

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

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In the matter of
Comprehensive Review of
the Revenue Requirements
and Rate Stabilization
Plan of SOUTHERN BELL
TELEPHONE AND TELEGRAPH
COMPANY.

DOCKET NO. 920260-TL

PROCEEDINGS: PREHEARING CONFERENCE NO. 2

BEFORE: COMMISSIONER SUSAN F. CLARK
Prehearing Officer

DATE: Thursday, January 15, 1993

TIME: Commenced at 9:30 a.m.
Concluded at 10:25 a.m.

PLACE: FPSC Hearing Room 106
Fletcher Building
101 East Gaines Street
Tallahassee, Florida

REPORTED BY: JOY KELLY, CSR, RPR
SYDNEY C. SILVA, CSR, RPR
Official Commission Reporters

1 APPEARANCES:

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8 Southern Bell Telephone and Telegraph Company.

9 DONALD BELL, Foley & Lardner, Post Office Box
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12 Persons.

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17 the State of Florida.

18 MICHAEL W. TYE, 106 East College Avenue,
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22 PETER M. DUNBAR, Haben, Culpepper, Dunbar &
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11 Florida Pay Telephone Association, Inc.

12 JACK SHREVE, CHARLES J. BECK and SUE
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17 Florida.

18 C. EVERETT BOYD, JR., Ervin, Varn, Jacobs,
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22 PATRICK K. WIGGINS, Wiggins & Villacorta,
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1 APPEARANCES CONTINUED:

2 ANGELA B. GREEN, TRACY HATCH and PATRICK LEE
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4 Gaines Street, Tallahassee, Florida 32399-0863,
5 Telephone No. (904) 487-2740, appearing on behalf of
6 the Commission Staff.

7 ALSO PRESENT:

8 CAROLYN MASON, Department of General Services.

9 ROBIN NORTON, Florida Public Service Commission,
10 Division of Communications.

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P R O C E E D I N G S

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

COMMISSIONER CLARK: Are we ready to begin?

Do we need to start all over and take appearances? Is there a notice? Go ahead.

MS. GREEN: Pursuant to notice this time and place was set for the second Prehearing Conference in Docket 920260-TL.

COMMISSIONER CLARK: Take appearances.

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

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

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

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

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

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

MR. WIGGINS: Pat Wiggins, on behalf of

1 Intermedia Communications of Florida Inc.

2 MR. DUNBAR: Peter Dunbar, Haven, Culpepper,
3 Dunbar and French, on behalf of the Florida Cable
4 Television Association.

5 MR. SELF: Floyd Self of the Messer, Vickers
6 law firm, on behalf of McCaw Cellular Communications.
7 I'm also entering an appearance for Laura Wilson of our
8 firm, on behalf of Florida Pay Telephone Association.

9 MR. BOYD: Everett Boyd of the Ervin, Varn,
10 Jacobs, Odom & Ervin law firm in Tallahassee, on behalf
11 of Sprint Communications Limited Partnership.

12 MS. MASON: I'm Carolyn Mason. Carolyn Mason
13 with the Florida Department of Management Services,
14 Division of Communications. The State of Florida is a
15 member of Ad Hoc. Ben Dickens and Doug Metcalf, who
16 represent Ad Hoc, cannot be here today so I'm taking
17 notes.

18 COMMISSIONER CLARK: Okay.

19 MS. GREEN: Angela Green, Tracy Hatch and Lee
20 Thomas for the Commission Staff.

21 COMMISSIONER CLARK: Angela, I noticed I was
22 given additional legal issues. Are these the legal
23 issues you spoke about last time?

24 MS. GREEN: Yes. Those are the ones. And I
25 just passed them out so people would have time to look

1 at them, and maybe we could talk about them later on.
2 Or if no one has a problem, those were the ones I had
3 mentioned at the last conference. And what I've done
4 is I've just put the present issue as it is and then
5 listed a Subpart 1 to show the new and additional legal
6 issue that relates back to the existing issue. They
7 are fairly simple.

8 COMMISSIONER CLARK: And the parties would
9 need to take positions on this issue prior to the final
10 -- I was going to say prior to the final prehearing
11 conference, or at the next prehearing conference.

12 MS. GREEN: Yes. We would need positions on
13 them, but since they are purely legal issues, they
14 would be disposed of by briefs at the end of -- in the
15 briefs at the end of the proceeding.

