

BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

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 In the Matter of : DOCKET NO. 970882-TI  
 :  
 Proposed Rule 25-24.845, :  
 F.A.C., Customer Relations; :  
 Rules Incorporated, and :  
 Proposed Amendments to Rules :  
 25-4.003, F.A.C., Definitions, :  
 25-4.110, F.A.C., Customer :  
 Billing; 25-4.118, F.A.C., :  
 Interexchange Carrier :  
 Selection; and 25-24.490, :  
 F.A.C. Customer Relations; :  
 Rules Incorporated. :  
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PROCEEDINGS: PREHEARING CONFERENCE

BEFORE: CHAIRMAN JULIA L. JOHNSON  
Prehearing Officer

DATE: Friday, January 23, 1998

TIME: Commenced at 9:30 a.m.  
Concluded at 10:45 a.m.

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

REPORTED BY: H. RUTHE POTAMI, CSR, RPR  
Official Commission Reporter

DOCUMENT NUMBER - DATE

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FPSC-RECORDS/REPORTING

1                   **NANCY B. WHITE**, c/o Nancy Sims, 150 South  
2 Monroe Street, Suite 400, Tallahassee, Florida 32301,  
3 and **JOHN R. MARKS**, Katz, Kutter, Haigler, Alderman,  
4 Bryant & Yon, P.A., 106 East College Avenue,  
5 Tallahassee, Florida, appearing on behalf of **BellSouth**  
6 **Telecommunications**.

7                   **BENJAMIN FINCHER** and **MONICA BARONE**, 3100  
8 Cumberland Circle, Atlanta, Georgia, 30399, and  
9 **EVERETT BOYD**, Ervin, Varn, Jacobs & Ervin, 305 South  
10 Gadsden Street, Tallahassee, Florida, appearing on  
11 behalf of **Sprint Communications Company, Limited**  
12 **Partnership**.

13                   **CHARLES REHWINKEL**, 1313 Blair Stone Road,  
14 Tallahassee, Florida 32302, appearing on behalf of  
15 **Sprint Florida, Incorporated**.

16                   **J. JEFFRY WAHLEN**, Ausley & McMullen, Post  
17 Office Box 391, Tallahassee, Florida 32302, appearing  
18 on behalf of **AllTel Florida**.

19                   **MARSHA E. RULE**, 101 East College Avenue,  
20 Suite 700, Tallahassee, Florida 32301-1509, appearing  
21 on behalf of **AT&T Communications of the Southern**  
22 **States, Inc.**

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1 **APPEARANCES CONTINUED:**

2 **RICHARD D. NELSON**, Hopping Green Sams and  
3 Smith, Post Office Box 6526, Tallahassee, Florida  
4 32314, and **MARSHA WARD**, 780 Johnson Ferry Road, Suite  
5 700, Atlanta, Georgia 30342, appearing on behalf of  
6 **MCI Telecommunications Corporation.**

7 **DONNA CANEANO**, Wiggins & Villacorta, P. A.,  
8 Post Office Drawer 1657, Tallahassee, Florida 32302,  
9 appearing on behalf of **Intermedia Communications.**

10 **VICKI GORDON KAUFMAN**, McWhirter, Reeves,  
11 McGlothlin, Davidson, Rief and Bakas, 117 South  
12 Gadsden Street, Tallahassee, Florida 32301, appearing  
13 on behalf of the **Florida Competitive Carriers**  
14 **Association.**

15 **SUZANNE SUMMERLIN**, 1311-B Paul Russell Road,  
16 Tallahassee, Florida, appearing on behalf of the **Furst**  
17 **Group, Inc.**

18 **CHARLES J. BECK**, Deputy Public Counsel,  
19 Office of Public Counsel, 111 West Madison Street,  
20 Room 812, Tallahassee, Florida 32399-1400, appearing  
21 on behalf of the **Citizens of the State of Florida.**

22 **MICHAEL GROSS**, Office of Attorney General,  
23 PL-01, The Capitol, Tallahassee, Florida 32399-1050,  
24 appearing on behalf of the **Office of the Attorney**  
25 **General.**

1 **APPEARANCES CONTINUED:**

2                   **KIM CASWELL**, One Tampa City Center, Tampa,  
3 Florida 33601, appearing telephonically on behalf of  
4 **GTE Florida Incorporated.**

5                   **DIANA CALDWELL**, Florida Public Service  
6 Commission, Division of Appeals, 2540 Shumard Oak  
7 Boulevard, Tallahassee, Florida 32399-0870, appearing  
8 on behalf of the **Commission Staff.**

9

10 **ALSO PRESENT:**

11                   **HARRIET EUDY**

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**I N D E X**

**MISCELLANEOUS**

**ITEM**

**PAGE NO.**

**CERTIFICATE OF REPORTER**

**51**

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

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

**CHAIRMAN JOHNSON:** We're going to go ahead and start the proceeding. Counsel, could you please read the notice?

**MS. CALDWELL:** Pursuant to FAW Notice of December 17, 1997, as modified by order issued January 2nd, 1998, this prehearing conference will be held at this time and place.

**CHAIRMAN JOHNSON:** Take appearances.

**MR. BECK:** My name is Charlie Beck. I'm with the Office of Public Counsel, 111 West Madison Street, appearing on behalf of the citizens of Florida.

**MR. GROSS:** Michael Gross, Assistant Attorney General on behalf of the Attorney General's Office at PL-01, the Capitol. Thank you.

**MS. KAUFMAN:** Vicki Gordon Kaufman, McWhirter, Reeves, McGlothlin, Davidson, Rief & Bakas, 117 South Gadsden, Tallahassee, Florida 32301. I'm appearing on behalf of the Florida Competitive Carriers Association.

**MS. WHITE:** Nancy White, 150 South Monroe Street, Room 400, Tallahassee, Florida, for BellSouth, as well as John Marks, 215 South Monroe Street, Suite

1 130, Tallahassee, Florida.

2           **MR. REHWINKEL:** Charles Rehwinkel on behalf  
3 of Sprint Florida, Incorporated, 1313 Blair Stone  
4 Road, Tallahassee, Florida, 32301.

5           **MR. NELSON:** Richard Nelson of the law firm  
6 Hopping Green Sams and Smith, P.A., P.O. Box 6526,  
7 Tallahassee, on behalf of MCI Telecommunications  
8 Corporation.

9           **MS. WARD:** Marsha Ward on behalf of MCI, 780  
10 Johnson Ferry Road, Suite 700, Atlanta, Georgia.

11           **MS. RULE:** Marsha Rule on behalf of AT&T,  
12 101 North Monroe Street, Suite 700, Tallahassee.

13           **MS. CANZANO:** Donna Canzano of the Wiggins &  
14 Villacorta Law Firm, 501 East Tennessee Street,  
15 Tallahassee, Florida, appearing on behalf of  
16 Intermedia Communications.

17           **MR. FINCHER:** Benjamin Fincher appearing on  
18 behalf of Sprint Communications Company, Limited  
19 Partnership, 3100 Cumberland Circle, Atlanta, Georgia  
20 303399. Appearing with me is Monica Barone with  
21 the --

22           **CHAIRMAN JOHNSON:** Who is she? (Laughter.)

