

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Comprehensive Review of)
 the Revenue Requirements and)
 Rate Stabilization Plan of) Docket No. 920260-TL
 SOUTHERN BELL TELEPHONE AND)
 TELEGRAPH COMPANY.)
 _____)

PROCEEDINGS: Motion Hearing

BEFORE: COMMISSIONER SUSAN CLARK
 Prehearing Officer

DATE: Tuesday, October 20, 1992

TIME: Commenced at 8:00 a.m.
 Concluded at 9:35 a.m.

PLACE: FPSC Hearing Room 122
 Fletcher Building
 101 East Gaines Street
 Tallahassee, Florida

REPORTED BY: Lisa Girod Jones, RPR, CM

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Florida Public Service Commission

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1 APPEARANCES:

2 HARRIS R. ANTHONY, Esquire, and R. DOUGLAS LACKEY,
3 Esquire, Suite 1910, 150 West Flagler Street, Miami, Florida
4 33130, on behalf of Southern Bell Telephone and Telegraph
5 Company.

6 MICHAEL W. TYE, Esquire, 106 East College Avenue,
7 Suite 1410, Tallahassee, Florida 32301, on behalf of AT&T
8 Communications of the Southern States, Inc.

9 PETER M. DUNBAR, Esquire, Haben, Culpepper, Dunbar
10 & French, P. A., 306 North Monroe Street, Post Office Box
11 10095, Tallahassee, Florida 32302, and JOSEPH W. CRESSE,
12 Class B Practitioner, on behalf of Florida Cable Television
13 Association.

14 RICHARD MELSON, Esquire, Hopping, Boyd, Green &
15 Sams, 123 South Calhoun Street, Tallahassee, Florida 32301,
16 appearing on behalf of MCI Telecommunications Corporation.

17 VICKI GORDON KAUFMAN, Esquire, McWhirter, Grandoff
18 & Reeves, 522 East Park Avenue, Suite 200, Tallahassee,
19 Florida 32301, appearing on behalf of the Florida
20 Interexchange Carriers Association.

21 MICHAEL W. TWOMEY, Assistant Attorney General,
22 Department of Legal Affairs, 1603 The Capitol, Tallahassee,
23 Florida 32399-1053, on behalf of the Attorney General of the
24 State of Florida.

25 CHARLES J. BECK, Esquire, Office of Public Counsel,
c/o The Florida Legislature, 111 West Madison Street, Room
812, Tallahassee, Florida 32399-1400, on behalf of the
Citizens of the State of Florida.

ANGELA B. GREEN, Esquire, Florida Public Service
Commission, 101 E. Gaines Street, Tallahassee, Florida
32399-0863, on behalf of the Commission Staff.

ALSO PRESENT: Robin Norton
Jill Butler
Sylvia Johe

PROCEEDINGS

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COMMISSIONER CLARK: Start off with the notice, please.

MS. GREEN: Pursuant to notice this time and place was set for a motion hearing before Commissioner Susan Clark as prehearing officer. This is Docket No. 920260-TL, the Comprehensive Review of the Revenue Requirements and Rate Stabilization Plan of Southern Bell Telephone and Telegraph Company.

COMMISSIONER CLARK: You're going to have to walk me through what we need to get done today.

MS. GREEN: Perhaps we should start by taking appearances of counsel.

COMMISSIONER CLARK: Thank you. Let's start with taking appearances.

MR. ANTHONY: Hank Anthony and Doug Lackey on behalf of Southern Bell Telephone and Telegraph Company, Suite 1910, 150 West Flagler Street, Miami, Florida.

MR. TYE: Michael W. Tye, 106 East College Avenue, Suite 1410, Tallahassee, Florida 32301, appearing on behalf of AT&T Communications of the Southern Bell Southern States, Inc.

MR. BECK: Charlie Beck, Office of the Public Counsel, 111 West Madison Street, Room 812, Tallahassee, Florida 32399-1400, appearing on behalf of Florida

1 Citizens.

2 MR. MELSON: Richard Melson, of the law firm
3 Hopping, Boyd, Green and Sams, 123 South Calhoun Street,
4 Tallahassee, Florida 32301, appearing on behalf of MCI
5 Telecommunications Corporation.

6 MS. KAUFMAN: Vicki Gordon Kaufman of the law firm
7 McWhirter, Grandoff & Reeves, 522 East Park Avenue, Suite
8 200, Tallahassee 32301, appearing on behalf of the Florida
9 Interexchange Carriers Association.

10 MR. TWOMEY: Mike Twomey, appearing on behalf of
11 the Attorney General of the State of Florida, 1603 The
12 Capitol, Tallahassee, Florida 32399-1053.

13 MR. CRESSE: Joe Cresse, appearing on behalf of the
14 Florida Cable Television Association, Class B practitioner.

15 MR. DUNBAR: Peter Dunbar, 306 North Monroe,
16 Tallahassee, 32301, appearing on behalf of Florida Cable
17 Television Association.

18 MS. GREEN: Angela Green, Florida Public Service
19 Commission, 101 East Gaines Street, Tallahassee, Florida
20 32399, appearing on behalf of the Commission Staff.

21 Commissioner, we have had, I believe, a total of
22 three informal meetings with the parties to attempt to set
23 out the issues for this docket. At the conclusion of the
24 third meeting -- you should have several documents before
25 you. I think that we should make sure everyone has got

1 those. There should be a very thick packet, and we believe
2 that that represents the revised issues as a result of the
3 -- you'll see that there are two meetings mentioned on
4 there, and those were the real issue I. D.s, plus there was
5 also a third informal meeting before those two. Then there
6 should be also some single sheets. We'll need to get one of
7 those for you that's missing. It should be a single sheet,
8 and at the top it says: Issues to be Addressed at 10-20-92
9 Hearing.

10 COMMISSIONER CLARK: I have that. The first
11 listing is: OPC wants the following issues incorporated.

12 MS. GREEN: Yes.

13 COMMISSIONER CLARK: I have that.

14 MS. GREEN: And Staff is bringing you an additional
15 sheet. Those are issues I don't believe that the parties
16 have seen before today.

17 I'm going to turn this over to Ms. Norton of the
18 Commission Staff and let her handle the Staff's part on
19 this, unless something legal comes up, but what we had in
20 mind, as I'm sure you'll remember, is that there have been
21 several contentious, very contentious issues brought up, and
22 without a decision as to whether those will or will not be
23 included, parties are unable to prepare their testimony.
24 We've received several motions directed toward that. So
25 this is an attempt to get that resolved.

1 COMMISSIONER CLARK: I also have another group of
2 papers --

3 MS. GREEN: Another sheaf with four pages?

4 COMMISSIONER CLARK: Yes.

5 MS. GREEN: Yes, ma'am.

6 COMMISSIONER CLARK: Now I have everything?

7 MS. GREEN: I believe you do.

8 COMMISSIONER CLARK: Would you go ahead? Where
9 should I start?

10 MS. NORTON: Commissioner, there are four issues
11 that were -- that I prepared to discuss with you today.
12 It's my understanding that there are probably several others
13 that the parties want to discuss with you as well. At your
14 pleasure, maybe we'll start with the worst first.

15 COMMISSIONER CLARK: Sure.

16 MS. NORTON: All-righty. Those issues -- forgive
17 me, those issues have to do with Public Counsel's Issues 1
18 through 4, which you should have copies of in front of you.
19 The substance of those issues are also the substance of
20 several other what we call the investigation dockets that
21 address problems with Southern Bell.

22 Public Counsel would like these issues to be part
23 of the issue list in the rate case. It is Staff's position
24 that the substance of these issues can be adequately
25 addressed in a myriad of other issues that are already part

1 of the rate case. These issues deal with the noncontact
2 sales and falsification dockets.

3 There are issues that are in the issue list having
4 to do with the current rate stabilization plans, evaluation
5 of those, evaluation of the proposed price regulation plan.
6 Staff is proposing in this list a new issue that simply
7 says: "Should there be a penalty imposed for poor quality
8 of service?" which would be appended as Issue 11a, that we
9 think would help address that.

10 There is issues on quality of service: Is Southern
11 Bell's quality of service adequate? And there are several
12 miscellaneous issues, as well, having to do with itemizing
13 customer bills. So our position is that those -- the
14 substance of what Public Counsel wants addressed can be
15 handled in those issues.

16 COMMISSIONER CLARK: All right, I'm on the page
17 entitled Issues To Be Addressed at 10-20-92 Hearing. The
18 OPC wants the following issues incorporated. And then we
19 have a list of 1 through 4. And it is Staff's position that
20 those are incorporated in, what, 11a?

21 MS. NORTON: It's Staff's position that -- what
22 Public Counsel's issues --

23 COMMISSIONER CLARK: 1 through 4?

24 MS. NORTON: -- 1 through 4 would require you to do
25 is to make the final determinations in the investigation

1 dockets that are ongoing. There are hearings scheduled for
2 those dockets and those -- but those are not to take place
3 until following the Southern Bell rate case hearings. It is
4 Staff's position that the Commission does not need to make
5 those final findings in the context of the rate case in
6 order to make a determination on the price cap plan
7 proposals and other quality of service issues.

8 COMMISSIONER CLARK: Let me hear from Public
9 Counsel?

10 MR. BECK: Thank you, Commissioner. Commissioner,
11 let me briefly summarize the points I'd like to make and go
12 into it in a little more detail. This case will be
13 reviewing Southern Bell's performance under the incentive
14 regulation plan, which this Commission approved in 1988. We
15 believe you cannot review the actions of the incentive plan
16 without looking at the improper conduct that Southern Bell
17 engaged in during the plan.

18 Southern Bell has also asked the Commission to
19 approve a new and further type of deregulatory type of plan
20 for the Commission to approve, and that's price cap
21 regulation. We also feel you cannot review that without
22 seeing what Southern Bell's actions were during the
23 incentive plan you reviewed during 1988.