16 COMMISSIONER CLARK: Shall we set a date by
17 which they should give you their --

18 MS. GREEN: Certainly.

19 COMMISSIONER CLARK: Do you have a
20 recommendation?

21 MS. GREEN: I'd say two weeks.

22 COMMISSIONER CLARK: Okay.

23 MS. GREEN: That would be the 29th.

24 Since we're on that topic, we still need some
25 corrections to the draft Prehearing Order that haven't

1 gotten back to me. Specifically, on the current
2 version at Pages 5 through 7, all the witnesses have
3 been identified and some parties either have not given
4 us the issues numbers that their witness' testimony
5 goes to or perhaps we have overlooked it. So I would
6 like to ask that parties provide that within that same
7 two week time --

8 COMMISSIONER CLARK: All right.

9 MS. GREEN: -- so we can get all --

10 COMMISSIONER CLARK: Does everyone understand
11 that request?

12 MS. GREEN: We have a version out that shows
13 a date in the upper right-hand corner with today's date
14 and that incorporates all the changes that we know
15 about thus far, changes or corrections. There has been
16 a filing from the Florida Hotel and Motel Association
17 formally withdrawing from this proceeding.

18 COMMISSIONER CLARK: Do I need to grant the
19 withdrawal?

20 MS. GREEN: Yes.

21 COMMISSIONER CLARK: The request for withdrawal
22 is granted.

23 MS. GREEN: Or acknowledged.

24 COMMISSIONER CLARK: Or acknowledged. Is it
25 appropriate now to turn to pending motions?

1 MS. GREEN: It's at your pleasure.

2 MR. SHREVE: Could I have just one second.

3 COMMISSIONER CLARK: Sure.

4 MR. SHREVE: I think with your delay of the
5 hearing that you made the other day working with
6 Chairman Deason, I think that's hopefully going to take
7 care of some of the problems. I think it was really
8 the appropriate decision to make.

9 And I would like to raise a concern that I
10 have on some rulings that I think may put us in a worse
11 bind if something isn't done in the way it's moving.

12 I'm not sure if it's not incumbent upon
13 Southern Bell to do some filings and identify some
14 things first, but I'm very concerned, when you look at
15 the last case and the way it came out and all of the
16 blood bath we had at that time, was the confidentiality
17 of the overall discovery. And I just think that we
18 need to take a look at that. I know it's not up for
19 this hearing, but I think it's one thing that we should
20 put on the forefront, or I can see it really coming out
21 to be a problem because there are public records
22 demands being made on some of those documents.

23 COMMISSIONER CLARK: Mr. Shreve, when I went
24 through the latest I had with respect to pending
25 motions, under 16 and 17 there were requests for

1 confidential classification and requests for protective
2 orders. I have instructed my aide to get with one of
3 our attorneys, and it's my intention to have rulings on
4 confidentiality done -- excuse me just a minute.

5 Billy, did we set a deadline which we would
6 have those rulings done on all the confidentiality
7 requests that had been made?

8 MR. STILES: Yes, we may have.

9 COMMISSIONER CLARK: Excuse me.

10 MR. STILES: We may have, I do not recall.

11 COMMISSIONER CLARK: I have not set a formal
12 date publicly in a meeting such as this, but we are
13 cognizant of it and it is my intention to get it done
14 as soon as possible. And if there are any things that
15 need -- that you have supplied, my recollection is
16 there is testimony or something that's been supplied
17 and a formal request for confidentiality has not been
18 made because of a pending Motion to Strike, you will
19 need to, when that motion -- I believe at the
20 appropriate time, or soon thereafter, you will need to
21 make a request that the information be held
22 confidential. I'm sort of getting ahead of myself here
23 because there are some motions that I'm going to be
24 dealing with that I think are affected by that.

25 MR. SHREVE: Yes. Commissioner, I think

1 there are some that will be up today. And I guess
2 really what I was bringing out is I think things could
3 work smoothly from the here on out. But I do think
4 there are some roadblocks that could come up, and I
5 think we really need to go ahead and take some action
6 on those confidentiality matters. I think the others
7 are going to be easier to get to, but those can cause a
8 real problem, as we know from the past, and right now
9 those are excluded from the public records and we're
10 going to begin getting demands for those.

11 COMMISSIONER CLARK: Yes. I mean, that is a
12 priority with my office to rule on the confidential
13 information that we currently have requests on.