23           **MR. BOYD:** Everett Boyd of the Ervin Varn,  
24 Jacobs & Ervin Law Firm, 305 South Gadsden Street,  
25 Tallahassee, Florida, also appearing on behalf of

1 Sprint Communications Company, Limited Partnership.

2 MR. WAHLEN: Jeff Wahlen of the Ausley &  
3 McMullen Law Firm, P.O. Box 391, Tallahassee, Florida,  
4 appearing on behalf of AllTel Florida, Inc.

5 MS. SUMMERLIN: Suzanne Summerlin. I'm here  
6 on behalf of the Furst Group, 1311-B Paul Russell  
7 Road, Tallahassee, Florida.

8 CHAIRMAN JOHNSON: I think there were a  
9 couple of individuals who are participating by  
10 telephone. If you could, state your name and who you  
11 represent and your address.

12 MS. EUDY: This is Harriet Eudy on behalf of  
13 AllTel, Florida, Inc. My address is 206 White Avenue,  
14 Live Oak, Florida 32060.

15 MS. CASWELL: This is Kim Caswell for GTE.  
16 Address is One Tampa City Center, Tampa, Florida  
17 33601.

18 CHAIRMAN JOHNSON: Is there one other  
19 individual? (No response.)

20 MS. CALDWELL: Diana Caldwell, Florida  
21 Public Service Commission, 2540 Shumard Oak Boulevard,  
22 Tallahassee, Florida 32399-0862 on behalf of Staff of  
23 the Commission.

24 CHAIRMAN JOHNSON: Are there any preliminary  
25 matters, counsel, that we may need to entertain from

1 the parties or Staff?

2 MR. NELSON: Chairman Johnson, just so the  
3 record is clear, Ms. Ward has entered an appearance on  
4 behalf of MCI. I'm sponsoring her. She's a member of  
5 the South Carolina Bar and regularly practices before  
6 state commissions.

7 CHAIRMAN JOHNSON: Thank you. Any other  
8 preliminary matters? (No response.)

9 Then I guess we can just proceed with going  
10 through the different sections of the prehearing  
11 order. To the extent that there is an issue, if you  
12 could, just make sure that I'm aware of that and we  
13 can address it at that time.

14 We have a very short case background, and  
15 when I get to a section, if you have a question or  
16 objection or a change, just make sure that you make me  
17 aware of that.

18 Section II is Rulemaking Hearing.  
19 Section III, Procedure for Handling Confidential  
20 Information. I don't see Section IV. Section V,  
21 which follows on Page 3, is the Hearing Procedures.

22 MS. CASWELL: Excuse me. This is Kim  
23 Caswell for GTE. Can I ask you a question about the  
24 hearing procedures?

25 CHAIRMAN JOHNSON: Sure.

1           **MS. CASWELL:** I'm not that familiar with  
2 rulemaking, and this seems, in some sense, sort of a  
3 hybrid. We have prefiled testimony from witnesses,  
4 but if other witnesses want to get up and speak, then  
5 they can speak, too? Is that how it works?

6           **CHAIRMAN JOHNSON:** You're asking if others  
7 could speak?

8           **MS. CASWELL:** Yeah. Well, other than the  
9 people that prefiled testimony, will there be like  
10 public witnesses or, say, if a company had an  
11 additional witness they wanted to put out and they  
12 didn't have prefiled testimony, could they speak as  
13 well?

14           **MS. CALDWELL:** Let me explain how I envision  
15 the hearing to proceed. I understand we have some  
16 customers that wish to speak, and I think they ought  
17 to go first. We will first hear from the customers.

18           We then will go through the order of the  
19 witnesses that have had prefiled testimony. Once the  
20 prefiled testimony has been concluded with the  
21 rebuttal and all the cross-examination questions, I  
22 think we should take some time that anyone who has  
23 filed comments or wishes to comment can at that time  
24 make a statement. Those statements, with time  
25 permitting, could then be -- questions could be asked

1 of those people who are making those statements.

2 MS. CASWELL: Okay. So then in the third  
3 group, people making comments, you could potentially  
4 have other company representatives? Is that --

5 MS. CALDWELL: That is how I think that it  
6 would be fair to do it that way.

7 MS. CASWELL: Okay.

8 MS. CALDWELL: And just keep in mind that we  
9 just have one day for this hearing.

10 MS. CASWELL: Right.

11 MS. CALDWELL: And that, you know, it's  
12 going to be late and we might have to limit the amount  
13 of time that these people have to make their comments.

14 MS. CASWELL: Okay. Thank you.

15 CHAIRMAN JOHNSON: Any questions regarding  
16 the procedure?

17 MS. RULE: This is Marsha Rule for AT&T, and  
18 perhaps this is a good time to raise the point that  
19 the order of witnesses presented is perhaps a bit in  
20 conflict with the procedure listed under Part 5,  
21 Hearing Procedures, on Page 3 of the draft.

22 Under Hearing Procedures on Page 3 it says  
23 "Staff will present a summary of the statement of  
24 estimated regulatory costs and the rules." And then  
25 the order of witnesses lists Staff as going last.

1 Typically Staff is the last to take the stand in a  
2 hearing procedure simply because Staff has no  
3 position, and their purpose for the Commission is to  
4 fill in the blanks, make sure the record is complete,  
5 and later advise the Commission.

6 In this case, however, Staff is the  
7 proponent of specific rule provisions, as is Public  
8 Counsel and the Attorney General. I think it makes  
9 more procedural sense and is fundamentally more fair  
10 to have the proponents of the rule go first to explain  
11 to the Commissioners and to the parties exactly what  
12 the basis is for their recommendations, allow some  
13 questions, and then have the parties put on their  
14 cases as to why they agree or don't agree and what  
15 they suggest instead. And simply because Staff is in  
16 the posture of the proponent of the rule, they should  
17 be going first.

18 I talked to Ms. Caldwell about it briefly.  
19 She pointed out that the Attorney General and Public  
20 Counsel are also rule proponents and, accordingly, it  
21 would make sense to me to have them go first. Other  
22 than that, I think the procedures outlined by  
23 Ms. Caldwell are quite workable for this type of  
24 hybrid hearing.

25 CHAIRMAN JOHNSON: Ms. Caldwell, would you

1 want to respond to the order of witnesses?

2 MS. CALDWELL: I don't think we have a  
3 problem with Staff going first. What we'll do is a  
4 presentation, an overview of the rules, and present a  
5 statement of regulatory costs; then we'll put on our  
6 witnesses and allow for cross-examination.

7 After we're through, I think Public Counsel  
8 can go, and we'll go on down the road.

9 MS. WHITE: The customers would come first  
10 and then Staff presentation and Staff witnesses and  
11 Public Counsel, and then the parties. Is that how  
12 you're thinking of it?

13 MS. CALDWELL: I still think that Staff  
14 ought to just present the rule before we put on  
15 testimony. So we'll still let Staff go first as far  
16 as explaining the rule, because it's not our witness,  
17 our prefiled witness. So we'll have Staff explain the  
18 rule and explain the circumstance and then we'll let  
19 the customers comment, and we'll come back with expert  
20 testimony.

