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BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In The Matter of	:	DOCKET NO. 891194-TL
Proposed Tariff Filings by	:	
SOUTHERN BELL TELEPHONE AND	:	
TELEGRAPH COMPANY Clarifying	:	<u>PREHEARING CONFERENCE</u>
When a Non-published Number	:	
can be Disclosed and	:	
Introducing Caller ID to	:	
TouchStar Service.	:	

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FEB 5 1991

FPSC, Hearing Room 106
Fletcher Building
101 East Gaines Street
Tallahassee, Florida 32399

Florida Public Service Commission

Friday, February 1, 1991

Met pursuant to notice at 9:30 a.m.

BEFORE: COMMISSIONER BETTY EASLEY
Prehearing Officer

APPEARANCES:

DAVID M. FALGOUST, Southern Bell Legal
Department, 4300 Southern Bell Center, 675 West
Peachtree Street, Northeast, Atlanta, Georgia 30375,
Telephone No. (404) 529-3865, appearing on behalf of
Southern Bell Telephone and Telegraph Company.

DOCUMENT NO.
01119-91
2/5/91

1 APPEARANCES CONTINUED:

2 E. BARLOW KEENER, Southern Bell Legal
3 Department, 150 West Flagler Street, Suite 1910, Miami,
4 Florida 33130, Telephone No. (305) 530-5558, appearing
5 on behalf of Southern Bell Telephone and Telegraph
6 Company.

7 KIMBERLY CASWELL, GTE Florida Incorporated,
8 Post Office Box 110, Mail Code 7, Tampa, Florida,
9 33601, Telephone No. (813) 224-4001, appearing on behalf
10 of GTE Florida Incorporated.

11 ALAN N. BERG, Post Office Box 5000, Altamonte
12 Springs, Florida 32716-5000, Telephone No. (407) 889-6018,
13 appearing on behalf of United Telephone Company of
14 Florida.

15 RICHARD E. DORAN, Department of Legal
16 Affairs, and VIRLINDIA DOSS, Attorney General's Office,
17 the Capitol, Tallahassee, Florida 32399-1050, Telephone
18 No. (904) 488-0600, appearing on behalf of the Attorney
19 General of Florida.

20 STEPHEN S. MATHUES, Department of General
21 Services, Office of General Counsel, Knight Building,
22 Suite 309, Koger Executive Center, 2737 Centerview
23 Drive, Tallahassee, Florida 32399-0950, Telephone No.
24 (904) 487-1082, appearing on behalf of the Department
25 of General Services.

1 APPEARANCES CONTINUED:

2 CHARLES J. BECK, Office of the Public
3 Counsel, Claude Pepper Building, Room 812, 111 West
4 Madison Street, Room 801, Tallahassee, Florida
5 32399-1400, Telephone No. (904) 488-9330, appearing on
6 behalf of the Citizens of the State of Florida.

7 ANGELA B. GREEN and TRACY HATCH, FPSC
8 Division of Legal Services, 101 East Gaines Street,
9 Tallahassee, Florida 32399-0863, Telephone (904)
10 487-2740, appearing on behalf of the Commission Staff.

11 MARTHA CARTER BROWN, FPSC Office of General
12 Counsel, Division of Appeals, 101 East Gaines Street,
13 Tallahassee, Florida 32399-0863, Telephone No. (904)
14 488-7464, Counsel to the Commissioners.

15

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17 REPORTED BY:

JOY KELLY, CSR, RPR
Official Commission Reporter

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P R O C E E D I N G S

(Hearing commenced at 9:35 a.m.)

COMMISSIONER EASLEY: Good morning. Call this hearing to order. Counselor, would you read the notice, please.

MS. GREEN: Pursuant to notice a prehearing conference was held in this matter on Friday, February the 1st, 1991. This is Docket No. 891194-TL Proposed Tariff Filings by Southern Bell.

COMMISSIONER EASLEY: All right. We are here on Citizen's motion. Is there any specific way you all have agreed on proceeding? Counselor?

MS. GREEN: Well, there are a number of items that need to be taken care of today, and it would be at your pleasure.

I would suggest that the first thing we would want to do after taking appearances of counsel --

COMMISSIONER EASLEY: That would be helpful, wouldn't it?

MS. GREEN: -- would be to make sure that everyone has copies of any pleadings that anyone has either just filed or will be filing and perhaps give us all a few minutes to look at them.

COMMISSIONER EASLEY: All right. Let's do that. Let's take appearances of counsel for give me

1 for forgetting that little item.

2 MR. FALGOUST: Good morning, Commissioner
3 Easley. David Falgoust on behalf of Southern Bell
4 Telephone & Telegraph Company, 675 West Peachtree
5 Street, Atlanta, Georgia.

6 COMMISSIONER EASLEY: Thank you, sir.

7 MR. KEENER: Barlow Keener on behalf of
8 Southern Bell Telephone & Telegraph, Suite 1910, 150
9 West Flagler Street, Miami, Florida 33130.

10 MS. CASWELL: Kim Caswell on behalf of GTE
11 Florida, P. O. Box 110, Mail Code 7, Tampa, Florida
12 33601.

13 MR. BERG: Alan Berg, Post Office Box 5000,
14 Altamonte Springs 32716-5000, appearing on behalf of
15 United Telephone Company of Florida.

16 MR. MATHUES: Stephen S. Mathues, 2737
17 Centerview Drive, Suite 309, Knight Building,
18 Tallahassee, Florida 32399-0950, on behalf of the
19 Florida Department of General Services.

20 MR. DORAN: I'm Richard Doran. I'm at the
21 Attorney General's office, The Capital, Tallahassee
22 32399.

23 MS. DOSS: Virilindia Doss. I'm also with the
24 Attorney General's office, The Capital, Tallahassee,
25 Florida 32399.

1 MR. BECK: Charles J. Beck, Office of the
2 Public Counsel, 111 West Madison Street, Room 812,
3 Tallahassee, Florida 32399-1400, appearing on behalf of
4 the Florida Citizens.

5 MS. GREEN: Angela B. Green, Florida Public
6 Service Commission, 101 East Gaines Street, Tallahassee,
7 Florida, appearing on behalf of the Commission Staff. And
8 with me is Tracy Hatch also appearing for Commission
9 Staff.

10 MS. BROWN: Martha Carter Brown same address.
11 I'm representing the Commission.

12 COMMISSIONER EASLEY: All right. Now, I
13 guess the easiest way to find out if everybody has
14 copies of everything is to determine what it is we have
15 copies of, first, and go down the list to make sure all
16 the parties have each one of the items, including me.

17 MS. GREEN: All right. I'll be glad to start.
18 We are here today as a result of Order No. 23995, which
19 you, Commissioner Easley, issued on January 16th, 1991.

20 That order directed -- that order did several
21 things. One thing that it did was granted the Office
22 of Public Counsel's motion for an additional limited
23 hearing in this docket. It also directed the Office of
24 Public Counsel to file a document identifying those
25 documents that he wished to use in the upcoming

1 proceeding. Public Counsel did, in fact, do that.
2 There is a document from him that someone has taken
3 away from me dated January 25th total best of my
4 recollection. Everyone should have a copy of that.

5 COMMISSIONER EASLEY: That's the one
6 entitled, "Citizens Response to Order No. 23995" and it
7 is dated January 25th, 1991.

