illustrations 29/10  
 illustrative 27/20  
 imagine 59/19  
 impact 8/20, 9/3  
 impaired 14/17, 15/3, 16/24, 22/24, 23/19, 24/5,  
 52/1, 52/15, 53/4, 53/9, 53/13, 53/20, 54/1, 54/10,  
 55/10, 55/13, 55/23, 56/6, 57/11  
 impose 59/15  
 impossible 48/2  
 improper 26/4  
 improperly 27/15  
 inadvertently 37/22  
 inappropriate 16/23, 57/6, 57/8  
 incorporate 45/8, 46/6  
 Incorporated 2/10, 2/13, 7/16, 25/10  
 independent 56/7  
 index 29/17  
 Information 5/4, 31/6, 35/25, 36/1  
 informed 12/25  
 input 17/2, 25/24, 31/18, 31/25  
 inputs 27/14  
 inserted 41/24  
 intent 41/16, 48/3  
 intention 41/12  
 interference 55/7  
 Intermedia 4/11, 4/13, 8/1  
 interpretation 21/7, 21/10, 21/14, 21/25, 22/3  
 interrupting 40/9  
 Investigation 1/5  
 irrelevant 31/9  
 issuance 13/24  
 issue 11/5, 14/6, 15/13, 16/20, 17/10, 17/24, 18/14,  
 18/15, 20/13, 21/7, 21/8, 21/11, 22/9, 24/19, 30/8,  
 30/9, 31/10, 32/8, 33/11, 48/13, 48/14, 48/22, 48/24,  
 48/25, 49/1, 49/2, 49/16, 50/14, 50/15, 50/16, 50/17,  
 54/9  
 issued 6/6  
 issues 16/12, 16/13, 18/12, 18/20, 19/9, 21/20, 25/19,

28/19, 32/4, 46/2, 46/3, 46/14, 48/2, 48/13, 53/19  
 Item 48/16

**J**

**JACOBS** 1/14, 6/3, 6/9, 6/18, 6/21, 7/9, 7/24, 8/2,  
 8/6, 8/11, 8/17, 9/5, 9/11, 9/18, 9/20, 9/24, 10/7,  
 10/17, 10/20, 10/24, 11/4, 11/21, 12/3, 12/18, 12/20,  
 12/24, 13/10, 13/16, 13/21, 14/2, 14/12, 14/15, 16/17,  
 17/14, 17/19, 18/5, 18/25, 19/5, 19/10, 21/6, 21/22,  
 22/8, 22/14, 22/15, 23/6, 23/8, 24/11, 25/5, 25/15,  
 27/2, 27/6, 30/18, 31/15, 31/16, 32/5, 32/19, 32/21,  
 33/1, 33/5, 33/10, 33/16, 33/25, 34/14, 34/15, 34/19,  
 34/23, 35/5, 35/11, 35/18, 36/2, 36/5, 36/11, 36/14,  
 36/19, 36/22, 37/10, 37/24, 38/10, 38/14, 39/6, 39/8,  
 39/11, 39/17, 39/18, 39/21, 39/22, 40/3, 40/13, 40/14,  
 40/18, 40/20, 40/25, 41/4, 41/6, 41/8, 41/15, 42/3,  
 42/6, 42/8, 42/11, 42/15, 42/20, 42/23, 43/1, 44/5,  
 44/22, 45/6, 45/9, 45/19, 45/21, 45/24, 46/8, 47/9,  
 47/12, 47/22, 48/7, 48/18, 48/22, 49/11, 49/15, 50/6,  
 50/10, 50/13, 51/5, 51/6, 51/10, 51/12, 51/17, 51/20,  
 52/3, 53/14, 53/22, 54/22, 55/2, 55/4, 56/18, 57/9,  
 57/24, 58/7, 58/9, 58/24, 59/8, 59/11, 59/23, 60/8,  
 60/16, 60/20, 60/24  
 Jeanne 36/10, 36/21  
 Jeff 7/18  
**JEFFRY** 2/2  
 Jeremy 7/2, 38/9  
 Jim 37/12  
 Joe 7/5  
 John 4/20, 7/15, 20/7  
 joined 7/1, 30/16  
 joint 13/5, 13/15, 25/9, 27/4, 31/13, 37/16, 37/18,  
 37/19, 38/19, 48/15  
**JOSEPH** 2/18  
 jump 53/23  
 justifying 52/22

**K**

**KAREN** 5/5, 12/16  
 Kaufman 2/19  
 Kim 6/13, 24/20  
**KIMBERLY** 1/21, 2/10, 62/3  
**KMC** 4/9, 4/10, 7/7, 7/8  
 knowledgeable 9/12  
 Knox 4/20