24 Finally, this is the case that will set Southern
25 Bell's return on equity, and to determine a rate setting

1 point for Southern Bell. The appropriate place to impose a
2 penalty on Southern Bell is in the docket where you're
3 setting rates and where you're setting rate of return. And
4 Gulf Power case it is precedent for that. This is the case
5 where you have that authority and you're setting rates.

6 Commissioner, in the order that approved the plan,
7 the incentive plan, back in 1988, the Commission
8 specifically addressed quality of service. In the order you
9 said that there was a concern that the Company might improve
10 earnings over the short run by letting quality of service
11 slip. You directed the Staff to engage in ongoing reviews
12 and to engage in expanded service audits. You said that the
13 Commission will be notified if service quality significantly
14 deteriorates during the course of the plan, and if
15 Commission rules concerning service standards are violated,
16 the Commission would consider imposing a penalty on Southern
17 Bell.

18 All of the items that we have raised in our issue
19 go to that, as well as to the review of the actions during
20 the incentive plan and the proposal by Southern Bell for
21 price cap regulation.

22 The statewide grand jury recently issued a report
23 where they noted that their settlement did not contain any
24 punishment for Southern Bell about actions that occurred
25 over the years. In their report they strongly recommended

1 that the Public Service Commission exercise its penal
2 authority and take into consideration possible fraudulent
3 conduct on the part of the Company in determining an
4 appropriate rate of return. This is the proceeding where
5 you are going to set an appropriate rate of return, and this
6 is the proceeding where you will be able to take action on a
7 possible mismanagement penalty for Southern Bell.

8 The Staff's proposed issue is new, as far as a
9 penalty for quality of service, but that doesn't address all
10 the specific actions that Southern Bell took, and in
11 particular it doesn't relate the actions that Southern Bell
12 took during the course of the incentive plan with respect to
13 a review of the incentive plan and with respect to their
14 proposal that you regulate them by a price cap plan.

15 With regard to the other dockets, it really -- I
16 feel it's not relevant, as far as what the other dockets are
17 looking at. The question is whether these matters are
18 relevant in this proceeding. The other dockets can go
19 toward the -- what remedial actions might be taken or what
20 further steps would be taken to ensure that there's proper
21 quality of service reports and proper quality of service
22 actions by the Company, but the fact remains that you have
23 to address them in this docket with respect to the return on
24 equity, the rate setting point and the review of the plan
25 and Southern Bell's proposal for price caps.

1 COMMISSIONER CLARK: Is there anyone else who is a
2 proponent of including these issues?

3 MR. TWOMEY: Yes, ma'am. Commissioner Clark, I
4 won't repeat everything that Mr. Beck has said, but we
5 support his position and the position of Public Counsel
6 fully. As mentioned, the Commission will be considering the
7 incentive plan this Company has been under for some four to
8 five years. You have to know how they get under that
9 program, whether they're successful or not, before you can
10 consider approving a rate cap plan that, in our view, is
11 more liberal, that offers the Company more unsupervised
12 latitude than the incentive plan. You have to know whether
13 they falsified records, how they treated their company, what
14 the quality of service was. And these issues address those
15 questions squarely.

16 Now -- and if they did so, would certainly impact
17 whether you allow a more flexible plan of rate regulation,
18 or return them to traditional rate regulation, as every
19 other company -- regulated utility in the state
20 experiences.

21 If you find that they engaged in some of these
22 practices as alleged, as pointed out by Mr. Beck, you may
23 wish to have their return on equity reflected by some type
24 of penalty. You have to know all that during the course of
25 the rate case.

1 Consequently, whether or not there's the existence
2 of two other dockets that are going to be heard in April,
3 again, I think as Mr. Beck said, is irrelevant. You have to
4 hear these issues, we believe, during the course of the case
5 before you can decide equity and before you can decide
6 whether their Company is entitled to a more flexible rate
7 regulation plan. And we would encourage you to do so.
8 Thank you.

9 COMMISSIONER CLARK: Okay.

10 MR. DUNBAR: Commissioner, Florida Cable Television
11 Association also offered a similar issue. When the
12 specifics of Office of Public Counsel presented theirs, we
13 deferred in favor of theirs, but we also think it's relevant
14 to the Commission's consideration in this case.

15 COMMISSIONER CLARK: Anyone else want to speak as a
16 proponent of including those issues? Would Southern Bell
17 like to respond?

18 MR. ANTHONY: Yes, ma'am. It probably isn't a
19 surprise that we're not a proponent, but an opponent, of
20 these issues for a number of reasons. First of all, Public
21 Counsel, I just have to get this on the record -- this is
22 being transcribed -- has talked about the improper conduct
23 Southern Bell has engaged in. I think that's part of the
24 problem. There's been no finding that Southern Bell has
25 engaged in any improper conduct before this body. Southern

1 Bell disputes that the Company engaged in any improper
2 conduct. Certainly there may have been a few individuals
3 who did some things contrary to public and Company policy,
4 but I just have to get that on the record. Sort of like the
5 debate last night, it's a matter of Company honor.

6 Second of all, I have to also note with respect to
7 incentive regulation, that we're the only company that's
8 before this Commission, or has been recently, in the
9 telephone industry, that's not asking for a rate increase,
10 so I think that may speak on behalf of incentive
11 regulation.

12 But as far as the merits of these four issues are
13 concerned, I think there is, foremost, just a practical
14 problem that is before this Commission, and that is the fact
15 that you have two separate hearings scheduled in April, each
16 one of four days, in which this Commission has decided to
17 take testimony, hear evidence and make decisions regarding
18 the two issues: The sales issue and the trouble reporting
19 issue. That's eight days of hearing. The Commission has
20 scheduled 12 days of hearing for this rate case. This rate
21 case is probably, at least to my knowledge, the most complex
22 case that I've ever been involved in, and, I would hazard to
23 guess, one of the most complex that this Commission has been
24 involved in for a number of reasons.

25 It's a review of a new form of regulation for a

1 telephone company, Southern Bell's incentive regulation plan
2 that the Commission approved back in 1988. Southern Bell
3 has proposed a new, innovative alternative regulation plan
4 in its testimony that's going to have to be considered, and
5 that's going to take a lot of time. On top of that, you
6 have the traditional rate case issues, all the things that
7 are outlined in the 16 or 17, 18 pages worth of issues that
8 you have in front of you, that are traditional rate case
9 issues: What are are working capital; what's the rate base;
10 what about deferred taxes; all those sorts of things.

11 As a practical matter, if Southern Bell is required
12 to litigate these issues, we're going to have to litigate
13 them just as if we were going to litigate them in the April
14 hearings. These are not trivial issues. These are
15 important. They go to the heart of the Company's operations
16 in terms of the allegations that are made. The Company
17 can't stand by and just agree to give short shrift to these
18 things. The Company is more than happy to deal with these
19 in the proper context in April, but to present them now in
20 the context of a rate case, when there simply isn't time to
21 give it the weight that these allegations deserve and the
22 defense the Company is entitled to provide, would be
23 inappropriate.

24 And I think that there are some issues, as Staff
25 noted, that parties can address, some of these ancillary

1 issues, but I don't believe that it would be appropriate at
2 this time to address these in this rate case.

3 MS. NORTON: Commissioner, if I might, I believe
4 it's important to understand here that the debate is not
5 between whether the evidence is in or not in. There is
6 information that's being developed in those dockets, and in
7 this one, that goes to the point at issue that Public
8 Counsel wants these issues in for. So it's -- I think the
9 debate is really one of degree: Do we need the specific
10 issue wording here that would require the specific final
11 findings in those dockets; in other words, do we roll those
12 dockets into this one, or is there information and evidence
13 enough that we can -- is there evidence enough that we can
14 gain in this docket to make the decisions in the rate case
15 that we need to without going to the level of detail and
16 degree that would be required under the Public Counsel's
17 Issues 1 through 4?

18 COMMISSIONER CLARK: Let me ask a question. What
19 is the schedule for these hearings? I don't have it in
20 front of me.

21 MS. NORTON: The hearings are scheduled to begin
22 January 25th in this case, and run through February 10th.

23 COMMISSIONER CLARK: And when is the recommendation
24 due and the order in the rate case?

25 MS. GREEN: The recommendation is due near the end

1 of March, March 22nd for communication issues and the AFAD
2 issues March 12th, a decision to be rendered for the AFAD
3 issues March 18th, for communication issues March 26th.

4 COMMISSIONER CLARK: So the rate case would be sort
5 of concluded and wrapped up on the 26th?

6 MS. GREEN: Yes, ma'am.

7 COMMISSIONER CLARK: And when are the hearings
8 scheduled in -- let me ask you this, is this on an
9 eight-month time schedule?

10 MS. GREEN: This is no longer on an eight-month
11 time schedule. The Company waived that some time ago and
12 has agreed to retrospective effective date of 1-1-93 for the
13 revenue impacts in this case.

14 COMMISSIONER CLARK: Well, let me tell you what my
15 position is on it. I agree with Public Counsel to the
16 extent that I think these issues need to be explored and
17 need to be taken into account in setting a proper rate of
18 return, but I agree with Southern Bell that they should be
19 treated as separate hearings. And I wonder if we can't
20 maneuver the procedure so that we could incorporate the --
21 ideally, the decision on the investigation would come first,
22 and then we could incorporate it in the rate case, because I
23 would feel more comfortable with my decision based on eight
24 days of hearings. And I do think it ought to be taken into
25 account, with respect to the Company's performance under the

1 incentive plan.

2 MS. GREEN: Well, then it seems that you're faced
3 with two choices, at least two that come to mind, and one is
4 to identify what issues would need to be left pending, which
5 can always be decided at the end of the hearing. It would
6 seem that although we, quote, "know" that certain things
7 have an impact, until we see what the evidence will actually
8 show from those other two dockets, we don't actually "know"
9 that there is going to be an impact. We sense that there
10 would be. We know that would need to be included if there
11 is, but we don't have the answer.