8 MS. GREEN: Yes. That's the correct
9 document. Then anyone who wished to respond
10 specifically to the items in Public Counsel's response
11 was directed to do that in writing and serve it no
12 later than today, before this conference started.

13 I have before me a response from Southern
14 Bell dated yesterday and a response from GTE.

15 COMMISSIONER EASLEY: All right. And those
16 are the only two responses we show?

17 MS. GREEN: To my knowledge.

18 COMMISSIONER EASLEY: All right. Do all of
19 the participants have copies of those three documents?
20 Is anybody missing a document? Are there any other
21 responses that have yet to be filed and need to be done
22 at this time? Okay. All right.

23 MS. GREEN: And I had one other matter that I
24 should have brought to your attention before we even
25 started into this.

1 I have received a copy of a letter that was
2 filed with Records and Reporting and the author of that
3 letter asked me to bring it to your attention. It's
4 from the Florida Coalition Against Domestic Violence.
5 And Ms. Phoenix is the director of that organization,
6 and she has asked to be officially excused from this
7 proceeding today as well as the limited hearing because
8 of the financial resources of her agency. So she just
9 wanted you to know that they were not abandoning their
10 participation.

11 COMMISSIONER EASLEY: All right. I think --
12 am I correct that their participation was not required
13 in order to maintain their standing in the overall
14 docket anyway. Their participation in this limited
15 proceeding was not required anyway.

16 MS. GREEN: That's correct

17 COMMISSIONER EASLEY: All right. So --

18 MS. GREEN: -- and they have filed their
19 briefs in the matter, so --

20 COMMISSIONER EASLEY: So, to the extent that
21 it's necessary, they are excused, but it does not
22 affect the rest of their standing. Anything else at
23 this point?

24 MS. GREEN: No, ma'am.

25 COMMISSIONER EASLEY: All right. This is a

1 little bit different from most -- from any of the
2 prehearings that I have held so far. We're in slightly
3 different posture.

4 In looking through the Citizen's response to
5 the order the -- and looking at the response of GTE,
6 this says they've not yet had an opportunity to review
7 the materials. Looking at the Southern Bell response,
8 who does get into this, I assume the easiest way to do
9 this would be to go down the items listed in the
10 Citizen's response one-by-one and discuss those.

11 Mr. Beck, is that how you wish to proceed on this?

12 MR. BECK: Yes.

13 COMMISSIONER EASLEY: All right. Since we're
14 here on your motion, I think that's what we will do.

15 I would like to point out at the beginning of
16 this, one of the things that we wanted to do up-front
17 was to identify precisely what the additional
18 information is contained in these documents that would
19 be, not cumulative, but additional to the evidence that
20 was received in the hearing, to identify which
21 witnesses, with great specificity, that are going to be
22 needed to talk about these documents, and the issues
23 contained therein. And having said that, we'll go from
24 there. Mr. Beck, are you ready to start?

25 MR. BECK: Yes, ma'am.

1 COMMISSIONER EASLEY: I guess the easiest way
2 to do this. Let's set it up. The easiest way to do
3 this, Mr. Beck, if it's agreeable with you and the
4 other parties, is to take it in numerical order, let
5 you explain that specific numbered item, and ask the
6 parties to respond in the order here. Mr. Falgoust?

7 MR. FALGOUST: Commissioner Fasley, Southern
8 Bell will have no formal objection to the Items No. 2,
9 3 and 4 on Mr. Beck's list. We feel that those
10 arguably do present new evidence that are arguably
11 related to the issues in this docket and, therefore,
12 won't formally oppose them.

13 COMMISSIONER EASLEY: 2, 3 and 4.

14 MR. FALGOUST: That's correct.

15 COMMISSIONER EASLEY: All right. GTE? Do
16 you to comment on that?

17 MS. CASWELL: As noted for our response, GTE
18 hasn't seen the documents, so we can't respond
19 specifically to anything that Public Counsel said in
20 his response. But we reserve the right to do so when
21 we do review the documents. I see no problem with
22 Southern Bell's position so --

23 COMMISSIONER EASLEY: Okay. All right. Then
24 suppose we deal first -- Counselor, Ms. Green, maybe it
25 would be easier year to deal with Items 2, 3 and 4

1 since Southern Bell doesn't have any problem and ask
2 Mr. Beck can you specifically identify which witnesses
3 you would need to discuss these with? Is that where I
4 am, Ms. Green? Okay.

5 MR. BECK: Commissioner, I think it might be
6 helpful if I just briefly describe the discussions I
7 have had with Southern Bell in a little more global
8 sense -- or not? It's up to you. I thought it might
9 help. If you'd like to me just identify the witnesses
10 on 2, 3 and 4 --

11 COMMISSIONER EASLEY: Let's do that first and
12 then let's get global.

13 MR. BECK: Okay. We need Mr. Schultz for No. 2.

14 COMMISSIONER EASLEY: All right.

15 MR. BECK: I can't remember if its Mr. or
16 Mrs. Cox for No. 3.

17 COMMISSIONER EASLEY: M. E. Cox.

18 MR. BECK: M. E. Cox and Southern Bell would
19 have to identify a sponsor for No. 4. And I've asked
20 them to do that, previously.

21 COMMISSIONER EASLEY: Southern Bell, have you --

22 MR. FALGOUST: Commissioner, we're not
23 prepared to identify a person on No. 4 this morning but
24 we will provide a person to respond to No. 4.

25 COMMISSIONER EASLEY: All right. As we get

1 through some of these things, to the extent that we can
2 do so, I would hope that we would have a witness who
3 could deal with more than one document. I'd like to
4 keep the number of witnesses down. I'd like to keep
5 this as concise as we can possibly do it. This is
6 something that should not take a lot of time at all.

7 MR. BECK: Commissioner Easley, your order,
8 you know, encourages us to do that and encourages our
9 office to take depositions of Southern Bell witnesses
10 so we can limit the amount we have to do at the
11 hearing.

12 Last week I identified seven people for
13 Southern Bell that I wishes to depose; three of them in
14 person and the others by phone would be fine. I asked
15 them to pick dates for it, and I have yet to receive a
16 response from them on that.

17 COMMISSIONER EASLEY: We're going to get into
18 a discussion about further discovery, but I wanted to
19 get the documents identified and the witnesses thereto
20 identified and make a determination first how much
21 we've got to talk about, how many people we want to
22 talk to and then we'll talk about the method of
23 discovery. How's that?

24 MR. BECK: Yes. The reason I raise that is
25 that would help us limit the people at the hearing, but

1 I can't know until we take the depositions to find out
2 how we can limit it.

3 COMMISSIONER EASLEY: Let's deal with the
4 documents. That may help us limit it.

5 MR. BECK: Document No. 1, the author is a
6 person named Gary J. Dennis. In our pleading dated
7 January 25, we've identified the substance of the
8 pleading, or of the document. I guess we need Mr. Dennis
9 to sponsor his document.

10 COMMISSIONER EASLEY: All right. I think
11 what I'm going to be looking for today, is I need some
12 specificity as to what is contained in this document.
13 I see you're relating it to Issue 5 because it
14 discusses the benefits and detriments, and to Issue 9
15 because it discusses the various types of blocking.
16 I need to know to what extent and what you think is in
17 here that is going to be additional to the evidence in
18 the hearing.