**L**

**LAURA** 4/15, 7/13  
 lawyering 12/8  
 lawyers 48/8  
 lead 44/8  
 leading 57/19  
 leave 12/4, 17/13, 19/1, 19/2, 35/16, 45/25, 46/6,  
 59/18  
 leaving 33/22  
 leeway 32/22  
 left 50/6  
 Legal 5/11, 8/5  
 length 28/6  
**LEON** 1/14, 62/2  
 level 10/18, 31/20, 52/25, 53/6  
 light 8/19, 13/23, 31/22, 52/11, 56/20  
 limit 46/15, 59/8, 59/11, 59/16, 59/25, 60/3, 60/5,  
 60/15  
 limitation 59/13  
 Limited 2/17, 7/17, 23/21, 46/10  
 limiting 31/11  
 limits 13/12, 43/12  
 Line 23/22, 24/12, 24/15, 24/16, 25/2, 25/3, 32/13,  
 32/14, 48/20, 52/21  
 lines 24/1, 24/15, 24/17, 29/23  
 lineup 41/24  
 Link 7/1  
 Links 3/5, 6/25, 38/8  
 list 22/23, 25/19, 26/6, 30/8, 30/9, 37/6, 37/18, 40/2,  
 41/20, 44/12, 44/17, 50/19, 50/25, 51/8  
 listed 40/22  
 listening 12/2  
 little 14/10, 21/13, 26/15, 43/4, 43/6, 47/21  
 live 21/19, 35/4  
 LLP 4/7  
 load 25/23  
 logic 36/14

**M**

Marcus 7/2, 38/9  
**MARK** 5/2, 7/22  
 market 52/11, 52/14, 53/7, 53/10, 54/13

marketplace 57/13  
 Matter 1/4, 25/7, 25/9, 30/5, 30/11, 30/14, 35/16,  
 35/21, 40/9, 59/13  
 matters 8/7, 8/12, 13/4, 36/6, 59/5, 61/1  
**McGLOTHLIN** 2/18, 2/19, 7/5  
**MCI** 3/4, 4/19, 4/21, 6/25, 7/3, 11/18, 20/21, 25/13,  
 25/19, 26/2, 30/20  
 McMullen 2/2  
**McNULTY** 4/19, 7/3, 11/18, 30/19  
 McWhirter 2/18  
 measure 48/3  
 Media 7/14, 41/2  
 MediaOne 4/17  
 meet 11/25  
 meeting 9/9  
 meets 31/2  
**MELSON** 3/2, 6/24  
 members 9/7  
 mention 26/12  
 mentioned 54/4  
 merit 58/15  
 Messer 3/15  
 met 54/10  
 methodology 25/20, 25/25, 43/25  
 Miami 5/2  
**MICHAEL** 4/2, 6/14  
 microphone 55/7  
 midway 41/17  
 mind 34/5, 55/8  
 minute 44/19, 46/9  
 minutes 11/1, 11/25, 59/20, 59/21, 60/7, 60/10, 60/18  
 mistaken 58/13  
 mix 43/6  
 model 27/10, 27/11, 28/5, 28/10, 32/17  
 modification 38/16  
 modifications 38/2, 38/15, 38/18, 38/22, 48/11, 49/1,  
 50/7, 50/15, 50/20  
 moment 9/14, 10/13, 32/6, 42/18, 43/1  
 Monday 15/7, 15/14, 17/24, 18/18  
 Monroe 2/7, 3/7, 4/3  
 Moore 5/6  
 morning 6/5, 10/11, 16/1, 20/8  
**MORTON** 4/6, 7/6, 36/7  
 motion 13/6, 13/11, 13/15, 13/17, 13/18, 13/19,  
 14/18, 16/18, 18/2, 19/1, 19/2, 19/7, 19/12, 22/16,  
 23/2, 23/5, 23/9, 25/9, 26/14, 27/4, 29/16, 30/17,  
 31/13, 31/17, 34/7, 34/9, 35/16, 47/14, 51/15, 52/17,  
 56/5, 56/13, 56/15, 57/1, 57/16, 57/18, 57/21, 58/14,  
 58/20, 58/23  
 motions 34/16, 47/13, 59/5  
 movants? 31/13  
 move 10/9, 38/21, 57/4, 57/15  
 moved 24/1, 56/4, 56/22  
 Mr. 44/5  
 Mr. Barta 41/1, 41/4, 41/25  
**MR. BUCHELE** 7/22  
**MR. CARVER** 6/12, 13/14, 13/18, 14/8, 14/13,  
 14/16, 17/1, 17/7, 17/21, 18/17, 19/3, 19/22, 20/15,  
 21/10, 22/6, 22/9, 23/20, 27/3, 27/7, 51/21, 52/2, 52/5,  
 53/5, 53/18, 54/6, 55/25, 56/17, 56/19, 58/8  
 Mr. Carver's 57/5  
 Mr. Chairman 41/23, 50/21  
 Mr. Doane 45/13  
 Mr. Emmerson 18/16, 44/16  
 Mr. Falvey 37/4  
**MR. FONS** 20/6, 48/1  
 Mr. Geis' 51/3  
 Mr. Gillan 29/11, 44/6  
**MR. GROSS** 6/14, 40/20, 41/1, 41/5  
**MR. HATCH** 6/22, 33/12, 34/13, 34/17, 34/22,  
 34/25, 35/10, 35/20, 43/17, 45/20, 51/6, 51/11, 59/7,  
 59/21  
 Mr. Hearing 20/6  
 Mr. Hendrix 54/13  
**MR. HORTON** 7/20, 36/24, 37/9, 37/12  
**MR. MCGLOTHLIN** 7/5, 9/21, 16/18, 17/9, 17/16,  
 20/18, 23/3, 37/7, 37/20, 47/18, 47/25, 48/3, 51/13,  
 51/18, 51/24, 52/20, 54/24, 54/25, 55/3, 55/14, 56/16,  
 56/24, 57/17, 58/1, 58/18  
**MR. MELSON** 6/24, 9/18, 9/19, 20/22, 21/12, 38/5,  
 38/11, 39/22, 40/14, 41/8, 41/23, 42/5, 47/11, 48/15,  
 49/21, 50/21, 60/16, 60/23  
 Mr. Murray 42/13  
**MR. PELLEGRINI** 6/15, 6/20, 39/18  
**MR. POSNER** 7/6, 7/11, 36/7, 36/12, 36/18, 36/21,  
 48/19  
**MR. REHWINKEL** 7/15  
 Mr. Reid 44/10  
**MR. SAPPERSTEIN** 7/25  
 Mr. Trimble 22/17, 45/11  
 Mr. Trimble's 22/17, 56/3  
 Mr. Varner 13/20, 18/16, 40/5, 40/17, 53/25, 54/13,  
 55/7, 58/5