12 One of the things that comes to mind is that this
13 Commission always has the right and obligation to come in at
14 anytime and address this Company's ROE and whether or not a
15 penalty is appropriate if that is the outcome of the two
16 additional dockets.

17 COMMISSIONER CLARK: But my concern would be that
18 we would institute a new rate setting point and go forward
19 with that rate setting point and then two months later we
20 would change it. I don't want to do that.

21 MS. GREEN: Then you may want to take this under
22 advisement and not issue a decision at this moment, and
23 ponder what are the several ways that could --

24 COMMISSIONER CLARK: When is the -- when is a
25 decision scheduled as a result of the investigations?

1 (Pause)

2 MS. GREEN: July.

3 MS. NORTON: July 15th.

4 COMMISSIONER CLARK: Well, I'm going to follow your
5 suggestion and take it under advisement, but I think the
6 Company needs to think about, perhaps, some -- a willingness
7 to extend the time we can put new rates into effect, or
8 something like that. I do feel you need your day in court
9 before we make a decision on this, but I also feel this
10 ought to be taken into account as we review the performance
11 under this plan.

12 MS. NORTON: Commissioner, the schedule in this
13 docket is already set up, and the Company has waived both
14 the eight- and 12-month clocks on this case already.

15 COMMISSIONER CLARK: I feel we could go forward
16 with these hearings and go forward with the hearings on the
17 investigation and delay the final implementation until we
18 can mesh the two together.

19 MR. ANTHONY: Commissioner Clark, if I read the nod
20 from the back of the room correctly, I don't think the
21 Company would have an objection to holding the issues in the
22 rate case open until after the investigatory dockets are
23 concluded, so that you can meld the two, if that's what
24 you're suggesting.

25 COMMISSIONER CLARK: I think that's what needs to

1 be done.

2 MR. ANTHONY: We don't have an objection to that.

3 COMMISSIONER CLARK: Public Counsel have an
4 objection to that? That accomplishes what you're trying to
5 do.

6 MR. BECK: I still don't think you can bifurcate
7 the decision a review of the incentive plan and their
8 proposal without looking at this also. So it's really part
9 of one proceeding in that respect. So if we address each
10 issue in the context of the incentive plan, you've got it
11 crossing over back and forth. Seems like they need to be in
12 the same docket to me. You can't just simply bifurcate this
13 conduct from the actions of the Company.

14 COMMISSIONER CLARK: Well, the proposal is to hold
15 the issues open in the rate case until we hear this case.

16 MR. BECK: Right, but we will need to interrelate
17 the two. They're not just two separate matters. They
18 relate to each other. I don't think you can neatly
19 compartmentalize and say, well, here's the rate case and
20 we're going to look at the incentive plan and the Company's
21 proposal and bifurcate that from the review of these
22 issues.

23 COMMISSIONER CLARK: Be a little more specific.

24 MR. BECK: If you were to say we're simply going to
25 hold everything open until the completion of the other

1 investigations, you're going to be looking at all the
2 evidence about Southern Bell's -- you know, how they did on
3 the incentive plan and what their proposals are, without
4 hearing the evidence of these matters. You can't just
5 bifurcate them and say, we're going to review the case of --
6 review the incentive plan and review Southern Bell's
7 proposal without, at the same time, considering what they
8 did. I don't see how you can bifurcate the two.

9 COMMISSIONER CLARK: Mr. Twomey?

10 MR. TWOMEY: For example, Commissioner, in the rate
11 case proper, the Company's witnesses are going to testify
12 that they met the Commission's quality of service standards
13 and the like. Now, if this were all one case, that would be
14 a proper place, I would think, to confront them on cross
15 examination, if not through the use of other witnesses, that
16 their compliance with Commission's quality of service
17 standards and repair records and the like may be suspect.

18 COMMISSIONER CLARK: Well, let me ask you this, it
19 seems to me you could review the quality of service in every
20 area but that, and that you would reserve a review of the
21 quality of service in that specific area for the
22 investigation.

23 MR. TWOMEY: I'm not -- I won't say that's
24 impossible. It just seems cumbersome in the sense that we
25 would all be sitting there, and in a sense, kind of looking

1 at the half naked emperor playing like he's fully clothed,
2 because they would be making assertions in their testimony
3 and they would go presently unrebutted with the knowledge we
4 would look at them later.

5 COMMISSIONER CLARK: But I think it could be placed
6 on the record that the issue of quality of service will
7 address service except for that which remains to be more
8 fully investigated in another docket. I have to say that we
9 are faced with a schedule that is -- while not set in stone,
10 is difficult to work around, and I think we have to work
11 with the schedule we have. And I think the best action I
12 can see to take is to hold those issues open. Southern Bell
13 has indicated its willingness to do that, and I think that
14 will reasonably accomplish your objectives, and certainly my
15 objective of taking it into consideration in the final
16 action we take on the rates. You'll have your day in
17 court. You'll have the opportunity to argue what should
18 affect the setting, the rate setting point.

19 MR. BECK: I've got to agree with Mr. Twomey, that
20 you'll be precluding us -- the Company will be making
21 assertions of how it performed during the incentive plan,
22 will be making assertions about what the effect would be of
23 its new price cap plan. You will be precluding us from
24 effectively rebutting that in that case, if we can't bring
25 out the actions, what the Company did during that time. The

1 analogy he made is a good one.

2 MS. NORTON: Commissioner, you had offered that you
3 would like to take it under advisement, and perhaps part of
4 the process there can be to relook at the issues. We've got
5 two sets of hearing dates, 12 days and eight days, and I
6 don't know at this point whether any of those can get moved
7 around or whether they would need to, but perhaps we can
8 redesign the flow of the issues to accomodate -- you know,
9 create a logical flow.

10 MR. BECK: Commissioner, may I have just a few
11 housekeeping things to mention on here? On the No. 4, there
12 are a number of subparts to that that didn't make it to the
13 handout.

14 COMMISSIONER CLARK: But I have them otherwise.

15 MR. BECK: With respect to Issue 2, that's broader
16 than the issues in either of the other two dockets, that we
17 intend to present evidence about the hard sell of optional
18 service by Southern Bell. In other words, it goes to a
19 broad marketing, not just fraudulent or false practices, but
20 whether the practices are appropriate for the services being
21 reviewed.

22 COMMISSIONER CLARK: You're saying No. 2, Issue No.
23 2, is not covered in --

24 MR. BECK: Correct.

25 COMMISSIONER CLARK: -- the two other dockets?

1 MR. BECK: Right. This is going to go -- broadly,
2 to the types of sales activities the Company engages in.
3 Finally, I would like to mention we have an awful lot of
4 motions that have been pending with respect to discovery.
5 They go from three and a half to five and a half months
6 old. I filed a motion eight days ago asking for a setting
7 of intervenor testimony due dates because we haven't had
8 rulings on these motions. That applies, not just in this
9 docket, but in also the other two investigations. I'd
10 simply like to request, could we please get rulings on
11 these, because it's hurting our ability to prepare the
12 case?

13 COMMISSIONER CLARK: Rulings on what?

14 MR. BECK: Pending discovery motions. We must have
15 at least 12 to 15 motions that have been collecting over the
16 last five months.

17 MS. GREEN: That is absolutely false, Mr. Beck, if
18 you're discussing this docket.

19 MR. BECK: Well, in this docket, I would guess
20 there's about eight pending.

21 MS. GREEN: That's also false.

22 COMMISSIONER CLARK: Let's deal with -- I'll look
23 into that later, Mr. Beck. It's your position, though, that
24 Issue No. -- your Issue No. 2 on quality of service is not
25 covered in the other dockets. Would Southern Bell like to

1 respond with respect to just including No. 2 in this
2 docket?

3 MR. ANTHONY: I'm going -- not sure exactly what
4 Mr. Beck has in mind with regard to Issue 2. Certainly we
5 haven't seen any testimony on it yet, because it's not time
6 yet for Public Counsel to file its testimony either.
7 Perhaps it thought that it, mistakenly, apparently, that it
8 was related to the sales investigation. It seems to me that
9 if -- it's hard to say, without knowing specifically what
10 Mr. Beck is talking about, whether it's more related to the
11 investigatory docket or if it's related to a general service
12 issue. I'm not sure what he means by "hard sell." So I
13 just don't have enough information to be able to respond
14 adequately. Perhaps if Mr. Beck could expand on it a little
15 bit, I could respond a little bit more.

16 COMMISSIONER CLARK: I'll tell you what I -- it's
17 my inclination, if it is not covered in the other two
18 dockets, to let it in, and then maybe you can work with
19 Mr. Beck and get more specifics on that and word the issue
20 more specifically with respect to No. 2.

21 MR. ANTHONY: Are we talking so-called fraudulent
22 sales, allegations of fraudulent sales, or are we talking
23 about he doesn't like the sales techniques that some of the
24 Company's service representatives or other employees use and
25 maybe if he can explain that a little bit more.

1 MR. BECK: I'm distinguishing Issue 2 from the
2 actual frauds and falsities. In No. 2 we're looking at the
3 types of sales techniques used by Southern Bell for monopoly
4 services.

5 COMMISSIONER CLARK: I think you need to reword the
6 issue, because you do use "false and misleading."

7 MR. BECK: I think "misleading" would be
8 appropriate and so would "abusive." If you want to
9 distinguish -- the point I'm trying to make is No. 2 goes
10 further than the other two dockets.

11 COMMISSIONER CLARK: You want to say did Southern
12 Bell use inappropriate sales practices?

13 MR. ANTHONY: Can we make it a little more neutral
14 than that, and say: Are Southern Bell's sales practices
15 appropriate, and if not, why not? Something like that?