14 MR. SHREVE: Thank you, Commissioner.

15 COMMISSIONER CLARK: Let me ask a question.
16 Where in the Prehearing Order would I go for pending
17 motions?

18 MS. GREEN: That would begin at Page 191 on
19 the new version.

20 COMMISSIONER CLARK: Is this the same two
21 sheets that I looked at yesterday?

22 MS. GREEN: Yes, ma'am, it is. It has just
23 been renumbered with pulling out the Hotel and Motel
24 Association and making some of the other changes.

25 COMMISSIONER CLARK: All right. Now, I would

1 like to go through this list and deal with those
2 pending motions that I can. I understand that with
3 respect to -- there remains outstanding a request for a
4 Motion to Compel Information on inside wire. And what
5 I propose to do is a ruling on that will wait until the
6 full Commission rules on your Motion to Reconsider next
7 Tuesday.

8 However, to the extent it deals with
9 allocations made to inside wire, my previous motion
10 with respect to discovery of information on unregulated
11 activities that relates to cost allocations, that is
12 discoverable now. And the Motion to Compel that I
13 already granted covers that.

14 MS. GREEN: Now, all the parties have a copy
15 of your order granting in part the four motions to
16 compel.

17 I checked at the Clerk's office, and they're
18 in the process of issuing that order, but copies have
19 been distributed to everyone here so they'll know what
20 you're referring to. And also because it does have a
21 time deadline for production.

22 COMMISSIONER CLARK: Okay. There still
23 remains outstanding the part of the motions to compel
24 dealing with attorney-client privilege and work
25 product. I had indicated that there would be a ruling

1 on that today. I believe it would be appropriate to
2 wait until after the agenda on Tuesday.

3 I understand your view, that regardless of --
4 that that information still needs to be heard in this
5 docket, even if the two dockets aren't combined. But I
6 want to do that for two reasons: I want to give the
7 opportunity for the Staff to have available to them the
8 discovery that they have propounded on Southern Bell
9 with respect to that motion. And I would also order
10 Southern Bell to deliver those documents to me for an
11 in camera inspection. They need to be in Tallahassee
12 by the 21st.

13 MR. ANTHONY: Are you saying the documents
14 that are subject to the Motion to Compel?

15 COMMISSIONER CLARK: That's right.

16 MS. GREEN: I believe, not wanting to
17 interfere, but I believe what you intended to say was
18 to deliver them, have them in their Tallahassee office
19 so that you can call for them to bring them.

20 COMMISSIONER CLARK: Yes. So I can make an
21 in camera inspection of them.

22 MR. ANTHONY: There are some that are
23 documents, like the audits that we discussed, there are
24 some motions to compel that relate to requests for
25 names of people who have certain knowledge, or

1 allegedly have certain knowledge. It's only those
2 things that are actually documents that you would want
3 produced; is that correct?

4 COMMISSIONER CLARK: There are two. The
5 first Motion to Compel and Request for In Camera
6 inspection, it's listed as Item No. 1. And then Item
7 No. 7. I had understood that what we were talking
8 about was four audits.

9 MR. ANTHONY: We can have those here. We
10 will have those in by the 21st, Commissioner Clark, is
11 what you said?

12 COMMISSIONER CLARK: Yes. That is the day I
13 would like to go --

14 MR. BECK: Commissioner, there is more --

15 COMMISSIONER CLARK: -- inspect those
16 documents, and I had intended to inspect them in my
17 office. If it works out that it's better for me to go
18 to your offices here, I will do that.

19 MR. BECK: Commissioner, there is more than
20 just audits.

21 COMMISSIONER CLARK: Okay.

22 MR. BECK: The supplement to the first Motion
23 to Compel, that covers four audits.

24 COMMISSIONER CLARK: And then there's a fifth
25 audit, right? Is that --

1 MR. BECK: Is that in the other docket?

2 MS. RICHARDSON: In the other docket.

3 MR. BECK: The fifth audit is covered by
4 motions in the repair docket. The supplement to the
5 first Motion to Compel covers four audits: The
6 Schedule 11, the LMOS, MOOSA, and the KSRI audits. The
7 No. 7, which is our Eighth Motion to Compel and Request
8 for In Camera Inspection of Documents, it's No. 7 on
9 the list here. That deals with -- the first thing that
10 comes to mind is a list of craft personnel that was
11 created as a result of a panel.