Mr. Varner's 14/16, 15/3, 15/10, 15/23, 16/9, 18/21, 23/23, 28/12, 51/14, 52/21, 54/23  
 MR. WAHLEN 7/18, 49/7  
 Mr. Williams 39/24, 41/9, 41/24, 50/22, 51/3  
 Mr. Wood 28/5, 29/18, 29/23, 34/18, 35/12, 42/8, 51/9  
 Mr. Wood's 27/9, 31/2, 32/24, 35/2, 35/9, 51/7  
 Ms. Caldwell 29/24  
 Ms. Caldwell's 40/5  
 MS. CAMECHIS 12/14, 12/19  
 MS. CASWELL 6/13, 22/14, 22/15, 23/4, 23/7, 24/18, 24/22, 24/25, 25/4, 25/15, 25/16, 27/4, 32/19, 32/22, 33/3, 33/7, 34/1, 34/11, 35/1, 42/18, 43/2, 43/20, 43/23, 45/9, 45/23, 46/17, 47/2, 57/9  
 MS. CLEMONS 6/5, 8/4, 8/9, 8/14, 10/22, 11/3, 13/5, 14/1, 18/9, 19/6, 23/12, 24/13, 24/20, 24/23, 25/2, 25/8, 31/16, 33/18, 35/15, 35/21, 36/4, 45/1, 47/1, 47/4, 50/12, 53/16, 58/22  
 MS. GALLAGHER 7/13  
 MS. KEATING 11/10  
 MS. MCNULTY 7/3, 9/5, 9/17, 11/17, 11/24, 20/21, 30/19, 42/7, 42/8, 42/14, 42/17, 42/21, 42/25  
 Ms. Murray 39/24, 41/25, 42/2  
 MS. WHITE 6/11, 10/4, 10/15, 10/19, 39/1, 39/7, 39/10, 39/14, 40/11, 43/9, 43/21, 44/21, 46/8, 46/24, 49/3, 49/9, 49/14, 50/8, 50/9, 60/6  
 multiple 43/18  
 Murray 39/19, 40/15, 40/21