19 MR. FALGOUST: Commissioner Easley, would you
20 like to see the document.

21 COMMISSIONER EASLEY: That would be extremely
22 helpful. As a matter of fact, I'm probably going to
23 have to look at every one of them that I have not seen
24 yet. Let me just take a minute. Hold down to a
25 minute, Joy, and let me read this.

1 (Stand down)

2 COMMISSIONER EASLEY: All right. I will
3 restate, repeat or renew the question: What is
4 additional?

5 MR. BECK: It gives three different options
6 on Caller ID. It presents a position that's very
7 different from the one identified by Ms. Sims in the
8 hearing. Again, I haven't had an opportunity to depose
9 Mr. Dennis to find out what else he might have to tell
10 us about this, but he certainly has information
11 relevant to the issues in this docket. It's different
12 evidence than what was presented by Southern Bell in
13 the hearing.

14 Commissioner Easley, we may -- I suspect I
15 have a different position. I'd like to state it, if I
16 might, about what we should be able to do in this
17 hearing.

18 COMMISSIONER EASLEY: Okay.

19 MR. BECK: It seems to me that any documents
20 that are relevant to this hearing and has relevant
21 information, we should be able to pursue in this
22 hearing so that we would be put in the same place or as
23 closely as possible at this point, we would be in the
24 same position that we would have been had we had these
25 documents going into the hearing to begin with.

1 COMMISSIONER EASLEY: Okay. I'm going to
2 remind you of the language. (Pause) One of the things
3 that was quite clear, in my opinion, in the motions
4 hearing was that the instructions to the parties were
5 that the information to be considered in these
6 documents went beyond just relevancy, went beyond being
7 simply cumulative. That it needed to be additional
8 material, persuasive. Those are my words. "Material"
9 and "persuasive" I'm not sure appear in the hearing but
10 I do know we dealt with they could not be just
11 cumulative, so that if -- I don't have any trouble with
12 acknowledging relevancy. What I am having trouble with
13 is if it is not materially sufficient to persuade one
14 way or the other that what we have heard already would
15 be affected by the information in these documents, then
16 I would tend to feel that this is -- to the extent that
17 it does not persuade, that it is only cumulative. And
18 that's been the way I've looked at your filing and the
19 way I will be looking at these documents.

20 I understand going in that we may have some
21 differences of opinion not only on those definitions,
22 but on the documents, and that one way or the other,
23 the full Commission will probably be asked to look at
24 this. Having said that, it is with a great deal of
25 consideration that what I intended to do today was

1 simply go ahead, rule on the things I'm asked to rule
2 on as Prehearing Officer, and then we go forward with
3 whatever we have to go forward with.

4 I hope that is relatively clear. Is there
5 anything -- you're looking like you need to say
6 something.

7 MS. BROWN: No, Commissioner, I really don't.
8 I was just thinking that it might be helpful to you and
9 to the other parties if I read our Rule 25-22.048
10 dealing with evidence in hearings. Subsection 3 reads,
11 "Any relevant evidence shall be admitted if it is the
12 sort of evidence which is normally admissible in civil
13 trials in Florida or which reasonably prudent persons
14 are accustomed to relying upon in the conduct of their
15 affairs."

16 I'll skip the hearsay part, I don't think we
17 need to deal with that. But I will read the last
18 sentence which says, "Irrelevant and unduly repetitious
19 evidence may be excluded."

20 COMMISSIONER EASLEY: All right. So relevancy
21 is not the only test.

22 MS. BROWN: That's correct, Commissioner.
23 I think we need to keep the question of whether the
24 evidence is unduly repetitious in mind.

25 COMMISSIONER EASLEY: All right. Is that

1 another way of saying cumulative?

2 MR. HATCH: No.

3 COMMISSIONER EASLEY: No?

4 MR. HATCH: All evidence by its nature is
5 going to be cumulative. You have Part A, Part B and
6 you add all of that up together to form the evidentiary
7 record. It's repetitious that you're concerned with
8 where you have the same piece of information over and
9 over.

10 COMMISSIONER EASLEY: All right. For you all's
11 benefit, I have been struggling with what word I wanted to
12 use in dealing with this today. The closest I could come
13 was material. Perhaps nonrepetitive is even better than
14 the word I have been struggling to find. Because I knew
15 that "material" didn't quite do it, "persuasive" didn't
16 quite do it, "nonrepetitive" is probably the better term,
17 and I hope everybody understands now where I am coming
18 from today. Mr. Falgoust?

19 MR. FALGOUST: Commissioner Easley, I'd just
20 like to remind, Commissioner, that you sat through two
21 days in hearings in November like the rest of us did,
22 and you recall hearing evidence with respect to the
23 fundamental issue in this docket, which is whether or
24 not Caller ID should be available without universally
25 available free blocking.

1 Ms. Sims, both in her testimony on the stand,
2 and in her deposition that was admitted into evidence,
3 acknowledged that in the corporate organization as
4 large as the BellSouth Companies that certainly there
5 is divergence of opinions. However, the only relevant
6 opinion with respect to Southern Bell's position on
7 these issues was the one she expressed under oath in
8 that hearing.

9 With respect to whether the Commission had
10 the opportunity to hear contradictory evidence with
11 respect to blocking and its merits or lack thereof, I
12 suggest that the Commissioner can reach her own
13 conclusion about whether she's heard such evidence.

14 COMMISSIONER EASLEY: Mr. Beck?

15 MR. BECK: Do you want me to go through the
16 first document?

17 COMMISSIONER EASLEY: Yeah.

18 MR. BECK: Again, it presents new and
19 different evidence than was presented by Southern Bell
20 in the case. This will go to the weight of Ms. Sims'
21 testimony. I can't give you a transcript reference,
22 but I do believe when asked -- either she or another
23 witness was asked about the possibility of blocking
24 unidentified calls as the author of this document
25 describes it. I think it was sometimes described as

1 blocked block where they were calling. And as I recall
2 -- I hope I'm correct, I can't guarantee it -- is that
3 the witnesses didn't know whether that technology was
4 available or couldn't say whether it was ready to be
5 supplemented. It appears this witness has additional
6 information on the possibility of that service. In
7 fact, it's one of the three forms of Caller ID that he
8 recommends the company offer.

9 COMMISSIONER EASLEY: Is the newness --
10 because I do not see anything in here that strikes me
11 as being something I have not heard before. Is the
12 newness in here the fact that this information comes
13 from a company employee rather than from -- and I don't
14 remember references either but I know I have heard the
15 information in this document.

16 MR. BECK: Well, I think Ms. Sims, if I'm
17 recalling correctly, said that she didn't know whether
18 it could be done or not. This witness or this person
19 who wrote this document apparently has an opinion about
20 it. Again, I haven't deposed him. I suspect he has
21 information, more information that would backup what he
22 says in this document.

23 COMMISSIONER EASLEY: I think I'm not dealing
24 with anything outside this document.

25 If I understand, we are limited because the

1 record has now been closed except for what we are
2 dealing with here. We are limited to the admission of
3 documents and the cross examination of the witnesses on
4 those documents. I'm not even sure you can go beyond
5 what is in this document on cross examination of a
6 witness to find out what else he might know.

7 MR. BECK: Commissioner Easley, I would
8 anticipate -- for example with this document talks
9 about blocking unidentified calls, I'd ask him about
10 discussions he's had with others in the company. I'd
11 ask him for the basis for that recommendation. It
12 would seem for me all that would be relevant in cross
13 examination about this document.