21 CHAIRMAN JOHNSON: Does everyone understand  
22 the procedure? Any other questions or objections or  
23 concerns?

24 MR. GROSS: Commissioner Johnson, my name is  
25 Michael Gross. And there is a pending motion that has

1 been resolved between the Attorney General and Sprint  
2 Long Distance. But I have just talked to Mr. Everett  
3 Boyd, and we've come to a resolution, but it would  
4 require an order to give the protection to Sprint Long  
5 Distance that would give it the comfort level it  
6 needs.

7           We had petitioned several companies for  
8 access to documents that were confidential, but in the  
9 hands of Public Counsel; and the Attorney General also  
10 wanted to look at those documents and use them. And  
11 there were just two points of contention that  
12 initially Sprint Long Distance and the Attorney  
13 General couldn't resolve. But we have basically that  
14 if I signed an agreement on behalf of the Attorney  
15 General's Office, that's binding on any employee in  
16 the Attorney General's office and every employee  
17 doesn't have to sign a separate agreement.

18           And the other issue was as far as  
19 reproducing any handwritten notes or making copies of  
20 the documents, they would also remain confidential,  
21 but that would be permitted; and they would all have  
22 to be returned.

23           Mr. Boyd, am I stating our arrangement  
24 consistent with your understanding?

25           MR. BOYD: Yes, I believe so. What we want,

1 Commissioner, is the -- for the protection of the  
2 company in disclosing this confidential customer  
3 information. That's the basis of our objections, to  
4 preserve the statutory prohibition against revealing  
5 customer information, that the conditions that  
6 Mr. Gross has just stated that they be incorporated  
7 into an order by, I guess, you as prehearing officer;  
8 and then, according with that order, we would produce  
9 the documents. So the matters that are set forth in  
10 this motion, if they are incorporated into an order,  
11 we do not oppose the entry of such an order.

12           **MR. GROSS:** Would you still want to execute  
13 a written agreement, or would an order -- because the  
14 petition only addresses two of the issues, but there  
15 were many issues that we agreed on right from the  
16 outset that were in the draft agreement.

17           **MR. BOYD:** Doesn't the agreement that you  
18 attached incorporate those matters?

19           **MR. GROSS:** Yes. The petition attaches a  
20 specimen of an agreement, so if that was incorporated  
21 by reference into the order, that would be fine with  
22 us.

23           **MR. BOYD:** We want it in the form of an  
24 order.

25           **CHAIRMAN JOHNSON:** Something that was filed

1 with the Commission?

2           **MR. GROSS:** Yes, yes; it was several weeks  
3 ago.

4           **CHAIRMAN JOHNSON:** Ms. Caldwell, would you  
5 be prepared to address that, then?

6           **MS. CALDWELL:** I think we were waiting for  
7 the parties to work it out so if -- I think we can  
8 issue the order granting their request pursuant to  
9 their agreement. I don't have a problem with that.

10           **MR. GROSS:** Thank you very much.

11           **CHAIRMAN JOHNSON:** Any other preliminary  
12 matters?

13           **MS. WHITE:** I have one more thing on  
14 Section V. On Paragraph 2, under Section V, it says  
15 that the first exhibit will be a composite exhibit,  
16 and part of it is materials provided to the Joint  
17 Administrative Procedures Committee in connection with  
18 the proposed rules which include the statement of  
19 facts and circumstances, and so on and so forth.

20           I have not been involved in a lot of  
21 rulemaking procedures, but I don't know what that is  
22 and how can I go about getting a copy.

23           **MS. CALDWELL:** We will provide copies. When  
24 we file the rule for proposal, we have to provide  
25 certain information to the Joint Administrative

1 Procedures Committee, and it's just a short statement.  
2 It is the information that is in the FAW, so that is  
3 your copy of that information; and we will have copies  
4 available. They're going to be fairly cumbersome, but  
5 we will have copies available for your review at the  
6 hearing.

7           **CHAIRMAN JOHNSON:** Any other questions on  
8 the hearing procedures?

9           **MS. CALDWELL:** I think I'd like to ask at  
10 this time does anybody -- since this is a rulemaking  
11 proceeding, I just want to raise the issue that this  
12 first composite exhibit will not -- it's not the  
13 general sworn testimony, but I still feel like it's  
14 information for the rulemaking proceeding that needs  
15 to go into the record. And so it won't be sworn  
16 testimony; it will be true copies of what was provided  
17 and a true representation of what was sent to the FAW,  
18 the proposed rules and the comments that people sent  
19 to us.

20           But I just wanted to make everybody aware  
21 that these comments are not sworn testimony, and all I  
22 can do is say that this is a true copy of the sworn  
23 testimony -- a true copy of the comments, and if  
24 anybody chooses to speak, those that are speaking will  
25 then be sworn in; and I think the Commission would

1 give due weight to the fact that this information is  
2 not sworn.

3           **MR. NELSON:** I'm unclear about exactly the  
4 contents of that Exhibit 1. Is it Staff's intention  
5 to include the prefiled direct testimony of parties  
6 who will be testifying at the hearing in that exhibit?

7           **MS. CALDWELL:** No, because I'll let you move  
8 that at the time -- generally in a rulemaking hearing,  
9 if there was prefiled testimony, we would have  
10 included it, but because of this proceeding, we're  
11 going to allow the companies to move it into the  
12 record as their witnesses are being introduced.

13           **MR. NELSON:** Will we have an opportunity,  
14 perhaps after the prehearing conference this morning,  
15 to review the contents of that exhibit and then get  
16 copies of pieces of it that we may not have yet.

17           **MS. CALDWELL:** Which exhibit?

18           **MR. NELSON:** Exhibit 1.

19           **MS. CALDWELL:** I haven't put it together. I  
20 probably will have it before the hearing. So  
21 February, probably like the first of February, copies  
22 will be available in my office.

23           **MS. RULE:** Ms. Caldwell, I'm assuming that  
24 this composite will be the standard rulemaking  
25 exhibit?

1 MS. CALDWELL: It is.

2 MS. RULE: And it's intended to fill out the  
3 record as to what the comments are?

4 MS. CALDWELL: That's correct.

5 MS. RULE: And you're not proffering it as a  
6 factual support for the rules?

7 MS. CALDWELL: That's correct.

8 MS. RULE: We have no objection to it.

9 MR. BECK: The transcript from the eight  
10 workshops, that's part of the record?

11 MS. CALDWELL: That is my understanding.

12 CHAIRMAN JOHNSON: Any questions on the  
13 hearing procedures? Seeing none -- (Audio  
14 difficulties.)

15 (Brief recess.)

16 - - - - -

17 CHAIRMAN JOHNSON: We're going to go back on  
18 the record. I think we were still discussing the  
19 posthearing procedures. Any final questions on that?  
20 No. Seeing none --

21 MS. RULE: Excuse me. Was that on the  
22 posthearing procedures? Are we on that yet?

23 CHAIRMAN JOHNSON: I meant hearing  
24 procedures. We fished the hearing procedures, and  
25 we're now on the posthearing procedures. So you were

1 ahead of me, but right where we needed to be.

2 MS. RULE: There are a couple things that I  
3 think need to be decided in conjunction with this  
4 section. And what I was going to request was more  
5 than 50 words, since the issue is a summary issue, and  
6 basically we argue our position on each of the rule  
7 amendments under this position.