12 Southern Bell is claiming that is covered by
13 the privileges. Again, that is not an audit, but it is
14 an existing document, and panel recommendation
15 summaries out of there, so there are not audits that
16 are documents that are covered by Item No. 7 on the
17 Prehearing Order.

18 COMMISSIONER CLARK: Is that it?

19 MR. BECK: No. Well, then we have No. 4.
20 There was a deposition conducted in June of Vice
21 President Sanders and head of personnel, Cuthbertson.
22 There's 58 instances where they refused to answer
23 deposition questions.

24 COMMISSIONER CLARK: But there's nothing to
25 look at.

1 MR. BECK: There's no documents related to
2 that. But if you are looking at what is privileged or
3 what reflects claims of privilege, those items do, but
4 there's no documents to look at from that.

5 COMMISSIONER CLARK: Charlie, at this point I
6 want to know what documents they need to get down here.

7 MR. BECK: Well, I think the matter is
8 covered by the supplement to the First Motion to
9 Compel, and then Item No. 7 here, which is our Eighth
10 Motion to Compel.

11 COMMISSIONER CLARK: Okay. Do you
12 understand?

13 MR. ANTHONY: I do, but if I understand what
14 Mr. Beck said, on the Seventh Motion to Compel, there
15 is a list of craft employees who may, as I recall,
16 relate to some other issues.

17 We can produce that list, but I don't think
18 -- as we stated in our responses to the various motions
19 to compel, a lot of these documents, by a simple
20 inspection of them, won't reveal to you whether or not
21 they're privileged by that inspection itself. It's the
22 circumstances within which they were created, either
23 gives rise to the privilege or doesn't. So we can
24 produce that. I'm just not sure in a lot of these
25 instances whether that will provide much assistance to

1 you. But that's all I want in our responses to the
2 motions to compel, and why we believe that to be the
3 case. But if that's your order, we'll, of course,
4 comply or tke appropriate --

5 COMMISSIONER CLARK: Well, it's my
6 understanding that your argument is it's either
7 privilege or attorney work product.

8 MR. ANTHONY: Yes, ma'am, or both.

9 COMMISSIONER CLARK: And it seems to me it
10 requires an in camera inspection for me to see what is
11 in the documents so that I can make a ruling, because
12 there is a distinction between what is factual and what
13 is opinion, at least with respect to the work product.

14 MR. ANTHONY: If the facts were provided to
15 Southern Bell as part if its work product or the
16 attorney-client privilege and we've compiled those,
17 whether they are facts or not, our gathering of them
18 still remains privileged. The underlying facts
19 themselves are not privileged, but our compilation of
20 them is. And a name in and of itself, of course, is
21 not a privileged piece of information. But the manner
22 in which we've gathered it, as part of our
23 investigation, can make a listing of those names
24 privileged. And that's the important distinction. So
25 even though the list may only have names, I don't think

1 that's dispositive of the issue. And that's all I'm
2 trying to point out.

3 COMMISSIONER CLARK: Okay. I would like to
4 have the documents, the audits, the list of craft
5 personnel and the panel recommendations.

6 MS. GREEN: Now, the list of craft personnel
7 is in a motion that is not filed in this docket.
8 That's the Seventh Motion to Compel that they have been
9 discussing and it has not been filed in this docket.

10 MS. RICHARDSON: It is the Eighth Motion to
11 Compel. It's No. 7 on the list. Angela, it's titled
12 "OPC's Eighth Motion" but it's No. 7 on your list.
13 That's where the confusion is coming in, I believe.

14 MR. BECK: And that motion was filed in both
15 this docket and the repair docket.

16 MS. GREEN: It's part of the eighth?

17 MR. BECK: Yes.

18 MR. RICHARDSON: Yes.

19 MS. GREEN: I'm sorry.

20 MR. ANTHONY: Just so I'm clear on the
21 documents, it's all five audits or is it the first
22 four, which are the subject of --

23 COMMISSIONER CLARK: Let me put it this way:
24 Be prepared to have the four down, and whatever the
25 vote is on Friday, if it is a consolidation, have the

1 fifth one down here.

2 MR. ANTHONY: Yes, ma'am. I'm just trying to
3 make sure I know what's supposed to be here.

4 Then the panel recommendations on discipline
5 and then the list of craft employees, those are the
6 three documents we're talking about? I don't want to
7 miss anything.