14 COMMISSIONER EASLEY: Mr. Falgoust?

15 MR. FALGOUST: Commissioner Easley, I
16 believe, and again like Mr. Beck, I can't cite the
17 specific interrogatory. But Southern Bell responded to
18 Staff interrogatories with respect to the availability
19 of "block the blocker." That is on the record. You've
20 heard it before; this document adds nothing.

21 COMMISSIONER EASLEY: Ms. Green?

22 MS. GREEN: The Staff would disagree with
23 Mr. Falgoust. Our preliminary discussions here, this
24 appears to be information that we think might be useful
25 or have a slightly different twist based on our

1 recollections of what the witness said on this issue.
2 Although it's not my position to advise the Commission,
3 I would suggest that if you believe it's a close call,
4 that you should err in favor of admitting it, and at
5 the point of the hearing itself another ruling can be
6 made at that time, or if it's ultimately admitted and
7 found not to be instructive, that you would give it
8 whatever weight it's due at that time. But
9 preliminarily, without talking to the witness, it's
10 difficult to say if he could add more or not. And we
11 would be very interested in talking to this person.

12 MR. FALGOUST: Commissioner Easley, may I
13 respond to that please?

14 COMMISSIONER EASLEY: Yes.

15 MR. FALGOUST: The Commission's order with
16 respect to this limited hearing is limited to new
17 information on the face of the document. What the
18 witness may know or not know about a variety of other
19 subjects is not at issue appropriately under the
20 Commission's order.

21 MS. GREEN: Mr. Beck, if you could wait a
22 second I would like to respond to that.

23 That's true. But you have to keep in mind
24 that what the whole thing is about is putting Public
25 Counsel back into the position he would have been if

1 his Motion to Compel had been promptly disposed of.
2 And in order to do that, you have to step backward in
3 time and attempt to now make events occur that would
4 have occurred had everything gone the way we wish it
5 had.

6 COMMISSIONER EASLEY: Mr. Beck.

7 MR. BECK: I have nothing additional.

8 COMMISSIONER EASLEY: I have a little bit of
9 a problem with allowing the document in if it is your
10 intention, Mr. Beck, to go beyond the information in
11 the document. Now, to the extent that there is --
12 underlying what is on the face of the document, I can
13 understand the need to cross examine that, but to the
14 extent that you would be asking, "Well, is there
15 anything else you talked about with Tom Hamby or Ernest
16 Bush remotely related to this?" I would have a serious
17 problem with you doing that.

18 Perhaps the way to handle this is going to be
19 when we get to the issue of how to conduct further
20 discovery in these documents. So I think what I'll do
21 at this moment is I'm going to allow this document in
22 with the understanding that when we get to how we are
23 going to deal with future discovery, whether it's going
24 to be by interrogatory, or whether in a deposition or
25 whether it's going to be by some informal hearing or

1 interview rather, we'll deal with some of this at that
2 time. So for the time being, I will allow the document
3 subject to further clarification as to how it will be
4 used. All right. Next document.

5 MR. BECK: Okay. Now, I understood Southern
6 Bell had no objection to 2, 3 and 4.

7 COMMISSIONER EASLEY: I beg your pardon.
8 You're right. 2, 3 and 4.

9 MR. BECK: Southern Bell advises me that I
10 was provided No. 5 in some discovery before the
11 hearing. I'll accept that representation on its face.
12 And I will not pursue No. 5.

13 COMMISSIONER EASLEY: So you are withdrawing
14 or dropping Document No. 5 from this particular --.
15 No. 6.

16 MR. BECK: No. 6 is a memorandum from the
17 manager at Southern Bell's Annoyance Call Center in
18 Ft. Lauderdale, Darlene Wallace, discusses the
19 interrelationship between Caller ID and Call Tracing,
20 discusses some problems they have experienced with Call
21 Tracing, recommends a changed rate structure and rate
22 levels for Call Tracing.

23 COMMISSIONER MESSERSMITH: All right. This
24 one specifically goes to Issue 6. (Pause)

25 All right. What is the new information?

1 Issue 6 asks about existing services that are similar
2 to Caller ID. What are their benefits, what are their
3 detriments and is their rate structure appropriate?

4 What is new in this document?

5 MR. BECK: Part of Issue 6 encompasses the
6 petition that our office filed on Call Trace asking
7 that the rate level and rate structure rate be changed
8 to a per-usage charge of no more than \$1 per use. This
9 document from Southern Bell very strongly supports the
10 very thing that we've asked for in the petition. You
11 recall that Southern Bell has opposed our petition to
12 offer Call Trace on a per-use basis at a dollar. This
13 goes directly to support the petition and the specific
14 relief we've asked for in that petition. And it
15 impeaches the testimony provided by Southern Bell's
16 witness in the hearing opposing our request for Call
17 Trace on per-use basis.

18 COMMISSIONER EASLEY: Mr. Falgoust?

19 MR. FALGOUST: Commissioner Easley, once
20 again, Ms. Sims testified at great length concerning
21 the rates for Call Trace, the fact that those rates are
22 offered pursuant to tariff approved by this Commission.
23 Ms. Sims was, in fact, cross examined by Mr. Beck and
24 others at some length with respect to the appropriate
25 pricing of Call Tracing. To suggest that one employee

1 among a corporate family numbering in the neighborhood
2 of 100,000 employees can impeach the policy positions
3 of the corporation to me is not tenable. And again,
4 I'd ask you to examine whether this document presents
5 any new evidence. Certainly, it contradicts Southern
6 Bell's policy as expressed by Ms. Sims perhaps, but
7 there is other evidence on the record that it's already
8 done that and this would, indeed, be repetitive.

9 COMMISSIONER EASLEY: Ms. Green?

10 MS. GREEN: We're trying to remember, and we
11 do not, any evidence put on record of contradictions
12 amongst Bell itself.

13 COMMISSIONER EASLEY: You're trying to
14 remember what? Say it again.

15 MS. GREEN: If there is contradictory
16 evidence from Bell itself regarding the rate structure,
17 we just don't remember that.

18 MR. FALGOUST: Commissioner Easley, I didn't
19 suggest that we put in contradictory evidence of Bell
20 South. I think my paycheck would have been withheld.
21 Mr. Beck indeed offered contradictory evidence.

22 MS. GREEN: Well, then certainly someone
23 else's view could very well be the one that tips the
24 hand.

25 MR. BECK: Commissioner Easley, I believe

1 this goes directly to the weight also that you would
2 give Ms. Sims testimony. And I realize that my
3 view of what it should be allowed to do may be
4 different than yours. But I would very much object if
5 you were to say that I couldn't present evidence that
6 would go to the weight that you should give to the
7 testimony provided by a Southern Bell witness, and here
8 we have a Manager of their Annoyance Call Center
9 directly contradicting her testimony what the
10 Commission should do. I mean, they weren't addressing
11 what the Commission should do but this is this person's
12 opinion, and it would affect what the Commission would
13 do to see that there are other people in Southern Bell
14 with different opinions.

15 MR. FALGOUST: Commissioner Easley, may I
16 suggest that perhaps I would, as an employee of
17 Southern Bell, do things differently, too. For one
18 thing, my salary might be higher. But is that
19 reasonable? Is that relevant?

20 COMMISSIONER EASLEY: Gentlemen, let's not
21 get into one of these. I can understand where both of
22 you -- you all are not helping me to keep this narrow.
23 I can tell.