16 COMMISSIONER CLARK: That's fine with me, and in
17 the position you take, you can be more specific.

18 MR. BECK: We'll have testimony on the point.

19 MS. NORTON: Commissioner, it's Staff's opinion
20 that the sales practices would be at issue in the noncontact
21 sales dockets.

22 COMMISSIONER CLARK: Which one is that?

23 MS. NORTON: 900960.

24 COMMISSIONER CLARK: Just so I'm clear, is that one
25 of the dockets that will be heard in April?

1 MS. NORTON: Yes.

2 COMMISSIONER CLARK: Tell you what, I do believe
3 that all these issues should be considered in the final
4 outcome of our review of the incentive plan. However, I do
5 not agree that they should be incorporated into the main
6 case. I think they should be, in effect, a spinoff issue,
7 to be considered in the April hearings. If Staff has any
8 recommendations as to more specifics and how we will
9 accomplish that in terms of when we make our decisions and
10 perhaps the issues we leave pending until a recommendation
11 is made in the subsequent dockets, please come talk to me
12 about that. That's my ruling on those four issues.

13 What is the next issue you want to take up?

14 MR. CRESSE: Commissioner, may I address that last
15 issue that you just mentioned, spinoff?

16 COMMISSIONER CLARK: Yes.

17 MR. CRESSE: And let me also mention that I have to
18 go up to the cabinet meeting that starts at 9 o'clock, so
19 I'd like to be excused to attend that, on that issue we
20 discussed yesterday in Internal Affairs that's coming up at
21 9 o'clock at the cabinet meeting, and I will be up there for
22 that.

23 But it seems to me, now, as I'm sitting here, we
24 were thinking of making a motion to this effect later, but I
25 think we need to raise it up, bring it now. If you're

1 talking about spinning some things off and so forth in
2 evaluating the plan, it seems to me that in an alternative
3 regulation plan, which Southern Bell is proposing in this
4 case, the Commission first has to find that the alternative
5 method of regulation includes adequate safeguards to assure
6 that the rates for monopoly services do not subsidize
7 competitive services.

8 An issue in this case is: Has the Commission
9 prescribed an allocation methodology to ensure that
10 competitive telecommunications services are not subsidized
11 by monopoly service? Depreciation case, I think we were
12 willing to stipulate that there have been no accounting
13 methodologies prescribed by the Commission. In order to
14 provide the assurances that is necessary for alternative
15 regulation, I think you have -- the Commission has to
16 identify competitive services, I think they have to go
17 further and identify those competitive services that are
18 effectively competitive or subject to effective competition
19 under 364.338, and I think you have to describe accounting
20 methodology for those services that you find are
21 competitive. And I don't think there's any argument about
22 that latter statement.

23 Since that has not been done, should you not defer
24 to a later docket all of the issues relating to alternative
25 regulation, because in the present posture of this docket, I

1 don't see how you can find that proposal includes adequate
2 safeguards to assure the rates for monopoly services do not
3 subsidize competitive service. The procedures have not been
4 put into place with which to make that assurance. And it's
5 our intent to go through and explore all those issues in
6 this docket, or should we wait and defer that to another?
7 And that was going to be our motion that we defer the
8 alternative regulation plan, because it doesn't meet the
9 statutory standard in the law.

10 COMMISSIONER CLARK: Well, that doesn't relate to
11 the four issues of OPC, does it?

12 MR. CRESSE: If you're going to evaluate in a later
13 docket the question of their performance under the first
14 alternative regulation plan, then it would seem to me that
15 deferring that evaluation and the question of whether you're
16 going to enter a new one through the same docket.

17 MS. NORTON: Commissioner, I'm not sure I
18 understood all of what Mr. Cresse suggested or was saying
19 there, but I don't believe that it has been -- that you have
20 ruled or decided that we are going to defer anything yet,
21 and it was my understanding that Staff would bring back to
22 you a recommendation on the order of the issues and which
23 hearings they could be addressed in, and that we would
24 recommend that we just go ahead and do that, and we will --
25 if need be, we'll take up -- we'll have further meetings

1 with the parties to try to hammer out an order of issues.

2 MR. CRESSE: Commissioner, I'd be happy for the
3 Staff to bring back recommendations as to whether they
4 should proceed under the laws on -- on the alternative
5 regulation proposed, unless proposed by Southern Bell. We
6 can proceed now or wait until some of the preconditions that
7 I just mentioned have been met.

8 COMMISSIONER CLARK: Let me see if I understand how
9 you got here. You're saying with respect to these four
10 issues, Public Counsel, they are a part of a decision of
11 whether we should go forward with a new incentive regulation
12 plan because we're evaluating what they did in a prior
13 incentive plan, and it would be your position that all
14 issues with respect to a new incentive plan should be
15 deferred until we address whether there are adequate
16 safeguards that monopoly services do not subsidize
17 competitive services? In effect, it's another step you
18 would have to take before you would make a decision that
19 another incentive plan is appropriate?

20 MR. CRESSE: Yes, ma'am, and I would say that
21 clearly, under the laws, until you prescribe accounting
22 methodologies and make determinations as to what is
23 competitive or not competitive, that there is no physical
24 way you can reach the conclusion that adequate safeguards
25 exist. So, as a matter of law, until such time as you make

1 those decisions, you cannot assure adequate safeguards
2 exist.

3 COMMISSIONER CLARK: Let me ask you this, have you,
4 in the position -- I mean in the issues you have suggested,
5 and I haven't looked through the rest of my papers here,
6 have you identified from your perspective in the issues,
7 services you are interested in, what services are -- you
8 believe are competitive and for which we have to employ
9 safeguards to prevent monopoly subsidization?

10 MR. CRESSE: No, ma'am, we have not --

11 COMMISSIONER CLARK: So we have to do it in a macro
12 sense; we have to look at all those services that we think
13 might possibly be competitive and then demand a
14 restructuring --

15 MR. CRESSE: I think that's a precondition to
16 alternative regulation as proposed, that you have to make
17 those decisions first, as a precondition to alternative
18 regulation.

19 COMMISSIONER CLARK: Would Southern Bell like to
20 respond to that?

21 MR. LACKEY: I take it you would like us to respond
22 to everything that Mr. Cresse has been saying here, so let
23 me start at the beginning. It's our position that it is not
24 necessary to address the issue that the cable TV people seem
25 to be so interested in in order to determine whether an

1 alternative form of regulation should be approved. Once you
2 got past your first four issues, I assume we were going to
3 be asked whether there were any additional issues with which
4 we took issue, and we were going to suggest that the cross
5 subsidy issues that public -- that cable TV have raised are
6 not appropriate here.

7 The Commission hasn't determined, to my knowledge,
8 that there are any services that are effectively
9 competitive. And I believe that when it comes to that
10 point, when we come to the Commission, or when some other
11 party comes to the Commission and says this service is
12 effectively competitive, we want to do something, deregulate
13 it, detariff it, whatever happens to follow, then the
14 Commission is going to have to decide how to allocate cost
15 between those effectively competitive services and other
16 services. I think you can do it on an ad hoc basis as the
17 issues come up. You could probably even do it in a generic
18 way, if you want to, but it's not necessary to address that
19 issue before you approve an alternative form of regulation.

20 Let me point out to you something that you
21 obviously already know and that is the Commission has got
22 dockets going on right now, and has had them in the past
23 regarding what cross subsidization meant, what cost
24 methodologies should be used, and that sort of thing, all of
25 which are going to have to be resolved before, I suppose,

1 you ever get to the point of doing the segregation that
2 we're talking about. But it's clearly not tied to the
3 issues of a cost allocation methodologies for regulated,
4 nonregulated services being offered within the same -- I'm
5 sorry, monopoly and competitive services offered within the
6 same company. That's just -- that's one step beyond where
7 we are, I guess is what I'm trying to say. It's not
8 appropriate to decide now and it's not necessary to hold
9 alternative regulation hostage to the development of such a
10 methodology. Law doesn't require it.

11 COMMISSIONER CLARK: Well, Mr. Cresse, I have to
12 say that -- and I know you're familiar with the pay
13 telephone docket, and it seemed to me -- it seems to me,
14 both in terms of a more rational way to approach it, is to
15 look at it with a specific service before you, and you can
16 focus on that service, just as we did and you did in the pay
17 telephone. And I realize that hasn't been decided yet, but
18 that certainly focuses the Commission on a competitive
19 service.

20 MR. CRESSE: Yes, ma'am, it does, and that's --

21 COMMISSIONER CLARK: And to take the whole ball of
22 wax and try to deal with it, I think, is dealing with
23 abstracts, and I frankly don't like to approach it that
24 way.

25 MR. CRESSE: The only point that I'm raising at

1 this moment in time, and I only brought it up because I'm
2 recommending that we file a motion to this effect, that this
3 legislation was designed, Commissioner, to provide
4 competitive services, level playing field for competitive
5 services and tradethe off for that in the legislation was an
6 alternative form of regulation. And this law specifically
7 says that you can provide an alternative form of regulation
8 if the Commission finds that the alternative method of
9 regulation includes adequate safeguards to assure that the
10 rates for monopoly services do not subsidize competitive
11 services.

12 We're going into this case. We have not identified
13 the services that are competitive and I don't know if we're
14 going to do that in this case or not, but I don't see any
15 evidence of it. And since we're not going to identify the
16 services that are competitive, since you have not prescribed
17 an accounting methodology for competitive services, how in
18 the world under the laws can you find that their alternative
19 method of regulation includes adequate safeguards to assure
20 the rates for monopoly service do not subsidize competitive
21 service? You will have done nothing about that. And all
22 I'm suggesting is under the law, until that is done, you
23 cannot provide an alternative method of regulation for
24 Southern Bell or any other telephone company. I think this
25 is a condition precedent to you being able to do it and

1 that's the motion we were going to file.

2 COMMISSIONER CLARK: Let me suggest this --

3 MR. CRESSE: And that would make this a plain,
4 vanilla rate case, and the other issues would come up later
5 in the other dockets you have reference to, including the
6 question of what is competitive and noncompetitive service
7 provided by this telephone company.