8 However, I believe Public Counsel has  
9 proposed some other issues, and I think we need to  
10 address all of this at the same time.

11 What I would suggest -- right now the issue  
12 is whether the Commission should make any changes to  
13 its rules, basically. I agree with Public Counsel  
14 that that's not the most efficient way to allow  
15 parties to argue and explain their positions to the  
16 Commission. It's not the most efficient way, I think,  
17 for the Commission to understand the specific changes  
18 that either Staff, Public Counsel or the other parties  
19 believe are necessary. But on the other hand, nor do  
20 I agree that Public Counsel should be framing issues  
21 with brand new rules right now.

22 What I would suggest, and I think would work  
23 best from a procedural point of view, is that you have  
24 an issue for each rule, should the Commission adopt  
25 the rule as proposed. Because the Commission has

1 already formally proposed rules, those are the rules  
2 that are on the table. Those are the rules that we  
3 have the opportunity to change, accept, or comment on.

4           That would allow you, as Commissioners, to  
5 get a briefer argument on each section of the rule  
6 upon which you have to vote. It would allow us a more  
7 specific opportunity to present our arguments and, I  
8 believe, would also allow Public Counsel the  
9 opportunity to argue their positions that they're  
10 raising in their issues.

11           **CHAIRMAN JOHNSON:** Okay.

12           **MS. CALDWELL:** Staff would have no objection  
13 to that. Each issue would be -- each of the rules as  
14 proposed. So we would have an issue for 25-24.845,  
15 25-4.003, 25-4.110, 25-4.118 and 25-24.490. So there  
16 would essentially be five issues.

17           **MS. RULE:** I believe so, although I haven't  
18 counted the rules.

19           **CHAIRMAN JOHNSON:** And the 50-word  
20 limitation would apply to each of those?

21           **MS. RULE:** I would ask that we extend the  
22 limitation simply because some of those rules are  
23 quite lengthy and embody more than once change.

24           **CHAIRMAN JOHNSON:** What's your suggestion as  
25 to the amount of words?

1           **MS. RULE:** Well, I'd say 100, simply because  
2 even though we break it down on a rule-by-rule basis,  
3 the rules have many changes.

4           **CHAIRMAN JOHNSON:** Any suggestions or  
5 objections to increasing the word limitation to 100  
6 words? Public Counsel?

7           **MR. BECK:** Commissioner Johnson, I agree  
8 with the 100-word on that, but if we're going to have  
9 five issues delineating those five rules, I'd request  
10 we have one other asking if there are other -- any  
11 rule proposals that should be adopted so we can get in  
12 our -- the other things we propose as well.

13           In other words, you're going to say "Should  
14 the Commission adopt," and then list five different  
15 rules. I think we ought to have a sixth issue, "Are  
16 there other rules that should be adopted by the  
17 Commission," so that we can put in other -- the  
18 changes that we would like and the additional things  
19 we would like.

20           **MS. RULE:** Commissioner, may I respond?

21           **CHAIRMAN JOHNSON:** Yes.

22           **MS. RULE:** The concern I have about that is  
23 that at this point the Commission's procedure is  
24 limited by those rules that it has published, and you  
25 are allowed by the APA to make changes or

1 modifications to those rules and supported by the  
2 record of the hearing; but I really don't think the  
3 APA allows the promulgation of new rules.

4           Now, of course that would be a question that  
5 would have to be decided on -- a suggestion or a  
6 request-by-request basis. You'd have to determine  
7 what's inside the scope of your notice and what's  
8 outside the scope of your notice. But I don't think  
9 proposing a new rule during the course of a rule  
10 hearing, the statutory purpose of which is to examine  
11 the rules that the Commission has published, I  
12 don't -- I think that goes too far for the notice  
13 purposes of the APA.

14           **CHAIRMAN JOHNSON:** Public Counsel?

15           **MR. BECK:** I think --

16           **CHAIRMAN JOHNSON:** She can't hear you. Is  
17 your mike on?

18           **MR. BECK:** No. We'll go with the five, and  
19 use our -- and propose limits to them to be consistent  
20 with what we've proposed.

21           **CHAIRMAN JOHNSON:** Very good. Then we'll  
22 have the five issues. We will change the summary of  
23 position to no more than 100 words, and I think that  
24 will take care of the posthearing procedures. Are  
25 there any other questions -- I'm sorry.

1           **MR. WAHLEN:** Yes. This is Jeff Wahlen for  
2 AllTel. I have a question.

3           Are we talking about identifying five issues  
4 for briefing purposes, or are we also going to  
5 identify five issues in the prehearing statement. And  
6 do you contemplate each of the parties submitting  
7 positions for the prehearing order on the five issues  
8 that we've just talked about?

9           **MS. CALDWELL:** I don't know. I mean,  
10 Marsha, what did you have in mind?

11           **MS. RULE:** Well, to be honest, nothing.  
12 Well, at this point I think perhaps it would be  
13 helpful to identify them for briefing purposes. Given  
14 the free-form nature of a rule hearing, I don't know  
15 that it's strictly necessary to do that, particularly  
16 when we all have witnesses who have been addressing  
17 the one central issue.

18           So although it's an unusual procedure, I  
19 think it would help the Commission in its  
20 understanding of everybody's positions, and I'd be  
21 just as happy if we identified the five issues for  
22 briefing purposes and left the one issue for hearing  
23 purposes. I think that allows everybody to make the  
24 arguments they're going to make and allows us to  
25 characterize them in a more concise fashion for

1 briefing purposes.

2           **CHAIRMAN JOHNSON:** Any other comments on  
3 that? Would anyone like to file, in the form of  
4 prehearing positions, a summary on each issue?

5           **MR. NELSON:** Commissioner Johnson, I'm not  
6 sure I've got a definite position on that. MCI  
7 originally filed a quite lengthy position on the  
8 single issue because we did try to address our  
9 concerns on the specific rules, and Staff, I believe  
10 appropriately for this purpose, cut us back to a  
11 paragraph in the draft prehearing order.

12           We are prepared to state a position on each  
13 of the particular amendments. I think the question  
14 is, what would be most helpful to the Commissioners,  
15 because I understand you all read these prehearing  
16 statements in advance of the hearing; and if having  
17 the parties' position on particular rules would give  
18 the Commissioners a better framework for understanding  
19 the testimony, MCI, at least, would be willing to take  
20 the extra effort to do that at this stage.

21           **CHAIRMAN JOHNSON:** And I was sitting here  
22 contemplating just that. I think generally from the  
23 Commissioners' perspective it's helpful. I'm just  
24 wondering, because we definitely put a word limitation  
25 on that, how responsive you all could be if we were

1 to -- and perhaps less than 100 words.

2 My initial thoughts would be that we should,  
3 indeed, have something at the preliminary that would  
4 be helpful to the document and helpful for the  
5 Commissioners to follow before the witnesses come  
6 forward.

7 Let's go with that. Let me have more  
8 discussion, if necessary, if you don't believe that  
9 that's possible. I don't know if you can summarize  
10 and provide with us that information. Ms. Rule?