24 MR. FALGOUST: We're trying.

25 COMMISSIONER EASLEY: No, you're not. (Pause)

1 The fact that this document has anything to
2 do with your petition on Call Trace, frankly, is not a
3 reason to let it in. Because the Issue 6, OPC's
4 position on Issue 6 as written does not deal with a
5 petition.

6 MR. BECK: May I?

7 COMMISSIONER EASLEY: All right. Clear it up.

8 MR. BECK: There is a letter from the
9 Chairman in the Commission that says that Issue 6
10 encompasses our petition and that the Commission would
11 address our petition as part of Issue 6.

12 COMMISSIONER EASLEY: All right. So I don't
13 have it in -- okay. It's not in here. Sorry.

14 Having said that, and been corrected, and
15 having the feeling that it doesn't make much difference
16 what I rule today, I will allow the document. Do you
17 want to identify a witness with this now? I assume it
18 would be Mr. Wallace?

19 MR. BECK: Yes.

20 COMMISSIONER EASLEY: Okay. All right. No. 7.

21 MR. BECK: No. 7 relates to, specifically,
22 the Call Trace, and it interrelates Caller ID and Call
23 Trace. And I think this is the first of a number of
24 documents that discuss about the Company's position on
25 whether the number traced by a Call Trace customer

1 should be provided to that customer.

2 One of the concerns we have, of course, this
3 was not brought out in the hearing that Southern Bell
4 is planning to or at least it appears that Southern
5 Bell is planning to offer Call Trace in a way that they
6 would provide the number of the trace, or the traced
7 number to the subscriber of Call Trace. And I've got
8 to connect that also with the documents we'll get to
9 further that says once you have the number, you can get
10 the name, address, zip code and the works on the
11 customer.

12 One of the concerns that's brought up by this
13 and the next documents concerns the way that this would
14 provide numbers to customers that might otherwise not
15 be available to them. The Commission heard testimony
16 about a number of ways that the Caller ID number can be
17 blocked, such as using an operator, or if the Commission
18 accepts our position and orders per-call blocking. Our
19 concern is none of those or Call Trace is not affected by
20 those. So numbers that are blocked to Caller ID would be
21 available under Call Trace. And we have in the pleading,
22 or in our response to Commission's order, have shown the
23 concern there would be for undercover law enforcement
24 persons. If Call Trace were be offered in this way that
25 the bad guy, as it were, might be able to get the number

1 of an undercover police officer in instances where Caller
2 ID would not provide the number, and so we have the
3 relationship to Issue 10 here, too, that the arrangements
4 that should be made for law enforcement personnel.

5 Just generally on this document, this is a
6 whole matter that was not looked at at all during the
7 hearing and the concern that would be with it.

8 COMMISSIONER EASLEY: What wasn't looked at
9 in the hearing?

10 MR. BECK: The provision of the number or the
11 traced number to a subscriber of Call Trace.

12 COMMISSIONER EASLEY: That wasn't looked at
13 at the hearing?

14 MR. BECK: Not like this. Not in these
15 circumstances. No. The Company said they weren't
16 providing it. And here we have a series of documents
17 that show plans to provide it.

18 MR. FALGOUST: That's incorrect, Commissioner
19 Easley. I'll show you the document. But there were a
20 lot of "ifs" and "would be's" in Mr. Beck's statement.

21 This is another situation where the Security
22 Department at BellSouth has made a suggestion. That
23 suggestion was initially made September 1st, 1989,
24 almost a year and a half ago. It still hasn't gotten
25 anywhere, and to the extent that we're going deal in

1 the Never Never Land here of what Southern Bell may or
2 may not do in the future, we'll never get through with
3 this conference today or the hearing itself.

4 Southern Bell offers call tracing pursuant to
5 a tariff. Pursuant to that tariff numbers are not
6 released. Ms. Sims testified under oath that Southern
7 Bell had no policy, no plans to change that policy to
8 release those numbers. If, indeed, Southern Bell did
9 decide to change its policy, it would have to come back
10 before this Commission to get authority to do so. And
11 I'd like to remind the Commissioner also that Issue 6,
12 identified on Page 25 of the Prehearing Hearing Order,
13 specifically asked, "Are there any existing CLASS
14 services that have similar functions?" This is not an
15 existing CLASS service. The existing CLASS service of
16 Call Tracing does not allow the number to be released.

17 COMMISSIONER EASLEY: Ms. Green?

18 MS. GREEN: Stranger things have happened at
19 this Commission, but Staff supports Mr. Falgoust's
20 position on this document.

21 COMMISSIONER EASLEY: Well, okay. I really
22 think this one has gone into the future, and I am going to
23 deny this one. I can't cite the page and line number
24 either, but I know I have heard this information.

25 COMMISSIONER EASLEY: No. 8.

1 MR. FALGOUST: Ms. Easley, may I make a
2 suggestion?

3 Southern Bell's position on No. 8, 9, 12 and
4 13 is going to be the same, and if it's acceptable to
5 you and Mr. Beck, we just as soon address those four as
6 a set or category of documents.

7 COMMISSIONER EASLEY: 8, 9, 12 and 13?

8 MR. BECK: Yes, ma'am.

9 COMMISSIONER EASLEY: Let me get back over
10 and remind myself. (Pause)

11 Mr. Beck, do you have any trouble discussing
12 these as a group? I will rule on them individually but
13 discussing them as a group?

14 MR. BECK: No, I have no objection to that.

15 COMMISSIONER EASLEY: Then let's do it this
16 way: If you would, tell me within 8, 9, 12 and 13, if
17 you see anything that is different from my ruling on
18 No. 7 that would change my ruling on No. 7 -- would
19 change the effect of my ruling on No. 7 on these four
20 documents.

21 MR. BECK: Again, on all of these, I'm going
22 to rely primarily on the written pleading that I
23 submitted a week ago.

24 On 8, I've described the same general things
25 that we've discussed on No. 7.

1 No. 9, of course, goes on bit further than
2 Mr. Falgoust has suggested because this documents
3 states that the name and -- or providing the number,
4 Call Trace has been tentatively approved by BellSouth
5 Corporation, which is, of course, new information and
6 contradicts what was, or at least -- yeah, contradicts
7 what Southern Bell has put out because it shows it has
8 been tentatively approved.

9 COMMISSIONER EASLEY: Is that all?

10 MR. BECK: Commissioner, if you would,
11 please, give me a second to review 12 and 13.

12 COMMISSIONER EASLEY: Sure. I'll do it with
13 you. (Pause)

14 MR. BECK: I think that's all I'd like to add
15 to the written.

16 COMMISSIONER EASLEY: Mr. Falgoust.

17 MR. FALGUST: Rely on the arguments made by
18 the previous document and in response to Mr. Beck's
19 specific suggestion concerning tentative approval.
20 That tentative approval was, in fact, a reference to
21 the document that you have just disallowed.

22 COMMISSIONER EASLEY: Staff? Ms. Green.

23 MS. GREEN: Once again, we agree with
24 Southern Bell on this series of documents.

25 COMMISSIONER EASLEY: All right. On Document

1 No. 8, I will disallow that. It seems to almost be
2 limited.

3 On Document No. 9, again, even though this
4 has a little bit different language in it, Mr. Beck, it
5 also -- the prior sentence also says, in your summary
6 of the document says, it states "The customer's have
7 demanded and Southern Bell wants to provide," and then
8 it goes on with the tentative approval.