8 MS. GREEN: Commissioner, Staff would like to make
9 two points in response to Mr. Cresse. No. 1, we've had
10 three meetings to discuss the issues. This is the first
11 that we've heard these arguments. And that's because, I
12 believe, the second point I would like to make, this is the
13 motion that you heard at the end of the pay telephone
14 hearing. It's coming to you in somewhat different clothing,
15 but it's the same motion. It's the motion that has been
16 heard numerous times in other dockets, and that is how to
17 interpret the law in the new statute.

18 The alternative regulatory methods section does say
19 in it that one of the things that the Commission will want
20 to do is include adequate safeguards to assure rates for
21 monopoly services do not subsidize competitive services.
22 That is in there. But again, you're back to the question:
23 What is a competitive service? And, again, Staff would take
24 the same position, and that is that you don't have a
25 competitive service until this Commission determines that

1 there is a competitive service.

2 And then you have to go to the section that deals
3 with competitive services. And that allows either an
4 interested party to bring a petition or the Commission to
5 address on its own motion, and in order to do that, I
6 believe you would have to have a proceeding similar to what
7 you did in the pay telephone docket, at least a good,
8 probably two, three, four, five days to make that
9 determination.

10 And now I think you're getting a flavor of what the
11 heart of the matter is before you today, and that is not so
12 much the issues, but the scope of a proceeding and the
13 control over those dockets. And as long as this Commission
14 addresses the issues that it believes it needs to address,
15 it is well within this Commission's discretion to determine
16 how it will do that, when it will do that and in what order
17 it will do that. If all the parties were to have their way,
18 we will have hearings for three months.

19 COMMISSIONER CLARK: I think you're right. You
20 know, you're free to file another motion in this case and
21 have it ruled on to preserve the issue, but I do think that
22 the procedure that is being followed in the pay telephone
23 case is the way to go.

24 MR. CRESSE: Thank you, Commissioner, and we will
25 file the motion. I brought it up now solely because I think

1 you've got a cross-subsidy docket that's already open.
2 There's a hearing set for that in early month and this is an
3 issue we were going to file, and since you were discussing
4 it, I thought it appropriate to bring it up now.

5 I told the Staff after the last hearing that we
6 were considering filing a motion that might shorten this
7 docket substantially, and I think it would shorten this
8 docket substantially because if you rule that it's not
9 sufficient evidence, as I'm suggesting that you should rule,
10 you will put the decision of alternative regulation off to a
11 subsequent, and what you'll have is a plain vanilla rate
12 case to deal with Southern Bell.

13 COMMISSIONER CLARK: Okay. Now where do we go?

14 MS. NORTON: The second issue, Commissioner, there
15 is an issue that Staff has proposed that reads: "Should
16 AT&T be required to flow through any switched access charge
17 reductions approved in this case?"

18 If I can summarize, Staff would like this issue,
19 and AT&T requests that this be made a PAA. And Staff
20 believes that it should not be made a PAA.

21 COMMISSIONER CLARK: Well, okay.

22 MR. TYE: Commissioner Clark, contrary to
23 assertions --

24 COMMISSIONER CLARK: Let me see if I can shorten
25 this up just a minute. Why -- I mean I have to -- looking

1 at that, I seem to recall that we were no longer going to
2 impose upon AT&T the requirement that they flow through
3 access charge reductions. Am I wrong?

4 MS. NORTON: Commissioner, in the AT&T forbearance
5 docket the Commission ruled that there would no longer be
6 automatic flow-throughs. In previous -- until that time the
7 policy was in place that there would be an automatic flow
8 through of switched access charge reductions. That ruling
9 in the AT&T forbearance docket changed the automatic aspect
10 of it, but the Commission stated, and the order reads that
11 it does not preclude the Commission from addressing it on a
12 case-by-case basis.

13 COMMISSIONER CLARK: Okay. Now given that, why
14 shouldn't it be a PAA?

15 MS. NORTON: Staff's -- we're going to hearing.

16 COMMISSIONER CLARK: This is a hearing on Southern
17 Bell, not on AT&T.

18 MS. NORTON: Yes, but is there any -- our logic
19 was: Is there any reason, given that we're having a
20 hearing, that this should be made a PAA?

21 COMMISSIONER CLARK: I guess, are you intending for
22 AT&T to provide testimony in this docket on this issue?

23 MS. NORTON: Presumably, yes.

24 COMMISSIONER CLARK: Mr. Tye?

25 MR. TYE: Commissioner Clark, the issue goes

1 beyond, I think, what is initially stated. It's Issue 38 on
2 Page 13 of Staff's issue. It's not only "Should ATT-C be
3 required to flow through any switched access charge
4 reductions approved by the Commission in this case," but
5 also says that, "If so, to what ATT-C services and in what
6 proportion should they be flowed through?"

7 Now, I think you're exactly right. In the
8 forbearance case, the Commission dispensed with the
9 previous requirement that AT&T flow through all access
10 charges. And on Page 27 of your order in that docket, you
11 say this: "ATT-C is currently required by Order 19758 to
12 flow through reductions in access charges. We find it
13 appropriate to discontinue this requirement prospectively
14 because we find that there is sufficient competition in the
15 intrastate interexchange telecommunications market to assure
16 fair, just and reasonable rates without this requirement."
17 And then you add: "This does not preclude consideration of
18 such a requirement on a case-by-case basis."

19 Basically, I think what you decided, and after
20 reviewing the transcripts at special agenda -- and I was
21 there that day -- I think you decided that the market will
22 flow through on its own access reductions, and it ought to
23 be allowed to work.

24 I think that the last sentence in that order was
25 put in in case there was some evidence to indicate the

1 market wasn't doing that. And there hasn't been any
2 evidence that that is the case. We haven't had an access
3 reduction under the forbearance order yet so we can even
4 tell.

5 Another purpose of your forbearance decision, I
6 think, was more or less to equalize regulatory treatment of
7 interexchange carriers. This issue goes strictly to AT&T.

8 Now, if this issue stays in Southern Bell's rate
9 case, I think AT&T will be compelled to retry the
10 forbearance case in this docket. I don't think anybody
11 wants that. I don't think AT&T wants that. I don't think
12 the Commission wants that and I don't think that Southern
13 Bell wants that.

14 We spent a lot of time on the forbearance case.
15 The Commission spent a lot of time on it. There was a lot
16 of evidence in it. I think you need to allow that order to
17 work.

18 In the GTE case, this issue came up, and it was
19 designated a PAA. Now, in all fairness to Staff, I have to
20 admit that one of the reasons that it was designated a PAA
21 in that case was that the issue was not proposed by Staff
22 until after AT&T had filed its testimony. So there was a
23 due process argument there, and we sat down with Staff and
24 basically cut a deal to allow it to go in as a PAA.

25 My view is that if it goes in at all in this case,

1 it should be a PAA, as a matter of judicial economy.

2 COMMISSIONER CLARK: Is that to avoid retrying the
3 forbearance?

4 MR. TYE: Yes, ma'am, there's a matter of judicial
5 economy here. The Commission has decided the issue. I
6 don't think we should have to retry this case every time
7 there's a LEC rate case. And essentially that's what Staff,
8 I think, would like to do. That's not a good -- that's not
9 a good procedure for the Company, the Commission or the
10 parties.

11 If it's a PAA, then the Commission can look at it
12 in the context of whatever you voted to do with access
13 charges in this case. You may vote to do nothing with
14 access charges in this case. That would be a bad decision,
15 but if that was the case, then this issue would be moot.

16 COMMISSIONER CLARK: It seems to me it would be
17 more consistent with our previous decision to not have this
18 as an issue for this reason: I think my recollection of our
19 rationale was let's recede even further from the regulation
20 of the dominant carrier and see if competitive pressures
21 will replace that regulation. What I would rather do in
22 this case is not have it as an issue at all and let -- and
23 do what the order suggests, see how it plays out, and then
24 we can -- you can bring it back before the Commission to
25 say, Commissioners, you know, we instituted this significant

1 switched access charge reduction, and we've seen it not
2 reflected in the rates AT&T is charging, and for that reason
3 we now think you should order it. I think there are enough
4 issues, and it can be handled later, that we should do
5 that. And for that -- my preference would be to take it
6 out.

7 MS. NORTON: Are you suggesting then that it would
8 be a docket opened by Staff subsequent to this, as a
9 completely separate proceeding?

10 COMMISSIONER CLARK: Yes, and I think you could do
11 that under the order in the forbearance docket.

12 MR. TYE: Commissioner, I think the forbearance
13 docket is designated as oversight to be revisited prior to
14 January 1, 1996, I think. I think what you're suggesting --

15 COMMISSIONER CLARK: Let's take Issue No. 2 out.

16 MR. TYE: Thank you.

17 COMMISSIONER CLARK: No. 3. Robin, what is the
18 next issue we need it take up?

19 MS. NORTON: The next issue is Public Counsel's No.
20 14: How should software additions be treated? And the
21 Commission -- Public Counsel would like this in as an issue,
22 and it's Staff's position that since the Commission ruled in
23 the United rate case that this issue should be addressed in
24 a generic docket, Staff believes this issue does not need to
25 be in here.

1 COMMISSIONER CLARK: Mr. Beck?

2 MR. BECK: Nothing in the United case said that --
3 would preclude anybody in any cases from raising this
4 issue. We have an issue about the accounting treatment of
5 software additions. We will propose an adjustment to
6 Southern Bell's revenue requirement. That, in turn, would
7 affect Southern Bell's rates that you set in this case. If
8 you preclude us from having this issue, you'll be setting
9 Southern Bell's rates too high in our opinion. What the
10 Commission did in the United case simply doesn't preclude us
11 from raising the issue here.