11 MS. RULE: Well, Chairman, as usual,  
12 Mr. Melson raises excellent arguments, and I'm  
13 entirely persuaded; and I think that we'd be certainly  
14 willing to ante up some positions on those five  
15 issues.

16 However, typically the 50-word limit doesn't  
17 apply to our prehearing position; it applies to our  
18 posthearing position. Most of us try to limit it to  
19 50 words up front just so we don't have to reword it  
20 over again.

21 I'd say if you'd allow leeway up front and  
22 keep us to 100 words during the brief, it will  
23 probably -- I think it will work out.

24 CHAIRMAN JOHNSON: Okay.

25 MS. KAUFMAN: Chairman Johnson, just to jump

1 into the fray. Like, Mr. Nelson, FCCA's position,  
2 basic position, was cut back by the Staff for purposes  
3 of preparing the draft prehearing order, and I had  
4 discussed that with Ms. Caldwell -- and I know some  
5 other parties are in the same position -- and she had  
6 at least indicated to me that in the final prehearing  
7 order she did not have any problem putting back in our  
8 entire statement of basic position, which I think  
9 covers the majority of the rule changes.

10           If the Commission believes it's more helpful  
11 to have us delineate the individual issues for  
12 prehearing purposes, we'd certainly be glad to do  
13 that, but perhaps if the original statements of  
14 everyone's basic position was reflected in the final  
15 order, that might be helpful.

16           **CHAIRMAN JOHNSON:** Okay. I think what we  
17 should do, then, is have the statements -- I'll  
18 allow -- the filing actually would require that we  
19 file the prehearing statements, but I would like them  
20 delineated by issue as opposed to one comprehensive  
21 statement. I believe that will be even more helpful  
22 if you can do that, tailor it to the specific issue  
23 and why you believe whatever you might believe; that  
24 that will be helpful to the process with no word  
25 limitation on the front end.

1           But I caution you to be as brief and  
2 succinct as possible, because that's the most helpful  
3 for the Commissioners. And at the posthearing we'll  
4 stick with the 100-word limitation.

5           **MR. WAHLEN:** Can we talk about timing and  
6 the mechanics of doing that? I mean, when do you want  
7 to have those in? The hearing is two weeks away, I  
8 guess.

9           **MS. CALDWELL:** Monday or Tuesday. I mean,  
10 I'd like to be able to do that, to get the -- I mean,  
11 by the time I get it in, then I get it into the order,  
12 and then we get it downstairs and distributed, if I  
13 got it by Tuesday, you're looking at no earlier than a  
14 Thursday distribution, and that doesn't leave you but  
15 a week with the order. So the sooner I get it -- like  
16 even if I had it on Monday.

17           **MS. WHITE:** Can we just do it in the form of  
18 a letter?

19           **MS. CALDWELL:** Yes.

20           **MS. WHITE:** Giving you a position on the  
21 five rules?

22           **MS. CALDWELL:** If you did it in a letter  
23 format, sort of an addendum to your current prehearing  
24 statement, and just list the issues and list your  
25 positions on it; and it would be really helpful if you

1 would file on disk as well, and then I'll get it out  
2 as soon as I can.

3 MS. WHITE: File what as well?

4 MS. CALDWELL: A disk.

5 MS. WHITE: A disk.

6 CHAIRMAN JOHNSON: Ms. Caldwell, are you  
7 saying Tuesday?

8 MS. CALDWELL: Tuesday at the latest.

9 CHAIRMAN JOHNSON: Tuesday at the latest.

10 So we'll set Tuesday as the -- Tuesday by close of  
11 business day as the deadline, and if we can get those  
12 in earlier, that will be most helpful.

13 Anything else on the post or prehearing  
14 procedures? (No response.)

15 Prefiled Testimony and Exhibits; I guess  
16 we're going to change the order of -- well, we can  
17 handle that under Order of Witnesses. Prefiled  
18 Testimony and Exhibits, any changes there or comments?

19 MR. BECK: Chairman Johnson, Mr. Poucher has  
20 three exhibits, and his first one that's identified as  
21 REP-1 is letters and calls received by the Attorney  
22 General's Office and the Citizens.

23 We would like to file an addendum to that to  
24 update, and that's all it would be is updating the  
25 additional letters and -- that we've received.

1           We would propose to serve that on the  
2 parties next Friday if nobody objects. It will simply  
3 be a continuation of what we filed the first time.

4           **CHAIRMAN JOHNSON:** Ms. Rule?

5           **MS. RULE:** Well, in that everybody has had  
6 the opportunity to respond to the exhibits already  
7 filed and will have no opportunity to respond or file  
8 rebuttal to an addendum to the exhibits, I would  
9 object.

10           Of course I understand that Mr. Beck retains  
11 the right to use whatever he wants as a  
12 cross-examination exhibit, but in that we would have  
13 no opportunity to respond or rebut an addendum to  
14 what's basically a direct testimony exhibit, I would  
15 object.

16           **CHAIRMAN JOHNSON:** Public Counsel?

17           **MR. BECK:** Well, I think this is simply  
18 putting in the letters that the customers -- were  
19 received. Nobody responded in any way to those that  
20 we submitted the first time.

21           If Ms. Rule wants to respond orally to the  
22 customer letters, we'd be happy to entertain that at  
23 the hearing. But I think the Commission deserves to  
24 have the comments that we've received from customers  
25 put into the record of this proceeding.

1                   **CHAIRMAN JOHNSON:** Ms. Rule?

2                   **MS. RULE:** Well, I would suggest that the  
3 reason that there is a cut-off date for testimony and  
4 rebuttal is to prevent exactly this event, parties  
5 constantly updating their position and moving the  
6 target for everybody to hit.

7                   I do believe there's probably a way for  
8 Mr. Beck to use some of his information as a  
9 cross-examination exhibit. But, again, the deadline  
10 has passed. The deadline's purpose is to form up the  
11 issues and the testimony so everybody can respond to  
12 it, and I would object.

13                   **MR. BECK:** Commissioner Johnson, one last  
14 thing. You've already said that customers can appear  
15 on the day of the hearing. You're going to allow  
16 company witnesses to comment after all the prefiled  
17 testimony.

18                   Certainly this is no different. We can put  
19 on a witness at that time and put all the exhibits in.  
20 What I'm trying to do is to get it to people ahead of  
21 time to give them a chance to review it. So I think  
22 this is a better proposal than simply dumping it on  
23 them on the day of the hearing.

24                   **CHAIRMAN JOHNSON:** Mr. Beck, when did you  
25 say you could have that information available?

1           **MR. BECK:** Next Friday is when we propose  
2 serving it.

3           **CHAIRMAN JOHNSON:** And the hearing is --

4           **MR. BECK:** Two weeks. That would be a week  
5 before the hearing.

6           **CHAIRMAN JOHNSON:** Oh, you're saying next  
7 Friday.

8           **MR. BECK:** Right. We would serve it on all  
9 the parties next Friday. The hearing is the Friday  
10 after that.

11           **CHAIRMAN JOHNSON:** Okay. I'm going to  
12 allow --

13           **MS. BARONE:** Sprint would object to filing  
14 it that late in the process. If we get it the end of  
15 the day on Friday, we don't have that much time to  
16 take a look at it. We'd ask that it would be filed  
17 sooner if you're going to allow it in.