9 Other than perhaps the words "tentative
10 approval", I've heard that, too. I know that is not
11 something that I have not already heard.

12 MR. BECK: You believe that was heard in the
13 hearing that this was tentatively approved?

14 COMMISSIONER EASLEY: The fact the customers
15 asked for and Southern Bell wants to provide Call
16 Trace.

17 MR. BECK: No, no, no. It's not Call Trace.
18 It's the number; they are not providing the number now.

19 COMMISSIONER EASLEY: Oh, the number. Yeah.
20 We heard that coming out of the ears.

21 MR. BECK: The Call Trace customers, not
22 Caller ID.

23 COMMISSIONER EASLEY: Yes, sir, Call Trace.

24 MR. BECK: And that's been tentatively
25 approved by BellSouth Corporation? I don't recall

1 that.

2 COMMISSIONER EASLEY: The language "tentative
3 approval," I do not know; but I will tell you it would
4 be my opinion that if the memorandums are going out and
5 they say they want to provide it, and that's your words
6 on that. I do not know where the actual language is,
7 that I could interpret that to be tentative approval.
8 I understand we've got a difference of opinion going,
9 Mr. Beck.

10 MR. BECK: Yes.

11 COMMISSIONER EASLEY: I'm just doing the best
12 I can with what I've got.

13 Documents 12 and 13, I will disallow. We are
14 back to 10.

15 MR. BECK: Okay. On No. 10, Southern Bell
16 tells me that that document was provided previous to
17 the hearing. I accept their representation and will
18 not pursue that.

19 MS. GREEN: Commissioner, did you disallow
20 Document No. 9?

21 COMMISSIONER EASLEY: Yes.

22 MS. GREEN: Okay.

23 COMMISSIONER EASLEY: Disallowed all four.

24 MS. GREEN: Thank you.

25 COMMISSIONER EASLEY: And No. 10 has been

1 dropped. No. 10 would have affected my decision as
2 well on reinforcing my decision on the other documents,
3 by the way.

4 MR. BECK: Are you ruling on 10 also?

5 COMMISSIONER EASLEY: No, you've dropped it.
6 Don't need to rule on it. That's my comment.

7 No. 11.

8 MR. BECK: Let me just have a moment.

9 (Pause)

10 COMMISSIONER EASLEY: Uh-huh.

11 MR. BECK: Prior to today's hearing, Mr.
12 Falgoust expressed concerns to me about using this
13 document. And I had expressed to him I would try to
14 work it out with him.

15 COMMISSIONER EASLEY: I wish you would.

16 MR. BECK: The remaining thing is I wanted to
17 discuss it with another counsel who has been out of
18 town all week.

19 COMMISSIONER EASLEY: Is there a limited
20 scope in this document that you wish to discuss? Can
21 we leave this one open --

22 MR. BECK: Yes.

23 COMMISSIONER EASLEY: -- on a very limited
24 basis, and can you identify that limited basis?

25 MR. FALGOUST: May I respond, Commissioner

1 Easley?

2 The reason I have a concern about it this is
3 a document that very well might qualify for
4 attorney-client privilege that was inadvertently
5 produced in the haste of producing these documents.
6 And I've asked Mr. Beck to consider that. He's agreed
7 to consider it and discuss it with counsel, and I'm
8 willing to rely on his representation to give it
9 good-faith consideration.

10 COMMISSIONER EASLEY: I will withhold any
11 ruling on No. 11 at this time.

12 12 has been dealt with. No. 13 has been
13 dealt with. No. 14.

14 MR. BECK: 14 deals with two items from a
15 business case dated March 1990. One is their plans to
16 offer automated customer name and address. The second
17 one was their plans to offer a service called "Who
18 Called Me?" I'll just mention that these are services
19 that I don't believe were mentioned in the hearing. We
20 had considerable testimony about the broad implications
21 of Caller ID, particularly by Mr. Jones of United and
22 Mr. Mayne of the Department of General Services. And
23 in the pleading I've shown you where we believe it's
24 relevant to Issues 5 and 6.

25 COMMISSIONER EASLEY: Mr. Falgoust?

1 MR. FALGOUST: Commissioner Easley, both
2 these documents deal with Southern Bell's future
3 business plans. And as I pointed out in the reply to
4 Mr. Beck's response, Southern Bell believes that the
5 Hearing Officer made the proper determination on Mr.
6 Beck's Motion to Compel on November 28th, with respect
7 to documents that dealt with business plans.

8 If you recall, I believe it's noted at
9 transcript Page 31, but the request that Mr. Beck had
10 made for documents dealing with future business plans
11 was -- the Motion to Compel with respect to those
12 documents was denied. And we believe that that logic
13 should apply in this case as well.

14 COMMISSIONER EASLEY: Page 31, Lines 14
15 through 17.

16 Ms. Green? Through 18, I beg your pardon.
17 Ms. Green?

18 MS. GREEN: I think Mr. Hatch has an opinion
19 to share.

20 MR. HATCH: Go through with Mr. Beck for a
21 moment. There is something I need to think about
22 before I respond, as far as those documents.

23 COMMISSIONER EASLEY: All right. Mr. Beck,
24 tell me in reading this, it would appear that both of
25 the items, both of the services are in the future while

1 they might be in the future alternatives to Caller ID?

2 MR. BECK: Yes, that's correct. And you've
3 had testimony in the case about such services, but not
4 these.

5 COMMISSIONER EASLEY: However, you would
6 agree that the order -- the ruling specifically at the
7 motions hearing, excluded each service the Company
8 plans to offer; that we excluded plans in the future.

9 MR. BECK: Sure, I'll accept that. Southern
10 Bell produced these in response to the request for
11 production of documents.

12 COMMISSIONER EASLEY: I understand.

13 Mr. Hatch, are you read yet, or do you need a
14 minute?

15 MS. GREEN: Does Southern Bell believe that
16 this falls within that category of documents? I don't
17 have my backup material. I'll be glad if you want to
18 break for a moment to go get it, and we'll determine --
19 let you have your order.

20 COMMISSIONER EASLEY: Let me ask this
21 bottom-line question: If there are plans in the
22 future, why did you provide the document?

23 MR. FALGOUST: We provided the document,
24 quite honestly, because we asked BellSouth to produce
25 any documents it had in its possession that may be

1 responsive. And BellSouth did that. If you recall,
2 the order was issued at about 1 o'clock in the
3 afternoon on a Wednesday, and the list was due by 4:30
4 on Friday. We didn't have the time to go through and
5 examine these and to think about well, is this
6 responsive, is it not responsive. It may have been we
7 made a good-faith effort, but, clearly, these deal with
8 future business plans.

9 COMMISSIONER EASLEY: I'll tell you what,
10 Angela.

11 MS. GREEN: Yes, ma'am.

12 COMMISSIONER EASLEY: Unless you all are just
13 real burning with desire to get in on this, I am ready
14 to rule on it.

15 MS. GREEN: That's fine with us. (Pause)

16 COMMISSIONER EASLEY: In spite of the fact
17 that the documents were produced, I'm going to rule
18 that they do deal -- it does deal -- the document
19 listed as No. 14 deals with future plans and will be
20 not considered.