12 Inside wire is a similar area. We've raised inside
13 wire in the United case, in the GTE case, in the Centel
14 case. All of those are issues in that case. We are
15 disappointed in the Commission's decision putting it off to
16 another date because, to the extent you don't address the
17 issue in the case, rates are set too high and the Company
18 wins, simply by the Commission saying we're going to address
19 it in a generic docket.

20 Nevertheless, we're being allowed to litigate that
21 issue on a case-by-case basis. The same should be true for
22 this. It would be inconsistent to not have this issue here
23 while having inside wire be present in all the other rate
24 cases.

25 COMMISSIONER CLARK: Anyone else who wants to speak

1 in favor of incorporating this issue?

2 Is the Company in opposition to this?

3 MR. ANTHONY: The Company's position is the same as
4 the Staff's; that the Commission, in your order in the
5 United case, has already decided that these are issues that
6 should not be cited on a case-by-case basis, but in a
7 generic docket, just a waste of resources and time to have
8 to litigate this and then have you, again, I assume, to be
9 consistent, spin this off in a generic docket when that's
10 your stated intent in an order.

11 COMMISSIONER CLARK: What exactly did the United
12 order say? Here's my dilemma, I think that in this case, as
13 part of a rate case, you would look at the appropriate
14 treatment of an expense, and notwithstanding the fact that
15 you want to look at something on a generic basis, until you
16 do look at it on a generic basis and formulate some policy
17 that at some point gets adopted in a rule, you do have to
18 look at it in the case.

19 MR. ANTHONY: I think, Commissioner Clark, that
20 there may be two separate issues here. If Public Counsel
21 had taken the position that Southern Bell is spending too
22 much money on software, and that it's an imprudent
23 investment, that certainly is an appropriate issue for this
24 rate case, and we don't dispute that for a second.

25 COMMISSIONER CLARK: We're looking at

1 capitalization versus expenses.

2 MR. ANTHONY: Exactly, and maybe if I could read to
3 you your order in the United case that's on Page 20, it
4 says, "We believe that the Company's accounting treatment
5 for software is appropriate and that it does not violate
6 Part 32. However, we also believe that nothing in Part 32
7 precludes this Commission from setting an accounting policy
8 for software costs for regulatory purposes. But we realize
9 that this issue has far-reaching implications for any
10 company and industry that purchases items of plant that are
11 software based. Accordingly, we find that this issue shall
12 be pursued in the context of a generic investigation." And
13 it's that issue that I don't think is appropriate in this
14 rate case.

15 COMMISSIONER CLARK: Let me ask you this,
16 Mr. Anthony. It seems to me the OPEBs is, arguably, in the
17 same position, but we are hearing testimony on that; that is
18 whether or not we should recognize the accrual or not. And
19 it seems to me that because the issue is ripe with respect
20 to your Company, that another party ought to have the
21 opportunity to present its case -- Let's assume you're
22 expensing it -- present a case that it should be
23 capitalized. And we may yet reach the same determination,
24 that it's still something we need to look at. But they may,
25 alternatively, present a strong case that in this instance

1 it should be capitalized. It's a matter of timing. And it
2 seems to me with the OPEBs we were faced with continuing
3 issues with respect to that, and this, in my mind, falls
4 into the same category.

5 MR. ANTHONY: I think that the reverse of what
6 Public Counsel has stated is also true for the Company, that
7 to the extent you find something ought to be capitalized
8 rather than expensed in Southern Bell's rate case, and then
9 in the generic docket, you decide, no, that wasn't the right
10 decision, it ought to be expensed rather than capitalized,
11 the Company has lost those revenues, and there's nothing
12 that you can ever do to ever return those. I think you've
13 already decided that it ought to be something that looks at
14 -- is looked at across the board, because it affects more
15 than just one company. Apparently -- I don't know how
16 United treated it for accounting purposes.

17 COMMISSIONER CLARK: Expensed it.

18 MR. ANTHONY: So I assume it's probably similar to
19 what Southern Bell is doing, given Public Counsel's stated
20 position. It seems to me that you've already made some
21 initial determination on this generic type of issue, and if
22 there are some differences, then maybe those can be
23 addressed. But the general issue about how this should be
24 treated for all the companies is something that shouldn't be
25 decided on a case-by-case basis, especially if you've

1 already determined that it's something that should cut
2 across all the companies, and that's why I think it ought to
3 be held for that generic docket.

4 MS. JOHE: Commissioner Clark, I believe that the
5 issue of capitalizing or expensing software in OPEBs are two
6 separate issues. If you talk about software, Part 32 is
7 written vague. It's allowing the Company -- when we were
8 investigating United, we ran across -- the Companies are
9 treating software differently, and that is the reason why we
10 went to the agenda with the recommendation Staff had made,
11 was that we felt that it was more appropriate to address it
12 in a generic basis, because companies are treating it
13 differently. FCC has written orders where it leaves room
14 for companies' discretion as to how they want to treat it,
15 and we feel maybe --

16 COMMISSIONER CLARK: Let me ask you this:
17 Shouldn't a party have the opportunity to come in in this
18 rate case to present to the Commission evidence on a
19 particular software dollar amount that, at least with
20 respect to that one, it ought to be capitalized?

21 MS. JOHE: I guess I feel that if we want to
22 address one purchase of one particular software, where a
23 company is expensing, if the Commission felt like it should
24 be capitalized, then the same rule should apply to all LECs,
25 rather than just segregating Southern Bell at this time, or

1 United in the last rate case, because they're not in
2 violation of Part 32. And if you want to change an
3 accounting procedure for one company, then that should apply
4 to all LECs rather than just one company individually.

5 And this has implication to electric industry, as
6 well, because there is a lot of software expenditures
7 involved in electric.

8 COMMISSIONER CLARK: Angela, do you have anything?

9 MS. GREEN: Well, I think that if you want to allow
10 evidence to be presented on it, you certainly can do that.
11 And Staff's view, we heard a message from the Commission in
12 the last decision, that is in the United case.

13 COMMISSIONER CLARK: Well, the fact that we need to
14 address it on a generic basis, I don't think, in this
15 instance, should preclude it from being an issue in this
16 case. If there are -- I think Southern Bell should provide
17 information as to why its additions were treated this way
18 and argue with respect to its interpretation of accounting
19 procedures, just as was done in United, and then I think
20 Public Counsel should have the opportunity to argue the
21 other way. And it's just -- some of it may be repetitive,
22 but I think it will be helpful, not only in this docket, but
23 also in the rulemaking docket, because we will have had
24 specific expenses or dollar amounts we can look at, and, at
25 least for me, that makes it sort of -- gives a real life

1 example that you then can compare your rationale to. So I'm
2 going to allow that as an issue. And it's No. 4 is the
3 final --

4 MS. NORTON: Yes, but I believe it's going to
5 expand a little bit. Let me see if I can summarize this
6 well. No. 4, the proposed issue is: Is the Company's
7 inside wire maintenance program an effectively competitive
8 service, or subject to effective competition?

9 Commissioner, if you'll turn to Issues 20a and b on
10 Page 5 of the issue list, it was Staff's understanding,
11 coming out of the issue I. D. workshops, that the parties
12 had agreed that issues 20a and 20b would be in as issues.
13 In the United case, the Commission did address these two
14 issues and its decision was to go to rulemaking. Staff had
15 put these issues in, into this case, to follow along the
16 same track. It was our understanding that the parties
17 agreed on this, however, at the last issue I. D. meeting,
18 FCTA, and I believe Mr. Cresse, wanted to have an additional
19 issue, which is currently Issue 20c, about the effectiveness
20 of competition of inside wire maintenance.

21 Now I understand that Southern Bell would like to
22 take issue with the existence of the -- the existence of
23 Issues 20a and b. It would seem to me that consistent with
24 your -- the ruling you just made, that 20a and b should stay
25 in. Southern Bell would probably want to argue that.

1 Nevertheless, Staff's position is that the issue before you
2 here on the effectiveness of competition would not be
3 appropriate as an issue simply because we would need to rule
4 on the other two issues before we could ever address it. So
5 I don't know if you want to --

6 COMMISSIONER CLARK: We would have to rule on a and
7 b?

8 MS. NORTON: Currently inside wire maintenance is
9 deregulated. We treat it as an effectively competitive
10 service. My understanding in the United rate case was that
11 the Commission determined it needed to go to rulemaking. So
12 you modify the rule that deregulates inside wire maintenance
13 in order to be able to address it, as to whether it's
14 effectively competitive or not. That would stand -- that
15 would be the same in this case.

16 So I think what you need to decide now is should
17 Issues 20a and b be in here, and then separately, should
18 20c.

19 COMMISSIONER CLARK: Let me be clear. Does
20 Southern Bell want to speak in favor of taking 20a and b
21 out?

22 MR. ANTHONY: Yes, ma'am. I think as Ms. Norton
23 has stated, it's our position that we don't believe that it
24 is something that's appropriate for this rate case. Again,
25 it is something that the FCC, back in '86, I believe it was,

1 told state commissions to do some things. As a consequence,
2 it was -- inside wire was deregulated. And a rule was
3 enacted to do that, I believe.

4 Since that time there's been some question about
5 the FCC's authority to pre-empt a state commission to do
6 that, but in the United case when that issue was raised it
7 was decided that because of all the background and the
8 effect that this would have across the board, that it would
9 be inappropriate to treat this on a case-by-case basis, to
10 have the possibility of imputation of inside wire revenues
11 and expenses for one company and not for others, and that
12 the best way to handle this was to take it on a generic
13 basis.

14 I think the argument is even stronger here than it
15 was for the software issue, where you have rules and the
16 like that are already out there, that it's just not
17 appropriate to start making exceptions to rules on an
18 individual company basis. This is something that ought to
19 be handled across the board for all companies and we have no
20 objection to discussing that on a generic basis. We don't
21 think it ought to happen, but that's something we can save
22 for that time. It's not an appropriate issue for this rate
23 case in our opinion.