**N**

N.W. 4/7  
 name 7/10, 12/16, 29/6, 36/19, 37/11  
 names 26/12  
 NANCY 2/5, 2/6, 6/11, 10/16, 49/4  
 natural 50/2  
 nature 22/18, 31/7  
 necessary 11/9, 14/17, 15/2, 16/10, 16/24, 22/24, 23/19, 24/5, 46/12, 51/25, 52/15, 53/3, 53/8, 53/12, 53/20, 54/1, 54/10, 55/10, 55/12, 55/23, 56/6, 57/11  
 need 10/12, 11/24, 12/3, 12/5, 14/13, 24/11, 38/13, 40/8, 51/2, 51/8, 53/17, 53/18, 60/13, 60/15  
 needs 54/15  
 network 1/6, 4/9, 7/7, 36/8, 37/23, 54/2, 55/21  
 new 27/14, 28/19, 39/24, 47/2  
 NORMAN 3/15, 7/20  
 North 3/7, 4/3, 4/15  
 Northpoint 3/17, 7/21, 37/15, 37/17, 38/18  
 note 27/8  
 Notice 6/4, 6/5, 6/8, 11/1  
 November 6/6, 25/14  
 number 9/7, 11/6, 11/8, 11/13, 11/19, 11/25, 50/5  
 numbers 24/12, 49/25

**O**

Oak 5/12  
 object 33/12  
 objecting 17/3  
 objection 46/17, 47/4, 47/8, 47/11  
 objections 35/18, 35/20, 46/15  
 obscenity 26/16  
 obtaining 11/12  
 offer 13/22, 13/24, 14/9, 15/24, 17/3  
 offered 15/18, 51/25  
 Office 2/3, 2/11, 2/15, 3/3, 5/6  
 Officer 1/14, 12/10, 12/13, 20/6, 62/5  
 OFFICIAL 1/9  
 omitted 37/22  
 operated 60/19  
 operating 58/10  
 operator 11/14, 11/15  
 opinion 24/3  
 opportunity 21/18, 26/24, 28/17, 32/25, 33/8, 33/13, 33/23  
 opposed 22/10  
 opposing 29/1  
 optimism 10/18  
 oral 13/9  
 order 6/4, 13/24, 14/25, 15/1, 15/22, 16/22, 17/5, 19/13, 19/14, 20/20, 20/25, 21/2, 21/3, 21/5, 21/15, 21/25, 22/12, 36/12, 37/25, 38/13, 40/7, 41/9, 41/12, 41/13, 42/19, 45/3, 45/25, 46/5, 46/7, 49/23  
 ordered 14/23  
 original 52/17, 57/1, 58/23  
 originally 15/5, 56/5  
 overtaken 36/12  
 overwhelming 55/17

**P**

P-O-S-N-E-R 7/12  
 P.A. 3/16, 5/6  
 p.m. 1/17, 61/4  
 pages 24/12, 24/13, 27/9, 28/4, 28/25, 29/22, 29/24, 46/10, 46/13, 46/18, 47/15  
 Palm 4/12  
 panel 45/11, 45/17  
 panels 45/18  
 paper 52/6  
 paperwork 38/12  
 paragraph 37/19, 37/21  
 part 23/1, 23/20, 29/5, 32/10, 36/13, 37/18, 51/22, 51/24, 52/8, 53/11, 58/12, 58/14, 58/20, 58/23  
 participate 9/9, 11/8  
 participating 37/3  
 parties 8/3, 8/15, 8/18, 8/22, 13/9, 14/5, 14/21, 14/24, 15/7, 15/16, 16/6, 16/13, 16/21, 17/22, 18/3, 18/15, 18/18, 19/24, 25/18, 26/9, 28/17, 30/23, 31/19, 33/23, 34/2, 37/18, 37/19, 39/12, 40/4, 43/10, 45/2, 46/1, 46/3, 47/5, 47/8, 49/22, 49/24, 50/3, 57/22  
 parties' 30/23, 33/14  
 Partnership 2/17, 7/17  
 parts 33/21  
 party 31/12, 36/1, 36/25, 41/21, 48/5  
 party's 38/3  
 passed 58/3  
 pause 32/7  
 PELLEGRINI 3/11, 6/15  
 pending 19/1, 19/2  
 Pennington 5/5  
 Petitioners 16/17, 38/19, 47/9, 47/14  
 Phase 14/7, 15/20, 15/21, 16/2, 16/8, 16/9, 16/21, 17/4, 17/8, 17/10, 17/12, 17/13, 17/17, 17/18, 18/10, 18/11, 18/13, 19/9, 20/12, 20/14, 21/8, 21/9, 21/11, 21/17, 27/11, 28/13, 28/15, 52/9  
 PHILLIP 2/5, 6/12  
 phone 6/18, 12/6  
 phrased 51/1  
 piece 38/13  
 PLACE 1/18, 6/7, 62/5  
 placed 59/9  
 places 29/17  
 plan 9/22  
 planning 10/5  
 plans 10/9  
 pleading 33/19  
 point 14/20, 18/10, 19/8, 22/21, 26/24, 28/22, 29/11, 29/14, 30/1, 30/20, 33/20, 34/6, 34/9, 35/7, 40/21, 44/14, 44/15, 44/17, 53/7, 54/7, 55/25, 57/10, 57/18  
 pointed 43/10  
 points 26/13, 26/23, 27/3, 29/9, 32/24, 35/13, 50/2  
 policy 15/11, 43/24  
 portfolio 25/24, 31/19, 31/25  
 portion 20/9, 22/17  
 portions 13/6, 14/4, 23/13, 23/16, 34/2  
 position 13/15, 15/1, 15/11, 16/7, 21/24, 22/2, 38/3, 47/20, 48/6, 49/5, 49/25, 52/10, 52/19, 54/1  
 positions 22/2, 48/12, 48/13  
 POSNER 4/6, 7/6, 7/11, 36/7  
 possibility 16/2, 57/5  
 possible 38/2  
 Post 2/2, 2/11, 2/14, 3/3, 5/6  
 potential 8/20  
 preference 41/21  
 PREFILED 1/10, 13/6  
 PREHEARING 1/12, 1/14, 6/6, 9/4, 12/9, 12/10, 12/12, 13/2, 35/17, 37/16, 37/25, 45/25, 61/1, 62/4, 62/5  
 preliminary 8/7, 8/12, 13/4, 25/7, 25/9, 35/16, 35/21, 36/6  
 prepare 59/10  
 prepared 11/21  
 prepositions 47/19  
 presence 12/16  
 presented 39/13  
 presents 45/12, 45/13  
 President 4/2  
 pressing 41/16  
 prevail 59/19  
 pricing 1/5  
 primary 45/12  
 problem 11/12, 40/7, 40/19, 59/22  
 Procedurally 18/7  
 proceed 8/8, 9/3, 11/22, 13/2  
 proceeding 8/13, 14/22, 15/17, 15/20, 20/12, 23/24, 24/3, 24/8, 25/18, 27/12, 29/6, 31/12, 36/25, 45/13, 46/11  
 PROCEEDINGS 1/12, 44/16, 62/7  
 process 26/25  
 proposal 8/19, 42/25  
 propose 18/17  
 proposed 8/15