8 COMMISSIONER CLARK: Yes.

9 MR. ANTHONY: Okay. Thank you.

10 COMMISSIONER CLARK: It would be my intention
11 to review those documents as needed. At that point, we
12 should have the information from Southern Bell. The
13 Staff should have information they feel they need to
14 make a recommendation. My goal is to issue an order by
15 Tuesday after -- I'm trying to think, I don't have any
16 calendar with me. I think it would be Tuesday the
17 26th.

18 MS. RICHARDSON: Tuesday is the 26th,
19 Commissioner.

20 COMMISSIONER CLARK: All right. (Pause)
21 Moving now to Item No. 8, the motion to require sworn
22 testimony sponsoring the quality of service reports, I
23 will require Southern Bell to have someone available at
24 the hearing to respond to questions about the Schedule
25 11.

1 MR. BECK: Commissioner, may I address that
2 briefly?

3 COMMISSIONER CLARK: Yes.

4 MR. BECK: We had a deposition that went
5 until 7:30 last night where matters related to this
6 were discussed.

7 Southern Bell has a rebuttal witness to
8 Staff, Wayne Tubaugh. He testified there, and I'm
9 leading up to the point I'm going to make, is that to
10 his knowledge that the reports were correct, although
11 there were some changes that needed to be made that he
12 hadn't made yet. But more importantly he was not
13 competent to say whether the Schedule 11's were
14 truthful or not, because there are matters that he did
15 not seek information on.

16 Basically he said "If I needed to know this,
17 somebody would tell me." I would hope that you would
18 direct Southern Bell as a corporation to supply a
19 person who would be competent to testify about the
20 accuracy and truthfulness of the Schedule 11's so we
21 don't get in a position where they put a person up who
22 says, "As far as I know, they're correct, but they may
23 not be because I don't know."

24 The distinction is I would appreciate it if
25 you would direct the Company to put somebody competent

1 to answer all questions about Schedule 11 on the stand.

2 MR. ANTHONY: Commissioner Clark, I
3 understand Mr. Beck's point. The trouble is if you
4 follow the allegations that have been raised, and
5 assuming, for the sake of argument, that there's any
6 basis to the allegations, that means that according to
7 Public Counsel there have been instances where some of
8 these reports have had incorrect data included. And I
9 don't know how we could provide any single person who
10 could testify either the report from this particular
11 area for that particular month was or was not accurate.
12 I understand the point he's trying to make. I just
13 don't know as a practical matter how Southern Bell can
14 comply with that kind of request, given the
15 circumstances.

16 COMMISSIONER CLARK: Certainly you have
17 individuals who compile these reports and are
18 responsible for their validity?

19 MR. ANTHONY: Mr. Tubaugh is the person
20 responsible for compiling it and then provided based on
21 information given to him by others.

22 COMMISSIONER CLARK: All right. And would he
23 also be the person who would know if there were
24 inaccuracies in it?

25 MR. ANTHONY: If he were told that there were

1 inaccuracies. But he would not have firsthand
2 knowledge.

3 COMMISSIONER CLARK: You will be required to
4 produce someone who can answer questions about Schedule
5 11. It may be that Mr. Tubaugh needs to make inquiries
6 of the people who provided him with information to
7 verify that they are correct.

8 MR. LACKEY: May I --

9 COMMISSIONER CLARK: I suggest you provide
10 the name of the person within two weeks, the same as
11 the positions on the papers, the witness who will be
12 sponsoring the validity of the Schedule 11. (Pause)

13 I believe that with respect to Item No. 9,
14 the motion to set time for intervenor testimony, in the
15 order on the Motion to Compel, which will be issued
16 hopefully no later than the 26th, we will set a date
17 for filing supplemental testimony if any is needed as
18 part of that order. So at this time we'll leave Item
19 No. 9 pending.

20 I understand that 10 and 11 are items the
21 full Commission is hearing.

22 With respect to Item No. 12, I will not grant
23 the Motion to Strike at this time pending the outcome
24 of the full Commission's decision on the consolidation.

25 Item No. 13, I believe, has been taken care of.

1 Item 14 was granted. (Pause)

2 With respect to -- is Dr. Cooper and Mr.
3 Poucher, is that testimony that is subject to the same
4 allegation, that they belong more properly in the other
5 docket?