24 And then Issue 20c, which I guess is the Issue 4 on
25 this one page, if it's deregulated and you decide to leave

1 it in that fashion until a generic docket, then we already
2 have all the part X requirements that apply to it and there
3 are safeguards, so I don't think it's necessary to discuss
4 in this rate case. And so we would object.

5 COMMISSIONER CLARK: Which is the accounting
6 requirements --

7 MR. ANTHONY: I'm sorry?

8 COMMISSIONER CLARK: Let me be clear. Was inside
9 wire treated the same way as CPE originally, in that you had
10 to have a separate subsidiary?

11 MR. ANTHONY: No, it was never required to be in a
12 separate subsidiary. It's always been offered on an
13 integrated basis, but it's always been offered with the part
14 X allocations of overhead wiring.

15 MR. BECK: Commissioner, briefly, this matter was
16 an issue in the United rate case, it was an matter in the
17 GTE rate case. It is an issue in the issues list for the
18 Centel rate case. It would be quite an anomaly to preclude
19 that from being an issue in this case, having been an issue
20 in three rate cases. The same arguments, of course, apply
21 to this software that apply here, that we have an
22 adjustment, we're going to propose Southern Bell's rates
23 will be too high if you did not make the adjustment we're
24 going to propose, in our opinion.

25 More over, Southern Bell is different than the

1 other companies. We have substantial evidence of fraudulent
2 activities related to inside wire maintenance and the use of
3 monopoly billing services to perpetuate those frauds.

4 This brings -- again, the problem we have with your
5 initial ruling is that you can't bifurcate this hearing, and
6 we feel that some of these activities are inextricably
7 interrelated to the inside wire maintenance. That's all I
8 have.

9 MS. GREEN: Are you speaking just to 20a and b?

10 MR. BECK: About whether it should be regulated?

11 COMMISSIONER CLARK: Yes. You are supporting the
12 inclusion --

13 MR. BECK: Yes, I'm saying that we have evidence
14 that's different from Southern Bell than we did for the
15 other companies.

16 COMMISSIONER CLARK: I think she was just asking
17 clarification because Issue 4 is FCTA's issue.

18 MR. BECK: I'm speaking of 20a and b, and I don't
19 oppose the FCTA's issue. I think it's appropriate also.

20 COMMISSIONER CLARK: Mr. Dunbar? (Pause) Is this
21 Mr. Cresse's issue?

22 MR. DUNBAR: In large measure, yes, Commissioner,
23 but you had asked earlier when he was here if we had
24 addressed some of the specifics, and this is one of them.

25 I do detect some note of irony when we're in a

1 proceeding that's governed within one specific section of
2 the statute, extraordinary and very special, special rules,
3 special criteria, an individual company asking for something
4 that's unique in a regulatory environment, and then they say
5 -- and the reason that they're in their direct testimony is
6 that they have found themselves in this new competitive
7 environment, probably haven't had reason to look at the
8 direct testimony yet, but basically that's one of the
9 linchpin foundations, the reason that they're here. And
10 then to say, no, I don't want to talk about any of the
11 competitive issues and I don't want to talk about -- it's
12 not right to talk about this individual company with regard
13 to this service, nor is it right to talk about this
14 individual issue, and let's pass it off into some generic
15 black hole.

16 Well, as strongly as I can say it, we'd like to
17 keep the issue in, and we think that it's appropriate,
18 particularly because of the type of regulation they are
19 asking for. It might be fine to retreat to the more
20 deliberate approach on dealing with competitive services and
21 how we define them if we were in a traditional rate forum.
22 We are not. This is specific under 364.036. One of the
23 required linchpins of the Commission is to address the
24 safeguards. We're not even going to talk about the
25 services. It seems that that we're really not following the

1 road map that the Legislature has given us if we're going to
2 allow this type of regulation.

3 COMMISSIONER CLARK: Let me ask a question, is the
4 FCC's outstanding position, at least the last position or
5 last pronouncement on this was it will be deregulated, and
6 handled through part X allocations?

7 MR. ANTHONY: That was the -- for interstate
8 purposes, yes.

9 COMMISSIONER CLARK: So in effect, in my mind, the
10 FCC pre-empted any decision we need it make with respect to
11 whether it's competitive or effectively competitive because,
12 in effect, it's already out of the loop. Now are you
13 suggesting by this recommendation that it be taken back in
14 and treated as a monopoly service? Is that the purpose of
15 this issue?

16 MR. DUNBAR: That would certainly be one of them,
17 Commissioner, but should you reregulate it in anyway, or --
18 if we determine that there are not adequate safeguards with
19 regard to how this service is offered and delivered, then
20 the whole test of their ability to have alternative
21 regulation falls. It's one of the required legs, that is
22 that there are adequate safeguards here. I think one of the
23 reasons it keeps appearing in this docket and in the others
24 is there's questions on how this business is carried out.

25 COMMISSIONER CLARK: Are you arguing that the

1 safeguards imposed by the FCC are not adequate with respect
2 to the allocation of cost for inside wire?

3 MR. DUNBAR: (Pause) Am I arguing that --

4 COMMISSIONER CLARK: Yeah, because it seems to me
5 that you've sort of asked a --

6 MR. DUNBAR: I'm trying to bring it within Florida
7 Statutes, Commissioner. I don't -- FCC --

8 COMMISSIONER CLARK: Well, let me --

9 MR. DUNBAR: Protocols. We have to call it
10 something. We've had this -- it appears in the other cases,
11 as well as this one, we're in a competitive environment,
12 telecommunications is competitive, and -- but we haven't had
13 the Commission hang a title on this particular service,
14 therefore, even though it is competitive, it really isn't
15 competitive to trigger all these provisions of the section.
16 We'd like you to address this service, is it a risk, and
17 that's, I guess, the reason for asking the question, as
18 opposed to disagreeing with or agreeing with something that
19 the FCC has put out.

20 COMMISSIONER CLARK: I guess my response is it has
21 already been addressed by the FCC and determined to be a
22 competitive service. That's why it was deregulated.

23 MS. BUTLER: Commissioner, I need to correct some
24 information that you have regarding what the FCC's decision
25 is on that because they've sort of changed over time, and

1 there is a case recently, I think it was in California,
2 where they've imputed inside wire maintenance and expenses
3 above the line, and the FCC found that that was appropriate.

4 COMMISSIONER CLARK: Okay.

5 MR. BECK: I think, in fact, Commissioner, the most
6 recent rulings of the FCC allow you to set prices. It's
7 been quite sometime that they've allowed you to impute the
8 revenues and expenses above the line. We support the FCTA.
9 We think if you're going to treat it as unregulated, then it
10 needs to meet the criteria of the statute, and that's what
11 their issue addresses.

12 MR. ANTHONY: Commissioner, I still think that you
13 are correct. In their finding that it was competitive, they
14 simply said that in light of some court cases they couldn't
15 pre-empt the states in how they handled it, but the FCC did
16 find, in their opinion that it was a competitive service.
17 Now whether -- how you treat it is, up to a point, within
18 your control, but it is deregulated. It is subject to
19 extensive protection. I find it curious, we were talking
20 about irony, that the cable TV industry is so worried about
21 competition in light of recent congressional actions, but
22 nonetheless, it is competitive and it is protected and it is
23 something that you -- the Commission, as a corporate body,
24 decided to address as a generic issue because of the effect
25 that it would have to all 13 local exchange companies.

1 MR. TWOMEY: Commissioner? May I address this
2 issue? First, let me say, I find that -- to use the word
3 again -- "ironic" that Southern Bell would be concerned
4 about wanting to be lumped together with the other companies
5 in terms of a generic decision, or a rule, given the fact
6 that they, and they alone, have experienced a unique form of
7 regulation for the last four or five years, and the fact
8 that they are asking for something that is equally unique,
9 and moreso on a going-forward basis.

10 Now, we support -- Attorney General supports the
11 notion that the issue of inside wire maintenance should be
12 heard in this case. Whether or not there was any admission
13 of any problem or anything, the inside wire was a major part
14 of the settlement reached by this Company recently. The
15 revenues involved are substantial. The billing, we believe,
16 and want to make an issue of the fact that the billing that
17 Southern Bell has for inside wire is, per se, misleading the
18 way it's located in the bill.

19 As to whether or not it is competitive, if the FCC
20 allows you to impute the revenues and the expenses and also
21 to set the rates, it seems to me you need to determine
22 whether it's competitive. If it's not competitive, it is a
23 monopoly. And if it's a monopoly service, then you should,
24 in fact, set the rates for it and you should include the
25 expenses and the revenues. So we would support the

1 inclusion of all three of the issues.

2 COMMISSIONER CLARK: Clarify for me, is there
3 another decision that allows the setting rates for inside
4 wire?

5 MS. BUTLER: Yes.

6 COMMISSIONER CLARK: And the FCC has taken no
7 action?

8 MS. BUTLER: I read an FCC order and I can't
9 remember exactly when it was, but I know that one of the
10 things that they said in that order was that they thought it
11 was okay for states to set prices for inside wire.

12 MR. BECK: Commissioner Clark, it's an FCC order.
13 In fact, Mr. Poucher, from our office, has been testifying
14 to it and it's been attached to his testimony in the recent
15 rate cases.

16 COMMISSIONER CLARK: Angela, do you have a
17 recommendation on this?

18 MS. GREEN: One of the things you need to keep in
19 mind is that the Commission has adopted a rule on how the
20 companies are to deal with the inside wire, and it
21 specifically deregulated -- inside wire, the provision of it
22 and the maintenance as well, has been deregulated by this
23 Commission for intrastate purposes. So it would seem that
24 the logic that you applied in the previous issue dealing
25 with software is probably the appropriate -- or is just as

1 appropriate here. I think that would go to 20a and b.