prospect 44/15  
 provide 31/20  
 provides 31/8, 55/17  
 PUBLIC 1/1, 5/10  
 purpose 6/7, 26/4, 30/22, 31/20  
 purview 21/23  
 pushing 47/22  
 put 15/10, 27/15, 27/20, 39/3, 44/23, 52/9  
 puts 21/14  
 putting 21/13

**Q**

qualification 20/23  
 Queen 4/12  
 question 11/7, 23/21, 23/23, 23/25, 32/13, 32/20, 49/16, 49/17, 54/5, 55/9, 59/7, 60/24  
 questions 45/16

**R**

raise 16/13, 17/24, 20/13  
 raised 16/2, 20/8, 28/19, 31/10  
 raises 18/19  
 raising 46/15  
 ramifications 41/19  
 ranges 60/12  
 rate 54/16  
 rates 57/15  
 rationale 44/10, 45/15  
 reached 8/25  
 reacting 17/1  
 read 6/4, 28/25, 42/1  
 reason 16/23, 17/22, 30/16, 32/15, 59/19  
 reasonable 18/7, 60/12  
 reasons 28/18  
 rebalancing 54/16  
 rebuttal 21/18, 25/21, 26/7, 26/9, 28/23, 28/24, 30/7, 30/23, 30/25, 31/4, 31/7, 32/23, 33/14, 33/19, 36/10, 39/9, 39/13, 39/15, 41/11, 42/1, 43/3, 44/7, 56/23  
 rebutted 28/1  
 rebutting 29/2, 29/7, 29/23, 30/3, 31/4, 31/5  
 recall 24/25, 58/4  
 receive 16/23  
 received 8/18  
 Recess 12/7, 12/9, 12/21, 12/22  
 recollection 58/20  
 recommendation 32/9, 33/17, 45/12, 45/14, 59/16, 60/4, 60/7  
 recommendations 19/18, 45/14  
 reconsider 60/11  
 reconvene 9/23, 10/12, 10/14, 12/24  
 record 9/6, 25/23, 32/7  
 reenforce 26/1  
 Reeves 2/18  
 reference 29/1, 29/4, 37/16, 53/2, 53/5, 53/20, 54/2, 54/7, 54/25, 55/5, 55/6, 55/12, 57/6, 57/10, 57/19  
 referenced 53/24  
 refile 16/9, 17/8, 17/13, 18/15  
 Regulatory 4/2, 4/3  
 REHWINKEL 2/14, 7/15  
 relate 53/12  
 related 51/15  
 relates 24/8, 53/3, 53/6, 53/10, 54/21, 55/23  
 relevance 23/24, 24/3, 32/4, 54/8, 54/9, 54/11, 56/8  
 relief 47/21  
 remain 56/8  
 remember 46/19, 58/4  
 removed 37/5  
 reply 25/23, 26/25, 33/8, 57/16  
 replying 57/17  
 Report 51/22, 52/4, 52/24, 53/17, 57/25  
 REPORTED 1/21, 62/7  
 Reporter 1/21, 62/1, 62/3  
 represent 20/1, 31/20, 60/20  
 representing 6/24, 7/6, 7/13, 7/16, 7/18, 36/8  
 request 15/21, 19/2, 34/25, 35/22, 40/15, 42/23, 45/10  
 requested 14/4, 19/24  
 requests 36/1  
 required 20/25, 21/15, 31/3  
 requirement 49/12  
 requires 21/2, 21/4, 49/24  
 resolution 23/9  
 resolve 21/9  
 resolved 10/3, 10/8, 19/16, 21/8  
 respond 28/17, 30/23  
 responding 29/18  
 responds 26/7, 35/9  
 response 14/2, 23/15, 26/19, 26/21, 27/13, 27/18, 31/10, 35/2, 35/5, 35/12, 52/17, 54/4  
 responsive 26/9, 34/18, 34/19  
 rest 9/3, 26/20, 32/1, 33/22, 43/8, 45/1