18           **CHAIRMAN JOHNSON:** But if I just understood  
19 the deadline, he's saying the Friday and then there's  
20 a week? Is there a week between for reviewing the  
21 information? And the information that has been filed  
22 thus far, you're talking about the customer calls and  
23 letters?

24           **MR. BECK:** That's all we're going -- yes.

25           **CHAIRMAN JOHNSON:** And it's not sworn

1 testimony. It's the stuff --

2 MR. BECK: Correct.

3 CHAIRMAN JOHNSON: -- that they have  
4 provided to you?

5 MR. BECK: Yes.

6 CHAIRMAN JOHNSON: I'm going to allow you to  
7 file that exhibit on next Friday. I don't have that  
8 date.

9 MR. BECK: January 30th.

10 CHAIRMAN JOHNSON: And if there are any  
11 objections or clarifications that need to be made, if  
12 you all could bring that to the attention of the  
13 prehearing officer through Ms. Caldwell, we'll handle  
14 those in due course.

15 MR. NELSON: Commissioner Johnson, through  
16 you, might I ask that Mr. Beck try to get that, at  
17 least to the local parties, hand-delivered in time for  
18 us to turn it around and get it Federal Expressed so  
19 we don't lose the weekend?

20 MR. BECK: Certainly. In fact, we'll -- our  
21 problem is logistics of copying all this stuff. The  
22 first exhibit, you remember, was fairly thick. If we  
23 can get it out before Friday, we certainly will.  
24 We'll try to.

25 CHAIRMAN JOHNSON: Okay. Any other

1 questions on the prefiled testimony and exhibits? (No  
2 response.)

3 Order of Witnesses; I think we're going to  
4 make a few changes here.

5 MS. CALDWELL: The changes that we will make  
6 will be Staff will put on Jennifer Erdman-Bridges, and  
7 then J. Alan Taylor, first and second; and then it  
8 will be followed in the order of Mr. Poucher and then  
9 on down the line.

10 CHAIRMAN JOHNSON: Any comments or  
11 suggestions with the revised order of witnesses?

12 Seeing none, we'll go on to the next  
13 section, Section IX.

14 MS. BARONE: Madam Chairman, I spoke with  
15 Ms. Caldwell earlier, and Sprint would like to make a  
16 change to its basic position; but I can get with her  
17 after the prehearing and give her the exact language  
18 to incorporate.

19 CHAIRMAN JOHNSON: Thank you.

20 MS. KAUFMAN: Chairman Johnson, and we would  
21 just request, as I mentioned earlier, that our entire  
22 statement of basic position be included when the final  
23 order is done.

24 CHAIRMAN JOHNSON: Okay.

25 MS. CALDWELL: Staff doesn't object to

1 either comment.

2           **MR. REHWINKEL:** That would be the same for  
3 Sprint Florida.

4           **CHAIRMAN JOHNSON:** So there may be some  
5 revisions to the basic position to include the entire  
6 text of what was provided?

7           **MS. CALDWELL:** Yes, ma'am.

8           **MS. WHITE:** And that would be true for every  
9 party?

10           **MS. CALDWELL:** That's correct.

11           **CHAIRMAN JOHNSON:** Yes, that will be true  
12 for every party.

13           **MR. WAHLEN:** In terms of the deadline, since  
14 we're providing positions on the issues by Tuesday,  
15 can we also provide positions -- or changes to the  
16 basic position by Tuesday, or earlier, of course, if  
17 we have them?

18           **CHAIRMAN JOHNSON:** We'll use the same  
19 Tuesday deadline.

20           **MR. WAHLEN:** Okay. Thank you.

21           **CHAIRMAN JOHNSON:** Any other -- well, I  
22 guess many of you will be providing -- or we will be  
23 revising this to reflect what was originally filed; or  
24 if anyone would like to file additional statements,  
25 please get those to Ms. Caldwell by Tuesday, close of

1 business day.

2 Issue X. That will be changed, I guess, to  
3 more clearly delineate and break out each subissue?

4 MS. CALDWELL: Based on what everybody files  
5 to me on Tuesday, by Tuesday.

6 MS. WHITE: Just so I can be clear, there  
7 will no longer be one summary issue, there will be  
8 five specific issues on the rules?

9 MS. CALDWELL: I think what I'll do is say  
10 "Should the Commission adopt new Rule 25-24.845," will  
11 be the first issue.

12 The second issue will be "Should the  
13 Commission adopt amendments to Rule 25-4.003," and on  
14 down the line, and I'll break it down into each issue;  
15 and that's how it will be worded.

16 CHAIRMAN JOHNSON: Any questions? Any  
17 questions on the exhibit list? Proposed stipulations?  
18 Any additional pending motions? (No response.)

19 And I guess Mr. Gross will have that order  
20 for you and Sprint as soon as it's possible for us to  
21 get that drafted and out.

22 Yes, ma'am?

23 MS. RULE: Chairman, AT&T has two motions;  
24 one which I've mentioned to Mr. Beck and Ms. Caldwell,  
25 and the other which kind of escaped me.

1 I had filed a motion to accept a late  
2 prehearing statement, and I would like that granted at  
3 this time. We'd be happy to argue it if any parties  
4 have any objections.

5 MS. CALDWELL: Staff has no objections on  
6 that one.

7 CHAIRMAN JOHNSON: A motion to file a late  
8 prehearing --

9 MS. RULE: To accept a late --

10 CHAIRMAN JOHNSON: To accept a statement.

11 MS. RULE: It was filed one day late.

12 MS. CALDWELL: It was filed one day late,  
13 and Staff had no objections.

14 CHAIRMAN JOHNSON: Show that granted.

15 MS. RULE: And the other pending issue is a  
16 motion for protective order that I've filed and  
17 Mr. Beck has responded to. It has not yet been ruled  
18 upon, and I've talked to Ms. Caldwell about the  
19 possibility of raising it for discussion today. I've  
20 also mentioned it to Mr. Beck, and I don't believe he  
21 has an objection.

22 MR. BECK: Oh, I have an objection to the  
23 merits of the motion, but I don't have --

24 MS. RULE: I meant to the procedure. And if  
25 you'd like me to briefly address it, I can. The issue

1 is pretty -- it's just one issue.

2 CHAIRMAN JOHNSON: Okay. Please do.

3 MS. RULE: Mr. Beck, on behalf of Public  
4 Counsel and the Attorney General, has subpoenaed  
5 information that under Section 364.24 is disclosure of  
6 which is not permitted. And, indeed, the statute does  
7 allow Mr. Beck to subpoena the information, and I am  
8 not objecting to providing Mr. Beck the information.

9 CHAIRMAN JOHNSON: Disclosure to whom is not  
10 permitted? To the --

11 MS. RULE: Anybody. Telephone companies are  
12 not supposed to give their customer lists out.

13 CHAIRMAN JOHNSON: Okay.

14 MS. RULE: We're not supposed to make our  
15 customer information known to third parties. It's a  
16 privacy issue and, therefore, in order to protect  
17 customer privacy, Section 364.24 requires that we  
18 produce this information only upon court order or  
19 subpoena; and I think there might be another issue,  
20 too. And you may remember this issue coming up in  
21 connection with the 271 docket.