21 No. 15.

22 MR. BECK: 15 deals with minutes of a meeting
23 that discussed two-level Call Return and that it will
24 not be turned on until Caller ID issues are resolved. I
25 do not know what two-level Call Return is. All I have

1 is a document stating that it won't be turned on until
2 the Caller ID issue is resolved. Issue 5 says, "What
3 are the benefits and detriments to Florida's consumers
4 of Caller ID services?" And this relates to that.
5 There's something called "two-level Call Return," and
6 we don't even know what it is, but it obviously relates
7 to it. Therefore, it -- go ahead.

8 MR. FALGOUST: Commissioner Easley, in Mr.
9 Beck's own response, he talks about "Who Called Me?"
10 service. This service would provide subscribers.
11 Clearly, this is another proposed or possible -- or
12 future service, and the arguments made with respect to
13 Document 14, we would urge with respect to Document 15.

14 COMMISSIONER EASLEY: Ms. Green, are you all
15 ready on this one? (Pause)

16 Could I see this particular document, please?

17 (Hands document to Commissioner.)

18 COMMISSIONER EASLEY: Are you read with
19 anything, Ms. Green?

20 MS. GREEN: It appears on the surface to be
21 related to Issue No. 6. In our view we don't even know
22 what it is.

23 COMMISSIONER EASLEY: Mr. Beck, I'm going to
24 allow this document. Mr. Falgoust, my problem here is
25 that -- that's why I wanted to see the language in this

1 actual document. It's under the heading and the
2 minutes labeled, "Miscellaneous." I cannot tell from
3 this whether or not this is something that is a current
4 service that's not going to be turned on until Caller
5 ID is resolved or it's a future service.

6 MR. FALGOUST: Let me ask a question: If Mr.
7 Beck conducts discovery on this document, and the
8 answer to his question, "Is this a future service?" If
9 the answer to that question is "Yes," is that the end
10 of the story for Mr. Beck on this document?

11 COMMISSIONER EASLEY: I'm not about to do a
12 "what if" ruling. I'm going to allow the document at
13 this point. We will deal with the results of any
14 discovery on that document after it's been completed.

15 (Pause)

16 All right. That appears to be the last
17 document. Let's determine first of all how many
18 witnesses we are now talking about. On Document No. 1,
19 it will be Mr. Dennis; on Document No. 2, it's Mr.
20 Schultz; 3, Mr. Cox; 4 is to be announced. 6, we
21 allowed, right?

22 MR. HATCH: Yes.

23 COMMISSIONER EASLEY: Mr. Wallace. 7, no.

24 (Pause)

25 I made a cute note to myself I don't

1 understand. The four were 8, 9, 12 and 13 that were
2 disallowed.

3 MS. GREEN: Yes, ma'am. We still have 11.

4 COMMISSIONER EASLEY: I have 11. Who would
5 be -- is that Mr. Brown?

6 MR. FALGOUST: We deferred No. 11 until --

7 COMMISSIONER EASLEY: Deferred. All right.

8 My notes got so clever they got cryptic. 12
9 is no; 14 is no; and 15 would be identified by the
10 Company? Or do you know, Mr. Beck?

11 MR. BECK: No, I don't know.

12 COMMISSIONER EASLEY: All right. So we have
13 potentially one, two, three, four, five six -- is that
14 correct -- witnesses? (Pause) It would be at the
15 outside with some hope that --

16 MR. HATCH: That's correct.

17 COMMISSIONER EASLEY: -- that the
18 to-be-announced witnesses might be one of the other
19 previously listed ones?

20 MR. HATCH: You may potentially have seven,
21 depending on what happens with Issue 11.

22 COMMISSIONER EASLEY: That's right. Thank
23 you.

24 All right. So the max at this time is seven
25 witnesses.

1 Now, we had asked in the order that if, in
2 the interest of time and expense, if we could do
3 discovery here, if I recall. I'm mixing up cases.

4 (Pause)

5 How are we going to do this? I need some
6 suggestions.

7 MR. FALGOUST: Mr. Beck and I have discussed
8 this to a limited degree.

9 COMMISSIONER EASLEY: Okay.

10 MR. FALGOUST: Mr. Beck has kindly agreed to
11 defer -- to the extent that Mr. Casey was identified as
12 a witness today, to defer Mr. Casey's deposition to the
13 last. We would also --

14 COMMISSIONER EASLEY: I don't have Mr. Casey,
15 unless he's on 4, 15 or 11.

16 MR. FALGOUST: Well, he may not be. One of
17 the problems we had, Commissioner, was in discussing
18 potential witnesses, we had disagreement over these
19 documents, and we couldn't know. But Southern Bell is
20 willing to provide these deponents in Tallahassee with
21 the exception of Mr. Casey, if he was going to be a
22 witness. It doesn't appear that he will be.

23 MR. BECK: Sure, that would be great.

24 COMMISSIONER EASLEY: Okay. We then need to
25 establish a deadline for accomplishing that.

1 MS. GREEN: Yes.

2 COMMISSIONER EASLEY: Okay, the current
3 hearing date is March 11th. So back me up. What do we
4 need to do? Back me up on dates. What do we need to
5 do on the dates prior to the hearing to get us there?

6 MS. GREEN: Well, the initial reaction seems
7 like March 1st would be an outside date to get this
8 finished.

9 COMMISSIONER EASLEY: To finished discovery
10 by March 1st, that's only 10 days from the hearing.

11 MS. GREEN: Well, we've finish in even
12 shorter times. I was suggesting that as an outside
13 date.

14 COMMISSIONER EASLEY: All right.

15 MS. GREEN: Southern Bell says --

16 COMMISSIONER EASLEY: That's a full month.
17 Does March 1st work, do you think, Mr. Beck?

18 MR. BECK: Yes. Again, we discussed this
19 over a week ago. I'm just waiting for Southern Bell to
20 give me some dates.

21 COMMISSIONER EASLEY: I understand.

22 MR. FALGOUST: We can live with an earlier
23 date. With respect to timing, next week appears to be
24 a real bad week but the following two weeks look good.
25 So the 22nd of February as a deadline would be

1 acceptable to us.

2 MR. BECK: It wouldn't be with me. I have
3 some conflicts there. I would suggest February 11th,
4 12th, 15th, or any day of the week of the 25th.

5 MR. FALGOUST: The week of February 11th is
6 clear for me.

7 COMMISSIONER EASLEY: Okay. You guys work
8 out the dates. I'm going to put a deadline that we'll
9 be completed by March 1. You all work out the dates.

10 What else do I need to do?

11 MR. MATHUES: Commissioner Easley, I have a
12 procedural question.

13 COMMISSIONER EASLEY: Yes, sir. So do I.

14 (Laughter)

15 MR. MATHUES: In my reading of the order
16 granting the motion, it appears to be moot on the
17 participation of parties other than those who were
18 privy to that proceeding. What is the ruling on our
19 participation?

20 COMMISSIONER EASLEY: That would be my ruling
21 that you need not participate. It does not preclude
22 you from being here, but it does not in any way affect
23 your position in the overall hearing.

24 MR. MATHUES: You said we need not. Are you
25 also saying we may not?

1 COMMISSIONER EASLEY: No, I'm not saying you
2 may not.

3 MR. MATHUES: Then your are saying we may.

4 COMMISSIONER EASLEY: I'm saying you may be
5 here if you wish. I'm not saying that you will be
6 allowed -- I don't think you will be allowed to
7 participate. (Pause) Whoops. Sorry.