result 16/19  
retail 57/14  
review 53/15  
reviewed 32/7  
revisions 51/12  
revisited 18/23  
Rhythms 3/4, 6/25, 7/1, 20/22, 38/7, 39/19, 39/23, 49/25  
Rhythms' 40/24  
RICHARD 3/2, 6/24  
rights 27/1, 31/11  
rises 59/7  
Road 4/20  
Robert 50/24  
Room 1/19, 11/7, 11/11  
RPR 1/21, 62/3  
rule 23/9, 31/3, 46/18, 46/20, 47/1, 47/3, 47/7  
ruled 51/15  
rules 18/4  
ruling 19/11, 19/19, 28/7, 35/24, 51/7  
run 11/12

S

S.W 5/2  
Sams 3/2  
SAPPERSTEIN 4/11, 7/25  
schedule 10/13, 15/6, 40/10  
scheduled 21/17  
schedules 41/16  
scientific 44/2  
scope 8/19, 21/20, 30/25, 57/20, 57/21  
SCOTT 4/11, 7/25  
second 24/24, 37/19  
secondary 45/13  
section 32/12, 34/21, 38/1, 38/4, 38/5, 38/15, 38/17, 38/21, 38/23, 38/24, 38/25, 39/1, 39/2, 45/25, 46/10, 48/10, 48/11, 48/13, 50/18, 50/19, 59/2, 59/3, 59/4  
sections 34/4, 34/16  
seek 34/23  
seeking 34/11  
Self 3/16  
self-provisioning 55/19  
Senatore 36/10, 36/21  
sense 18/3, 42/2, 53/12  
sentences 25/1  
September 13/8  
sequencing 46/2  
serve 31/12  
SERVICE 1/1, 5/10, 54/17  
Services 5/11, 8/5  
session 14/11  
set 6/7, 6/8, 13/11, 13/15, 22/23, 40/12  
sets 26/6  
setting 39/5  
Shereff 4/6  
shoot 10/25  
shooting 21/12  
show 37/2  
Shumard 5/11  
side 13/12, 19/4  
Sims 2/6  
sit 46/2  
situation 42/10, 44/13  
situations 29/21  
six 23/25  
skill 48/7  
skip 44/18  
small 22/17  
Smith 3/3  
solution 45/7  
sort 14/9, 27/16, 27/20, 29/15, 40/1, 52/6, 54/14, 56/14  
Sounds 13/21, 18/6, 21/22, 42/4, 45/6, 45/21, 47/15  
sources 53/1, 53/2, 55/20  
South 2/6, 2/20  
Southern 3/7, 3/9, 6/23, 25/12  
SPEAKER 46/22  
specification 50/5  
specify 31/3  
Spell 7/10  
spends 47/18  
sponsor 27/11  
sponsoring 58/6  
spot 44/24  
springs 12/25  
Sprint 2/16, 7/16, 7/17, 16/1, 20/7, 20/8  
Sprint-Florida 2/14, 2/16  
Staff 5/13, 8/3, 8/7, 10/21, 12/11, 17/20, 19/6, 31/15, 31/16, 32/2, 32/6, 32/9, 33/16, 33/18, 35/24, 36/3, 45/1, 46/1, 46/18, 47/7, 50/11, 53/14, 53/16  
Staff's 19/18, 35/16  
stand 33/2, 33/4, 40/6