6 MR. ANTHONY: Yes, ma'am.

7 COMMISSIONER CLARK: Okay. That one will be
8 left pending, depending on the outcome of the
9 Commission's decision. I will also set a date for -- I
10 will either set a date, or whoever is responsible will
11 set a date for requiring you, if it's necessary, to
12 file your request for confidentiality. I understand
13 that's what's at issue here.

14 All right. We'll leave that pending.

15 MR. BECK: Commissioner, may I address that
16 briefly?

17 COMMISSIONER CLARK: Yes.

18 MR. BECK: We filed the testimony of these
19 two witnesses on November 16th. No matter what the
20 ruling was, whether it was stricken or not, it is a
21 part of record in this proceeding. Even if it were
22 only for appeal, that testimony has been filed and is
23 part of the record.

24 You have a rule that requires the Utility to
25 file a request for specific confidentiality whenever

1 information will be used in a docket. It is used, it
2 has been used. It's irrevocable even if it were
3 stricken, because it will be on the record for appeal.

4 Southern Bell is saying they need not file
5 that --

6 COMMISSIONER CLARK: If it's stricken.

7 MR. BECK: -- follow that rule if it's stricken.
8 And it's simply not correct. It's still being used and
9 will be part of the record in the proceeding. So no
10 matter what happens, the Commission still has to rule on
11 whether that's confidential or not.

12 And what Southern Bell has done is, they're
13 refusing to take the step forward to make it happen.
14 In other words, they haven't even filed the request
15 saying what portions, if any, of that testimony is
16 confidential.

17 It would be our request that you order them
18 to do that immediately. They should have done it two
19 months ago. And meanwhile, because they haven't done
20 that, the testimony remains confidential. So I guess
21 I'm saying no matter what happens following, it still
22 needs to be done.

23 COMMISSIONER CLARK: You're saying because it
24 will be part of the record for any appeal you
25 might take --

1 MR. BECK: Yes.

2 COMMISSIONER CLARK: -- that we still need a
3 ruling.

4 Would Southern Bell like to respond to that?

5 MR. ANTHONY: Well, we'll be prepared to
6 respond. It's fairly voluminous and we don't object to
7 it. But I note that I think Southern Bell's position
8 is -- this is a unique situation. We had an order that
9 said the testimony wasn't supposed to be filed. Public
10 Counsel disregarded the motion and filed it in any
11 event. Southern Bell filed the Motion to Strike, and
12 because of that it was in a different posture.

13 Normally, we would have filed a request for
14 confidentiality, but this is in somewhat a different
15 posture.

16 COMMISSIONER CLARK: It would seem to me, if
17 I'm correct, this testimony will be either heard in
18 this docket or in the other docket. That being the
19 case, the problem is you have filed it in this docket?

20 MR. BECK: That's correct.

21 COMMISSIONER CLARK: Okay. Let me direct you
22 to within 20 days to file a request, because we're
23 going to have to deal with it anyway, so get it in.

24 MR. ANTHONY: We'll have that filed.

25 MR. SHREVE: Commissioner, on that 20 days,

1 this is one that I think you should be considering.
2 What's going to happen when we go to either one of
3 these hearings? And this is a situation where these
4 documents are public records and should be open to the
5 public unless there is a showing by Southern Bell that
6 they should be excluded. So at this point they're
7 being excluded from public view without any showing.

8 And I think it's obvious they are going to
9 become public records, and I think you're going to have
10 a problem when you get to the hearing in either you
11 can't walk around all of this information. The choice
12 is going to be the Commission's to close the hearing.

13 COMMISSIONER CLARK: I understand that. But
14 as I said earlier, it is my intention that every item
15 that we have to make a ruling on the confidentiality be
16 done.

17 Let me ask Angela a question. What is the
18 rule -- what are the deadlines in the rule for requests
19 for confidentiality?

20 MS. GREEN: The normal rule requires that it
21 be filed when the document is filed unless it comes
22 under one of the exceptions that allows 21 days.

23 It would seem to me -- I mean, it is a
24 standard part of civil practice that a Motion to Strike
25 holds the time for other types of filings. And that, I

1 believe, is the rationale.