8 MR. HATCH: All parties will be allowed to
9 cross examine if they choose.

10 COMMISSIONER EASLEY: All parties are allowed
11 to cross examine even if they were not one that
12 requested the original documents --

13 MR. HATCH: That's correct.

14 COMMISSIONER EASLEY: That was part of the
15 problem.

16 MR. HATCH: It's a procedural due process
17 problem to deny them the opportunity to cross examine
18 even though they are not the actual primary persons
19 involved in the discovery.

20 COMMISSIONER EASLEY: So not only may they
21 attend, they may --

22 MR. HATCH: Cross examine, yes, ma'am.

23 COMMISSIONER EASLEY: I've just been
24 clarified.

25 MR. FALGOUST: Commissioner Easley, Southern

1 Bell has no problem with that concept. We do have
2 another procedural issue to raise, however, and that is
3 discovery conducted prior to a hearing ordinarily would
4 allow the person conducting the discovery to cross
5 examine a witness on a document. However, I suppose
6 that what Mr. Beck will then want to do is present
7 witnesses at the limited hearing as his witnesses, at
8 which time Southern Bell would have the opportunity to
9 cross examine those witnesses.

10 Now, the practical problem in doing that in
11 one and the same deposition is that you've got one
12 party cross examining in a discovery deposition and the
13 other party sitting across the table having the right
14 to cross examine if that deposition is introduced into
15 evidence. And I quite honestly have not figured out
16 how we're going to resolve that.

17 MR. HATCH: What I would anticipate Mr. Beck
18 doing would be calling them as an adverse witness just
19 like any civil litigation. In a sense it makes them
20 his witness, but there are some kinks in how that
21 process transpires; you understand that.

22 MR. FALGOUST: And that's acceptable except
23 that's not consistent with the Hearing Officer's hope
24 to limit the number of people who have to get here and
25 testify.

1 COMMISSIONER EASLEY: Well, that's one of my
2 concerns. Are you planning to call your own witnesses
3 in addition to those who will be -- and am I asking you
4 something I can't ask you at this point?

5 MR. BECK: I have no specific plans to call a
6 witness of my own. I can't say what might happen after
7 we depose these witnesses. But at least, at the
8 present time, I don't have those plans to do that. I
9 would anticipate at this time that I would simply call
10 Southern Bell's witnesses hostile witnesses.

11 COMMISSIONER EASLEY: Well, let me ask you
12 this: Because of the nature of this proceeding, it
13 would be -- to the extent that I am permitted to do
14 this under the law, and protecting everybody's due
15 process -- it would be my intent to limit to the
16 greatest extent possible, the number of witnesses on
17 each document.

18 I don't see any point in getting into another
19 full-blown hearing process over seven documents that
20 are -- you know, we have heard this -- and to the
21 extent that you can bring forth additional information
22 that could potentially impact a decision, you should
23 have the opportunity to do that. But I really am going
24 to be disinclined to look favorably on anything that
25 gets protracted and repetitious in another hearing on

1 Caller ID.

2 MR. BECK: Commissioner Easley, we'll work
3 with Southern Bell. It may be that one witness can
4 sponsor several of the documents. And I'll work with
5 Southern Bell to do that. Despite the controversy that
6 we generate, we usually do manage to work things like
7 that out.

8 COMMISSIONER EASLEY: Well, I will be an
9 unhappy camper with everybody if we don't find a way to
10 do this because there is just no point in holding the
11 hearing over again.

12 MR. FALGOUST: The reason I raise the issue
13 is that, ordinarily, we might be able to conduct a
14 discovery deposition and simply file it into evidence
15 as an exhibit. That will not be possible in this case.

16 COMMISSIONER EASLEY: I understand. Okay.
17 Anything else?

18 MS. GREEN: We'd just like to have a few
19 minutes to talk about it.

20 COMMISSIONER EASLEY: Go off the record.

21 (Discussion off the record.)

22 (Brief recess.)

23 COMMISSIONER EASLEY: All right. We'll go
24 back on the record.

25 Staff? We had adjourned or recessed so you

1 all could discuss something. Is it something you wish
2 to share with me at this time? (Laughter)

3 MR. HATCH: Maybe yes; maybe no.

4 COMMISSIONER EASLEY: I have had a lot of
5 that today. Go right ahead.

6 MR. HATCH: At this point, it appears to us
7 that we're going to have to have at least one more
8 prehearing conference in this thing because we don't
9 know who the witnesses are. We don't know all the
10 details yet. We've sort of looked at the calendars and
11 come up with a March 1st tentative date. Presumably,
12 that's okay with everybody's calendars.

13 COMMISSIONER EASLEY: March the 1st is a
14 Friday. I would set it at 8:30 in the morning,
15 primarily because there may well be something else
16 scheduled that day, and it should not take a hour. So
17 we will set it up so we have it available and we don't
18 get messed up.

19 That means then you are encouraged to
20 complete the discovery process as soon as you can and
21 do the cooperation as soon as we can to get the number
22 of witnesses settled, who the witnesses are settled, so
23 that we can get that procedural part of the hearing
24 established on March the 1st. So I guess that's where
25 we are now. That is that from this point, you will go

1 forward and do your discovery process, hopefully as
2 soon as possible, and then we will be ready for a
3 procedural prehearing on March 1st.

4 MR. FALGOUST: At 8:30 a.m.

5 COMMISSIONER EASLEY: At 8:30 a.m. I suspect
6 it will be in this same room. (Pause)

7 Was there anything else, Counselor?

8 MR. HATCH: Just to make sure that I
9 understand, everybody understands now that discovery
10 will be done by November the 1st. If there is any
11 problems that come up between now and then, call us, or
12 November -- not November -- it's been a long week.

13 COMMISSIONER EASLEY: Yeah. To the extent
14 that you all start running into any kind of difficulty,
15 please don't wait until March 1st to tell us that there
16 is a potential problem going on, or whatever it is.
17 Because this is in addition to all the rest of the things
18 that are going on in this particular docket, we need to
19 keep it as simple as we can and as expeditious as we can.

20 I think the direction is clear. Does anybody
21 have any questions or concerns or anything else that
22 needs to be brought up at this time? If not, we will
23 adjourn, and thank you very much.

24 (Thereupon, the hearing adjourned at 11:05 a.m.)

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

CERTIFICATE OF REPORTER

4

5 I, JOY KELLY, CSR, RPR, Official Commission
6 Reporter,

7

8 DO HEREBY CERTIFY that the prehearing in the
9 captioned matter, Docket No. 891194-TL, was heard by
10 the Hearing Officer, commencing at the time and place
11 therein stated; it is further

12

13 CERTIFIED that I reported in shorthand the
14 proceedings held at such time and place; that the same
15 has been transcribed under my direct supervision, and
16 that the transcript consisting of 51 pages, inclusive,
17 constitutes a true and accurate transcription of my
18 notes of said proceedings; it is further

19

20 CERTIFIED that I am neither of counsel nor
21 related to the parties in said cause and have no
22 interest, financial or otherwise, in the outcome of
23 this docket.

24

25

1 IN WITNESS WHEREOF, I have hereunto set my
2 hand and seal at Tallahassee, Leon County, Florida,
3 this 5th day of February, A.D., 1991.

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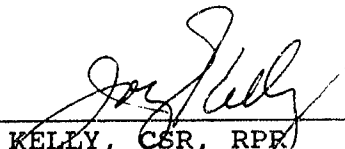
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