standard 14/18, 15/3, 15/12, 16/25, 22/24, 24/5, 38/23, 52/15, 53/9, 53/21, 54/10, 56/7, 57/11  
standards 54/1  
standpoint 16/22, 43/10  
stands 23/5  
start 6/10  
state 11/14, 11/15, 12/16, 52/8, 54/7, 54/19, 54/20, 62/1  
statement 21/23, 37/16, 48/16, 52/22  
statements 24/7, 35/17  
States 3/7, 3/9, 6/23, 25/13, 26/3  
stay 32/2  
Steen 2/19  
stenographically 62/7  
Stephen 38/6  
Steven 7/2, 38/10, 38/11  
stipulate 14/5, 15/19, 16/6, 19/24, 20/16, 20/18  
stipulation 8/16, 17/22, 23/4, 57/22  
stipulations 59/3  
stop 33/20  
Street 2/7, 3/7, 4/3, 4/7  
Street, Tallahassee 2/20  
stricken 13/23, 14/4, 24/9, 52/18, 58/17, 58/25  
strike 13/6, 13/19, 14/18, 18/2, 19/7, 22/16, 23/10, 24/1, 25/11, 30/17, 31/18, 31/25, 32/9, 32/11, 51/15, 53/22, 54/12, 56/4, 56/5, 56/11, 56/15, 56/22, 57/1, 57/4, 57/15, 57/21, 58/14, 58/21  
striking 33/21  
structured 52/11  
studies 16/3, 50/1  
study 27/17, 31/21  
stuff 14/19  
subject 17/2, 30/5, 30/11, 30/14, 52/16  
submit 25/19, 26/13  
substance 28/21, 53/10  
substantive 22/10, 24/4, 27/19  
suffice 33/22  
sufficient 11/4, 32/22  
suggestion 44/24, 47/24  
Suite 2/7, 3/7, 3/13, 4/7, 4/16, 4/20  
suited 42/12  
summaries 32/23, 33/9, 59/9  
summarizes 53/25  
summary 35/1, 35/3, 44/9, 59/20, 60/10, 60/14  
supplemental 15/8, 19/16, 19/17, 20/9, 20/10, 20/24, 33/19, 39/15  
supplementing 29/12  
support 31/21, 51/25, 57/7, 58/16  
sur-surrebuttal 35/4  
surprise 60/19  
surrebuttal 25/11, 25/22, 26/4, 26/7, 26/11, 26/15, 26/17, 28/19, 29/9, 29/13, 29/16, 30/7, 30/16, 30/22, 32/16, 33/15, 33/19, 39/15, 41/11, 42/9  
Swidler 4/6  
switch 37/14  
Systems 5/4

T

table 13/25, 21/16  
talk 30/10  
talked 52/6  
talking 23/14, 23/21  
talks 28/6, 28/7  
Tallahassee 1/20, 2/3, 2/7, 2/15, 3/3, 3/8, 3/16, 4/4, 4/16, 4/21, 5/7, 5/12  
Tampa 2/11, 4/12  
Telecom 4/9, 4/10, 5/8, 7/7, 7/8, 7/23, 12/17  
Telecommunications 2/6, 2/8, 4/5, 4/18, 5/4, 25/10  
ten 60/9, 60/10  
tend 43/11  
tends 40/6  
terms 28/21, 41/8, 43/14, 46/3, 46/5, 49/22, 52/22, 59/15, 60/7, 60/14  
Terry 40/21  
test 30/24, 31/2, 31/9  
testify 45/11, 45/17, 46/3  
testifying 39/24, 43/18, 51/4  
TESTIMONY 1/10, 13/6, 13/20, 13/23, 14/4, 14/17, 15/4, 15/8, 15/11, 15/13, 15/23, 16/8, 16/9, 16/12, 17/3, 18/2, 18/16, 18/21, 19/8, 20/9, 20/10, 20/16, 20/24, 21/14, 22/17, 22/19, 23/5, 23/11, 23/14, 23/17, 23/18, 23/23, 24/6, 24/19, 25/11, 25/17, 25/20, 25/21, 25/23, 25/25, 26/1, 26/2, 26/5, 26/8, 26/12, 26/15, 26/17, 26/18, 26/21, 27/9, 27/24, 27/25, 28/1, 28/3, 28/11, 28/12, 28/14, 28/16, 28/21, 28/23, 28/24, 29/8, 29/10, 29/13, 29/22, 29/24, 30/2, 30/3, 30/4, 30/5, 30/10, 30/12, 30/13, 30/24, 30/25, 31/2, 31/4, 31/5, 31/7, 31/8, 31/23, 32/1, 32/8, 32/18, 32/23, 33/14, 33/21, 34/3, 34/8, 34/12, 34/17, 35/3, 35/8, 35/9, 36/10, 41/10, 42/1, 42/9, 43/3, 44/14, 50/23, 50/25, 51/7, 51/16, 52/1, 52/21, 53/24, 54/4, 54/12, 54/23, 55/24, 56/3, 56/6, 56/14, 56/22, 58/16, 60/1