2 However, I think c is in a somewhat different
3 posture in light of the rule.

4 COMMISSIONER CLARK: Well, let me ask you this: In
5 order to reach a conclusion that inside wire should be
6 brought above the line, and its installation and maintenance
7 should be regulated, is the other side of a decision that --
8 is the same thing as deciding it's not effectively
9 competitive or subject to effective competition?

10 MS. GREEN: Not necessarily.

11 COMMISSIONER CLARK: Okay.

12 MS. GREEN: I think that the unique circumstances
13 that have been mentioned a number of times in this docket
14 are certainly relevant and may or may not have anything to
15 do with the specific finding under Section 338 of the
16 statute.

17 COMMISSIONER CLARK: I tell you what, I need to now
18 get ready and go into agenda. What I would like to do is I
19 will -- I need further time to think about this, but I'll
20 certainly have a decision by Friday. Is that adequate?

21 MS. GREEN: I think it might be useful in your
22 deliberations to ask the parties to take the revised Staff
23 issue list that was distributed today and to identify, if
24 they would like to have additional input, those issues that
25 they believe would have to be held in abeyance with the

1 Public Counsel issues that you were addressing earlier, and
2 at least you would have that to consider and maybe to have
3 them submit that no later than Thursday, close of business,
4 and you would have that available to you.

5 MR. LACKEY: Commissioner, there are still two or
6 three other issues that didn't make the Staff's list that we
7 have a dispute about. We had a big discussion about whether
8 they should be taken to the prehearing officer or not.
9 Southern Bell's position was that they were inappropriate in
10 this case and should be taken. They didn't make the Staff's
11 list, but they're still in dispute nevertheless.

12 MS. GREEN: Which ones are those, Mr. Lackey?

13 MR. LACKEY: They're the ones under the cross-
14 subsidy heading. As I mentioned when Commissioner Clark
15 called on us a while ago, we don't understand and don't see
16 the purpose of having those issues in this proceeding.

17 I know you've got to go to this agenda.

18 COMMISSIONER CLARK: Can you direct me to
19 something?

20 MR. LACKEY: Page 11, Issue 33. Let me give you
21 the 15-second explanation on 33a, and perhaps you'll see my
22 point. The issue is: Should Southern Bell be permitted to
23 cross-subsidize their competitive or effectively competitive
24 services?" We're going to say no, everybody is going to say
25 no and the Commission isn't going to learn anything out of

1 this issue because we all of have a different definition of
2 cross-subsidy and that's the subject of a different docket.

3 I mean it just -- we've already filed our testimony
4 in this proceeding. All we can do is file rebuttal now,
5 when we get the opportunity, and here's an issue that I
6 don't even know if it's going to be raised, but the -- I
7 don't know if anybody is going to file testimony that's
8 going to address this issue, but even if they do, it cannot
9 possibly convey any meaningful information to this
10 Commission in view of the cross-subsidization docket. We
11 just don't think it ought to be in here, and I've got the
12 same argument, essentially, for 33b and 33e in terms of the
13 information that they're going to convey to the Commission,
14 whether they're going to be useful in resolving anything in
15 this docket.

16 And we also had a rewording on 119d, but we can
17 talk to the Staff about that. I think it's one we
18 overlooked when we were talking at the prehearing
19 conference. Issue stays the same, we just need to, perhaps,
20 take out the word "subsidized" and rephrase it. But I can
21 handle that with the Staff, I think, but I can't deal with
22 these cross-subsidy issues without your help.

23 MR. DUNBAR: Commissioner, one of the seven tests
24 is includes adequate safeguards to assure that rates for
25 monopoly services do not subsidize competitive services.

1 It's one of the clear tests the Commission has to address if
2 they are going to allow alternative rate regulation. It
3 amazes me that the Company wants to so casually cast it
4 aside.

5 MR. LACKEY: Perhaps he wasn't listening. I said
6 we'd all say no to it, I'm sure.

7 MR. DUNBAR: I'm sorry. I didn't mean to --

8 COMMISSIONER CLARK: Look at the issue,
9 Mr. Dunbar. It says should Southern Bell be permitted, and
10 I think what you're saying is what the statute says, they
11 can't. So everybody is going to answer it the same way. I
12 think the question is --

13 MR. DUNBAR: We've even offered to stipulate to
14 that, Commissioner.

15 COMMISSIONER CLARK: -- is Southern Bell
16 cross-subsidizing their effective and effectively
17 competitive, and that gets back to the discussion I had with
18 Mr. Cresse.

19 You know, I don't see how the issue, as worded,
20 leads to any meaningful conclusion with respect to this
21 docket. We can leave it in and everyone can answer no.

22 (Pause)

23 And the same argument goes for 33b, did you say?

24 MR. LACKEY: The issue of "Should Southern Bell's
25 basic telephone service rates be based on the most cost

1 effective means of providing it?" Well, I mean we can
2 probably all agree, sure, but what's the most cost
3 effective? I mean how does that convey any meaningful
4 information to the Commission about what they are -- about
5 the decision they need to make in this proceeding?

6 COMMISSIONER CLARK: And I -- I'm not sure that I
7 agree with your -- that 33e falls into the same category.

8 MR. LACKEY: The issue there is I thought perhaps
9 what we were talking about was fiber with copper. The way
10 the issue is worded, has a replacement of -- wait a minute,
11 it's been changed. I'm sorry. I overstated my case. Last
12 time I saw this, it didn't have fiber in there, did it?

13 MS. NORTON: Right, no, it didn't.

14 MR. LACKEY: I'm sorry, I got in a hurry too. I
15 take it back what I said about 33a. Ms. Norton tricked me.

16 COMMISSIONER CLARK: Mr. Dunbar, doesn't 33c at
17 least address some of your concerns with respect to 33a?

18 MR. DUNBAR: Yes, and actually, there is -- it is
19 found similarly in 31f.

20 COMMISSIONER CLARK: I really don't see how 33a is
21 going to accomplish any meaningful result.

22 MR. DUNBAR: Commissioner -- and I don't mean to
23 keep you from agenda, but in the United case, three of the
24 five Commissioners, in the dialogue with Mr. Gillette during
25 that testimony, if you might recall, expressed some concern

1 and/or desire that perhaps in order to allow the competition
2 to foster itself in this environment, that maybe some type
3 of subsidization should occur. And we talked about that on
4 and off and whether or not the function that a cable
5 company, by way of example, had in the marketplace and
6 things of that nature. Then when the final order was
7 issued, there was simply no position taken by the Commission
8 as a result of any of that.

9 So we would like a confirmation from the Commission
10 that either that is a dead issue, that is subsidization will
11 not occur, and that is your understanding of what the law
12 says, or that it might occur under some circumstances.

13 COMMISSIONER CLARK: Well, again, it seems to me
14 the better mode of making decisions is when you have a
15 specific service in front of you and you look at it from
16 that per -- with a specific set of facts before you through
17 which you can weigh the pros and cons and what ultimately
18 serves the public good. It doesn't seem to me that this
19 sort of across-the-board issue would get to it, especially
20 the way it's worded.

21 MR. DUNBAR: Commissioner, while I disagree with
22 the approach, I understand you can interpret the statute
23 that way when you're dealing with traditional rate
24 regulation. I think within the four corners of this section
25 that it's not a correct reading of the statute that you can

1 take this very deliberate approach of not addressing the
2 broader subject of cross-subsidization and effective and
3 effectively competitive services. I do not think that
4 364.06 allows you the same latitude that we have used in the
5 other circumstances, and I disagree with it being used
6 there, but I --

7 COMMISSIONER CLARK: Okay, you still want 33a and
8 33b to remain in?

9 MR. DUNBAR: Yes, Commissioner, I would like that.

10 COMMISSIONER CLARK: Okay, is there anything else?
11 What about Staff's new issues?

12 MS. NORTON: I hope the parties have read those. I
13 don't believe that they are controversial. One is a
14 standard issue. It was just an oversight not to put it in,
15 about reconciling billed to book revenues. The other is
16 just sort of a note, we've got an issue that deals with the
17 revenues to be disposed of and the issues to be disposed of
18 in 880069.

19 COMMISSIONER CLARK: Okay, as a result of the
20 docket today?

21 MS. NORTON: Yes. So I think that's all that Staff
22 had.

23 COMMISSIONER CLARK: Okay.

24 MR. DUNBAR: Thank you.

25 MS. GREEN: Would you like any type of followup

1 filings from anyone here today?

2 COMMISSIONER CLARK: No, I do not. We can carry
3 this out too long. I will certainly try to get -- is Friday
4 going to be soon enough to --

5 MS. GREEN: I don't know that your schedule would
6 allow you to do it any sooner.

7 COMMISSIONER CLARK: Okay. Thank you.

8 (Hearing concluded at 9:35 a.m.)

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CERTIFICATE

1
2 State of Florida)
3 County of Leon)

4 I, LISA GIROD JONES, Registered Professional
5 Reporter, and Notary Public in and for the State of Florida
6 at Large, at Tallahassee, Florida, do hereby certify as follows:

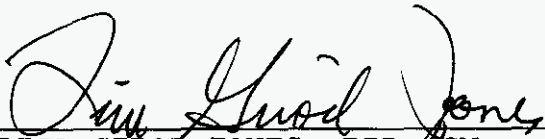
7 THAT I correctly reported in shorthand the
8 foregoing proceedings at the time and place stated in the
9 caption thereof;

10 THAT my shorthand notes were reduced to typewriting
11 with the use of computer-aided transcription, and that the
12 foregoing pages, 1 through 66, both inclusive, contain a
13 full, true and correct transcript of the proceedings on said
14 occasion;

15 THAT I am not a relative or employee or attorney or
16 counsel of any of the parties or attorneys connected with
17 the action, nor am I financially interested in the action.

18 DATED THIS 22nd DAY OF October, 1992.

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LISA GIROD JONES, RPR, CM
Notary Public, State of Florida
at Large.

My commission expires: 5-11-93