2 COMMISSIONER CLARK: What is the time that
3 Public Counsel has to respond to the requests for
4 confidentiality?

5 MS. GREEN: To respond to it? Is it 14 days
6 to request the public from -- somebody has got my
7 rules.

8 MR. HATCH: Under the rule it's 14 days to
9 file a request for nonconfidentiality or a response.

10 (Pause)

11 COMMISSIONER CLARK: I'm going to continue to
12 give them the 20 days, and I will give you your full 14
13 days to respond to them.

14 MS. GREEN: Since you did mention the part
15 about there's only a question as to whether -- where
16 the testimony would be heard, would it be your
17 intention, going back to Item No. 12 explicitly with
18 the Motion to Strike, would it be your intention to
19 deny that motion as to the three pieces of testimony
20 that would be heard in one docket or the other and then
21 just delay ruling on where it would be heard pending
22 the outcome of the consolidation? In other words --

23 COMMISSIONER CLARK: I think that gets us to
24 the same place.

25 MS. GREEN: No, it doesn't. We have a Motion

1 to Strike that has not been either granted or denied.

2 COMMISSIONER CLARK: I had indicated that I
3 wouldn't rule on it depending on whether it was my
4 ability to rule on it or somebody else's ability to
5 rule on it, depending on what the Commission did.

6 MS. GREEN: It is your ability to rule on it.
7 It's filed in this docket, and you're being asked to
8 strike the testimony from the docket.

9 COMMISSIONER CLARK: Because it's in another
10 docket.

11 MS. GREEN: And the only one that has really
12 any question left on it is Mr. Cresse's testimony on
13 the inside wire, depending on whether that becomes an
14 issue again or not.

15 COMMISSIONER CLARK: I'm still going to
16 withhold ruling on the Motion to Strike.

17 MS. GREEN: Okay.

18 COMMISSIONER CLARK: With respect to Item 16
19 and 17, as I indicated earlier, I have asked my aide to
20 work with the attorney on that and we will get rulings
21 as quickly as possible out on those, and the temporary
22 protective orders.

23 With respect to Southern Bell's Motion to
24 Strike the testimony filed the 25th, I have a note that
25 this is the same as No. 12.

1 MR. ANTHONY: I believe No. 12 is Public
2 Counsel's response to No. 19.

3 COMMISSIONER CLARK: All right. And with
4 respect to the motion to quash the subpoenas. Now,
5 these are subpoenas to be quashed in this docket.

6 MR. HATCH: Yes, ma'am.

7 COMMISSIONER CLARK: We'll withhold ruling on
8 that until after the ruling on consolidation.

9 With respect to Item 21, FCTA's motion to
10 dismiss, I believe that's something the full Commission
11 should rule on.

12 MS. GREEN: Are you going to move that to the
13 rate case as you did the motion to impose penalty?

14 COMMISSIONER CLARK: That's right.

15 MS. GREEN: Well, to the hearing. I'm sorry.

16 COMMISSIONER CLARK: That's right. I think
17 that's something that needs to be -- it's FCT's
18 allegation that their request for alternative
19 regulation does not meet the requirement of the
20 statute.

21 MR. DUNBAR: Yes, Commissioner, that's
22 correct.

23 COMMISSIONER CLARK: I believe that that
24 should be an issue in the case. And it can be by way
25 of a motion to dismiss.

1 MR. DUNBAR: Forgive me, because I was
2 reading something when you began the conversation. I
3 think that's the status of where we are. We did file
4 such a motion; basically that the Commission lacks
5 subject matter jurisdiction because there are missing
6 elements as a result of the facts and the testimony
7 that have developed since the initial filing. My
8 understanding from last week was that was a motion to
9 be argued before the full Commission.

10 COMMISSIONER CLARK: Right. I'm just
11 clarifying that. All right.

12 Attorney General's and OPC's motion for order
13 clarifying scope and purpose. The time has not run for
14 a response to that; is that correct?

15 MR. ANTHONY:
16 That is correct.

17 COMMISSIONER CLARK: So that is not ripe for
18 decision.

19 Is there any other matter that I need to take
20 up at this time?

21 MS. GREEN: I believe you wanted to address
22 some additional dates for the proceeding, and I don't
23 know what your position is as to dealing with order of
24 witnesses. It sounds like it might be more appropriate
25 pending the outcome of the Tuesday ruling, but I

1 believe you had identified some additional dates.