Texas 3/13  
text 25/24  
Thank 12/19, 25/4, 30/17, 30/18, 34/12, 36/18, 42/17, 45/23, 60/23  
Thereupon 61/3  
They've 24/1, 34/7  
three 37/1, 49/13, 49/18  
Thursday 1/16  
TIME 1/17, 5/8, 6/7, 8/24, 12/9, 12/17, 13/12, 16/19, 16/25, 18/22, 19/8, 21/16, 35/25, 36/4, 40/5, 41/2, 43/11, 43/12, 47/19, 58/2, 58/3, 59/15, 59/25, 60/3, 60/15, 62/5  
Time-Warner 5/8  
tone 32/16  
top 38/8, 48/19  
topic 29/22, 43/14, 43/15, 43/16  
topics 43/18  
TRACY 3/6, 6/22  
Trail 3/13  
transcribed 62/8  
TRANSCRIPT 1/8, 1/9, 62/8  
trees 46/12  
trial 33/11  
Trimble 13/7, 24/19, 25/2, 45/11  
troubling 58/10  
true 14/20, 26/10, 26/22, 39/23, 51/13, 58/8  
two 27/3, 29/23, 56/24, 59/4, 60/18  
type 53/21  
typed 49/5, 49/6  
typo 48/19  
typographical 40/23

U

unbundled 1/5  
understandable 48/4  
UNE 22/23  
UNEs 14/6, 14/22, 14/25, 15/21, 16/3, 17/5, 18/12, 18/20, 20/11, 20/19, 22/2, 53/1, 53/3, 55/18, 57/14  
unfair 43/4  
UNIDENTIFIED 46/22  
uniform 46/20  
universal 54/16  
unlike 28/23

V

variety 55/20  
Varner 13/7, 24/14  
Varner's 23/13  
VERSIONS 1/8  
Vice 4/2  
view 22/25, 33/25  
views 17/9  
voluntarily 18/21

W

WAHLEN 2/2, 7/18  
wait 11/22, 18/18, 20/5, 44/19  
waited 25/22  
waiver 46/25  
Warner 5/8, 12/17, 41/2  
Washington 4/8  
week 17/25, 19/14, 19/15, 39/25  
weeks 37/1  
weight 32/3, 36/14  
WHITE 2/5, 6/11, 10/16, 49/4, 52/6  
Wilkinson 5/6  
William 41/5  
Williams 39/23, 40/15, 50/24  
willing 8/22, 14/3, 14/5, 15/25  
withdraw 14/3, 15/23, 16/9, 17/12, 18/21, 20/16, 23/4, 23/15, 31/22, 36/25, 51/2, 56/14  
withdrawal 23/10, 57/22  
withdrawing 36/10, 36/17  
withdrawn 17/4  
withdrew 51/16  
witness 20/19, 22/18, 23/13, 24/14, 24/16, 26/2, 28/20, 29/1, 29/3, 29/4, 34/5, 34/20, 35/7, 37/5, 37/6, 37/12, 39/19, 39/23, 40/22, 41/1, 41/9, 43/6, 43/17, 44/9, 44/23, 50/22, 50/23, 50/25, 55/16, 57/10, 60/9  
witness' 35/1, 36/19, 37/11  
Witnesses 13/7, 30/6, 30/8, 30/14, 33/4, 33/6, 33/7, 40/10, 40/22, 41/11, 41/20, 43/4, 43/5, 43/7, 43/11, 43/13, 43/14, 43/15, 43/16, 43/24, 43/25, 45/3, 45/10, 56/21, 59/10, 59/25, 60/19  
witnesses' 24/6, 26/12, 34/3  
wondering 40/3, 46/14  
Wood 25/11, 42/21  
Wood's 30/12  
word 12/7, 47/20

words 29/12, 47/20, 48/2, 48/10  
work 9/13, 11/5, 43/18, 46/2  
World 4/19  
WorldCom 3/4, 4/22, 6/25, 7/4, 11/18, 20/21, 25/13,  
30/20  
writing 57/16  
written 19/12, 19/13  
wrong 12/8

X

xCSL 48/21

Y

York 39/24

Z

zones 49/13, 49/18, 50/3, 50/5

001152