22 So the question is not whether or not AT&T  
23 should produce the information to Mr. Beck upon  
24 subpoena. Of course they should, and that's what the  
25 statute says. But the subject of my protective order

1 request is to limit Public Counsel's use of the  
2 information.

3           And here's the reason: A customer list is  
4 kept private for the customer's purposes; that is, if  
5 I'm a customer of MCI or AT&T or Sprint, I don't want  
6 people giving my name and telephone number, using them  
7 for telemarketing purposes, trying to sell me  
8 anything, trying to reach me at home. I should have  
9 the privacy of that customer record protected under  
10 364.24.

11           The purpose of my protective order request  
12 is to ask that you order Mr. Beck not to contact the  
13 customers whose names and phone numbers are turned  
14 over to him.

15           And the reason is simple. If the purpose of  
16 the statute is customer privacy, which I think is very  
17 clearly the purpose of the statute, then the customer  
18 privacy should prevail no matter who is attempting to  
19 contact the customer; that is, I don't believe the  
20 statute gives the Commission the authority or the duty  
21 to determine whether customers would be contacted for  
22 good purposes or for annoying purposes.

23           I think if the statute is to protect  
24 privacy, it must do so against all comers. For  
25 example, in this proceeding some of the issues that

1 parties have been discussing regard who is slamming  
2 who, to whom and away from whom.

3 I could, for example, subpoena MCI's  
4 customer lists, call up those customers who have  
5 complained about slamming, and try to get them to come  
6 back to AT&T, because I could argue they've been  
7 slammed away from AT&T, they were our customer to  
8 begin with. I've identified those customers by virtue  
9 of MCI's customer list and, therefore, I should be  
10 able to contact them. But I don't believe the statute  
11 allows you to make that sort of distinction. The  
12 terms of the statute apply equally to everybody who  
13 obtains the information by subpoena.

14 Now, Mr. Beck argues that he is the  
15 statutory representative of these customers and, thus,  
16 must be able to contact them.

17 I would argue that it's difficult to  
18 establish an attorney/client relationship unless you  
19 know the names of your clients. Now, of course he  
20 would say "Give me the names and then I'll know them."  
21 But I think what you get into there is circular  
22 reasoning.

23 In this particular proceeding the Commission  
24 has gone to great lengths with advertisements on TV,  
25 public notices, and hearings all around the state to

1 identify people who may have had a problem with  
2 slamming, who wish to come forward, and who wish to  
3 participate in this proceeding.

4           Therefore, I think Mr. Beck has, and  
5 certainly has shown by virtue of his voluminous  
6 exhibit to Mr. Poucher's testimony that he has had an  
7 ability to contact customers, to get in touch with  
8 them, and to inform them of their rights.

9           Now, my understanding is Mr. Beck has  
10 contacted those customers who have filed public  
11 complaints with the Public Service Commission. Those  
12 customers are in a different posture. Those customers  
13 made their names, their telephone numbers, and their  
14 complaints part of the public record.

15           The people who call up AT&T or MCI or Sprint  
16 and allege that they have either been slammed or ask  
17 questions about slamming have not waived that privacy  
18 and, therefore, I believe Mr. Beck can adequately  
19 protect his clients' interest with the information he  
20 has.

21           I am happy to turn over without restriction  
22 information on the numbers of customers, the types of  
23 complaints they have. The specific information I'm  
24 asking to be protected is their billed telephone  
25 numbers, their names, and their addresses. I think

1 that's a direct issue of customer privacy.

2           The Commission has always protected that  
3 information, and I'm just asking that you make it  
4 clear that nobody is allowed to contact customers  
5 whose names come into play by virtue of a subpoena.

6           **CHAIRMAN JOHNSON:** Mr. Beck?

7           **MR. BECK:** Thank you, Chairman Johnson.

8 This is a novel argument that's being presented to you  
9 by AT&T, and it's asking for a type of relief that I  
10 don't think the Commission has ever granted in the  
11 past.

12           I have three points. First of all, the  
13 statute has exceptions to it. Those exceptions apply  
14 and, therefore, the basis for AT&T's arguments doesn't  
15 hold. Even if it did apply, it doesn't authorize the  
16 relief that AT&T is asking for. And, third, the  
17 relief they're asking for is inconsistent with the  
18 Public Counsel statute.

19           Let me first read the portion of the statute  
20 that AT&T is relying on, and it's subpart (2) of  
21 364.24. It says "that any officer or person in the  
22 employ of any telecommunications company shall not  
23 intentionally disclose customer account records,  
24 except as authorized by the customer, or is necessary  
25 for billing purposes, or as required by subpoena,

1 court order, other process of court, or as otherwise  
2 allowed by law."

3 Now, the information that they provided to  
4 us is in response to a process of law, which is our  
5 request for production of documents made consistent  
6 with the Commission's rule and the Rules of Civil  
7 Procedure.

8 Since other processes allowed by law is  
9 specifically exempted from this protection, that  
10 simply doesn't apply. Even if it did, at the request  
11 of AT&T, we asked the Commission's clerk's office to  
12 issue a subpoena for these documents, which they did,  
13 and which we served on AT&T. So they have been served  
14 with a subpoena for this.

15 Again, the disclosure is -- is that there is  
16 an exception, is that required by subpoena. So the  
17 statute has been met, and AT&T has provided, or is in  
18 the process, I think, of still providing these  
19 documents. They've provided us some.

20 Second of all, the statute doesn't at all  
21 address the relief AT&T is asking for. There's  
22 absolutely nothing in here that would lead you to  
23 conclude that once the information has been properly  
24 delivered to a person who is entitled to it, that they  
25 then can't use it. It's simply not there.

1           They're coming out of the thin blue sky to  
2 try to ask you to do that when it's not a relief.  
3 We've met the requirements of the statute, both by the  
4 request for production of documents and by subpoena.  
5 Once that's been complied with, that's the end of it.  
6 The statute's done. It's been complied with.

7           The third thing I would ask you to consider  
8 is that what they're asking for is an interference  
9 with our right to contact clients. And by statute, we  
10 represent the citizens of this state in matters before  
11 the Public Service Commission.

12           I'm not aware of any instance where the  
13 Commission has ever attempted to intercede and prevent  
14 us from exercising those statutory responsibilities,  
15 and that's what AT&T is asking you to do is stopping  
16 us from contacting people that we know have  
17 information relevant to a proceeding. That's what  
18 they've asked you to do.

19           They want to have you issue an order telling  
20 us that we can't contact the people we statutorily  
21 represent and use information that's relevant to the  
22 proceeding. I would urge you very strongly not to  
23 grant AT&T's request.

24           **CHAIRMAN JOHNSON:** Thank you, Mr. Beck.  
25 Ms. Rule?

1 MS. RULE: Brief reply. I would submit the  
2 question you have to answer is whether customer  
3 records are fair game once they've been subpoenaed.

4 Under Mr. Beck's argument, there is nothing  
5 to prevent me from subpoenaing MCI's customer records,  
6 asking for all customers who have complained they've  
7 been slammed, turning it over to my marketing people,  
8 and having my marketing people contact each one of  
9 them and say "I understand you've been slammed; we'd  
10 like to fix that."