2 COMMISSIONER CLARK: Before I get to that, is
3 there anything else that needs to be taken care of
4 today?

5 MS. GREEN: We may need to -- we may need to
6 put on the record the final result from last week's
7 request on stipulating and merging issues.

8 COMMISSIONER CLARK: All right. Okay.

9 MS. GREEN: I'm going to let Ms. Norton
10 address that.

11 COMMISSIONER CLARK: That's fine.

12 MS. NORTON: Commissioner, the pending issues
13 were 15m, as in Mary, and Public Counsel has agreed to
14 drop that issue and we'd like Southern Bell's position
15 on that.

16 MR. ANTHONY: We have no objection to that
17 being deleted.

18 MS. NORTON: The same on 17g.

19 MR. ANTHONY: No objection to that being
20 deleted as well.

21 MS. NORTON: The last one was Issue 22 and
22 Public Counsel has agreed with our proposal to delete
23 that issue.

24 COMMISSIONER CLARK: Anything else?

25 MS. NORTON: Those were the remaining ones.

1 COMMISSIONER CLARK: I have looked at my
2 calendar and set aside dates that we can reconvene this
3 prehearing conference as it is necessary to deal with
4 pending matters.

5 It's my intent to have the case completely
6 organized so there are not a lot of preliminary matters
7 that we need to take care of at the beginning of the
8 hearing. That takes up a lot of time and we don't have
9 a lot of time at the hearing.

10 And I'd like to make sure that the Prehearing
11 Order is complete and delivered to the Commissioners as
12 early as possible.

13 With that in mind, I would like to continue
14 this hearing to January 29th to begin at 9:30 in this
15 room. There is not enough time for me to notice that
16 in the Florida Administrative Weekly, so I'm just going
17 to continue this hearing until that time.

18 You will need to get in touch with Staff the
19 day before. They will know what issues I'm aware of
20 that I need to take up. If you have an issue that
21 needs to be taken up you can tell them. It may be we
22 can cancel that hearing, that prehearing status
23 conference, because there's nothing to take up.

24 I will also reserve February 5th, 12th and
25 23rd. The meeting on the 5th continuation of the

1 conference will be in Room 106. And the meeting on the
2 12th and 23rd will be in Room 122. They will also
3 begin at 9:30.

4 They are being reserved in the event we need
5 them. Again, you need to call and get in touch with
6 the Staff to be sure that we are, in fact, going to
7 hold those status conferences.

8 MS. GREEN: Is it your intention that
9 February 23rd be the final prehearing conference?

10 COMMISSIONER CLARK: I beg your pardon. That
11 we will convene. We will have a final prehearing
12 conference on the 23rd.

13 If there's nothing further we'll adjourn this
14 hearing until the 29th. Thank you very much.

15 (Thereupon, the hearing concluded at 10:25
16 a.m.)

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1 F L O R I D A)
2 : CERTIFICATE OF REPORTERS
3 COUNTY OF LEON)

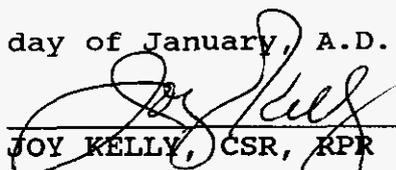
4 We, JOY KELLY, CSR, RPR, and SYDNEY C. SILVA,
5 CSR, RPR, Official Commission Reporters,

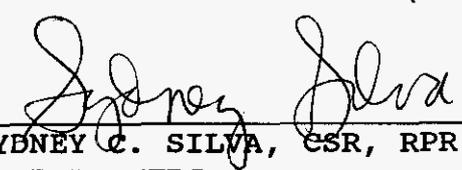
6 DO HEREBY CERTIFY that the hearing, in the
7 captioned matter, Docket No. 920260-TL, was heard by
8 the Florida Public Service Commission at the time and
9 place herein stated; it is further

10 CERTIFIED that we reported in shorthand the
11 proceedings held at such time and place; that the same
12 has been transcribed under our direct supervision, and
13 that this transcript, consisting of 33 pages,
14 constitutes a true and accurate transcription of our
15 notes of said proceedings; it is further

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

20 IN WITNESS WHEREOF, we have hereunto set our
21 hands at Tallahassee, Leon County, Florida, this 15th
22 day of January, A.D., 1993.

23 
24 JOY KELLY, CSR, RPR

25 
26 SYDNEY C. SILVA, CSR, RPR

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