11 And I think because the statute does not  
12 authorize you to grant exceptions to customer privacy  
13 for good purposes versus perceived bad purposes, if  
14 you open the door you open it for all.

15 Customer records are not fair game simply  
16 because they've been subpoenaed. We have to produce  
17 them, but the Commission retains the authority to  
18 issue a protective order delineating the use that may  
19 be made of those records, just as the Commission  
20 retains the right to issue a protective order  
21 regarding the confidential treatment of documents.

22 I believe that Public Counsel is not  
23 inhibited in its representation of customers. You can  
24 look at the documents they've already filed in this  
25 case and determine that they have found plenty of

1 people willing to complain about slamming.

2           And I think the issue that the Commission  
3 has always held as a very important issue is customer  
4 privacy, and I'm asking you to retain the customer  
5 privacy of these records.

6           **CHAIRMAN JOHNSON:** Okay. Staff?

7           **MS. CALDWELL:** We have looked at this in  
8 that the statute -- it seems to me -- and I have not  
9 looked at the legislative history -- but it seems to  
10 me that the statute that is under question goes to the  
11 protection of the customers and their names and  
12 addresses, and it seems to be more in the customer  
13 list where other companies are using it.

14           And I feel like there is a distinction with  
15 the Public Counsel that they are not using it to  
16 contact the customer for solicitation of business or  
17 any other type of solicitation; it's merely there for  
18 asking them particular information.

19           And the fact that Public Counsel is given  
20 the directive to represent the ratepayers and the  
21 customers of telecommunications companies, I believe  
22 that they do have the right to contact them in order  
23 to find out information; and I don't think that they  
24 ought to be able to share that information beyond that  
25 or make that information public to that extent that

1 other companies could use the information for  
2 marketing techniques.

3           **CHAIRMAN JOHNSON:** Ms. Rule, did you have  
4 something you wanted to state?

5           **MS. RULE:** No. Well, lots of things.

6           **CHAIRMAN JOHNSON:** No, no; that's okay. I'm  
7 not going to grant the protective order. Certainly I  
8 am somewhat sympathetic to the arguments posed by  
9 Ms. Rule.

10           However, I don't think that Public Counsel's  
11 delineation was painted with such a broad brush to  
12 suggest that once the subpoena information is provided  
13 via subpoena, that it's open for any and all to  
14 contact customers.

15           I believe that a special exception should be  
16 made for Public Counsel as they do represent the  
17 customers whom they will be protecting.

18           Certainly the privacy issue is an issue that  
19 would cause me great concern if the scenario you  
20 suggested, one company trying to contact the customers  
21 of another, were at issue. But because this is a  
22 motion that has been posed by -- or because this is an  
23 issue and the information is being requested in the  
24 context of being made by the Public Counsel who  
25 represents those individuals, I feel that it is proper

1 for them to go ahead, for you to provide them the  
2 additional information, because I think you've said  
3 you've not received everything that you've requested  
4 via the --

5           **MR. BECK:** We're in a continuing process of  
6 receiving documents from AT&T. They've provided us  
7 quite a few. I think fundamentally they've given us  
8 documents that are complaints filed at the Commission.  
9 We're waiting -- I believe there are still more  
10 documents to come.

11           **MS. RULE:** Yes. And we have some that we've  
12 been stamping and trying to produce, and it's  
13 dribbling out, and I apologize for that. But what we  
14 had provided Mr. Beck earlier in part was a redacted  
15 version, and what I would understand your ruling to me  
16 is we produce the unredacted version.

17           **CHAIRMAN JOHNSON:** Yes, ma'am. Any other  
18 questions? Sprint?

19           **MR. REHWINKEL:** Yes. Madam Chairman, I'm  
20 not trying to get in on this issue, but I just want to  
21 make sure that I understand, because I've provided  
22 information on the same basis.

23           Mr. Beck -- and I may have misunderstood his  
24 argument to a point. The ruling would not be based on  
25 any assumption that the information is still not

1 confidential and protected otherwise. It's still --

2 **CHAIRMAN JOHNSON:** Right.

3 **MR. REHWINKEL:** You're just not interfering  
4 with his use of it. He still can't disclose the  
5 information.

6 **CHAIRMAN JOHNSON:** Absolutely. Now, the  
7 information that you've provided, I was understanding  
8 that it was just an issue between AT&T and Public  
9 Counsel that they received, that you had not received  
10 the telephone numbers or addresses?

11 **MR. REHWINKEL:** Yeah. Our information is  
12 not at issue. I'm just concerned about the scope of  
13 your ruling. That's all.

14 **CHAIRMAN JOHNSON:** I would agree. Thank you  
15 for the clarification.

16 **MS. RULE:** And to further clarify, we will  
17 produce it under confidentiality.

18 **CHAIRMAN JOHNSON:** Certainly.

19 **MS. RULE:** I think the question is just do  
20 we now produce it.

21 **CHAIRMAN JOHNSON:** Thank you. Yes. Any  
22 other questions or comments? Any other pending  
23 motions? Final matters? Is that it?

24 Well, we have several documents that will be  
25 provided to -- or statements of positions that will be

1 provided to Ms. Caldwell by --

2 MS. CALDWELL: Tuesday.

3 CHAIRMAN JOHNSON: Which is the --

4 MS. CALDWELL: Tuesday, January the 27th.

5 CHAIRMAN JOHNSON: January 27th. Also,

6 Public Counsel, you will be providing an amended

7 exhibit. And the date again?

8 MR. BECK: Right. It's an addendum to

9 Mr. Poucher's exhibit, and we'll be providing it on or  
10 before next Friday, the 30th.

11 CHAIRMAN JOHNSON: Okay. And if there is a  
12 question or comment with respect to that filing, bring  
13 it to Ms. Caldwell's attention and she'll bring it to  
14 my attention as prehearing officer.

15 Anything else? (No response.)

16 Thank you very much. The prehearing is  
17 adjourned.

18 (Thereupon, the hearing concluded at  
19 10:45 a.m.)

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1 STATE OF FLORIDA)  
2 : CERTIFICATE OF REPORTER  
3 COUNTY OF LEON )

4 I, H. RUTHE POTAMI, CSR, RPR, Official  
5 Commission Reporter,

6 DO HEREBY CERTIFY that the Prehearing  
7 Conference in Docket No. 970882-TI was heard by the  
8 Prehearing Officer at the time and place herein  
9 stated; it is further

10 CERTIFIED that I stenographically reported  
11 the said proceedings; that the same has been  
12 transcribed under my direct supervision; and that this  
13 transcript, consisting of 50 pages, constitutes a true  
14 transcription of my notes of said proceedings?

15 DATED this 27th day of January, 1998.

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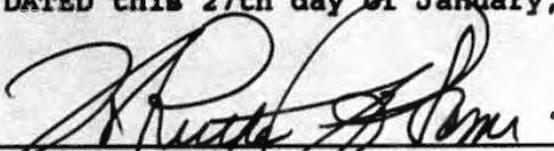
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H. RUTHE POTAMI, CSR, RPR  
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