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BEFORE THE

FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of : DOCKET NO. 920260-TL
 Comprehensive Review of the :
 Revenue Requirements and Rate :
 Stabilization Plan of SOUTHERN :
 BELL TELEPHONE AND TELEGRAPH :
 COMPANY :

Show Cause Proceeding Against :
 SOUTHERN BELL TELEPHONE AND : DOCKET NO. 900960-TL
 TELEGRAPH COMPANY for :
 Misbilling customers. :

Petition on behalf of Citizens :
 of the State of Florida to : DOCKET NO. 910163-TL
 Initiate Investigation into :
 Integrity of SOUTHERN BELL :
 TELEPHONE AND TELEGRAPH :
 COMPANY'S Repair Service :
 Activities and Reports. :

Investigation into SOUTHERN :
 BELL TELEPHONE AND TELEGRAPH : DOCKET NO. 910727-TL
 COMPANY'S Compliance with :
 Rule 25-4.110(2), F.A.C., :
 Rebates. :

PROCEEDINGS: STATUS CONFERENCE
 BEFORE: COMMISSIONER SUSAN CLARK
 Prehearing Officer
 DATE: Friday, May 21, 1993

DOCUMENT NUMBER-DATE
 05682 MAY 25 88
 FPSS-RECORDS/REPORTING

1 **TIME:** Commenced at 10:00 a.m.
 Concluded at 10:45 a.m.

2

3 **PLACE:** FPSC Hearing Room 106,
 Fletcher Building

4 **REPORTED BY:** JOY KELLY, CSR, RPR
 Chief, Bureau of Reporting
5 Official Commission Reporter

6 - - - - -

7 **APPEARANCES:**

8 NANCY WHITE, 4300 Southern Bell Center, 675
9 West Peachtree Street, Northeast, Atlanta, Georgia,
10 30375, Telephone No. (404) 529-6351, appearing on behalf
11 of Southern Bell Telephone and Telegraph Company.

12 VICKI GORDON KAUFMAN, McWhirter, Grandoff &
13 Reeves, 315 South Calhoun Street, Suite 716,
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15 222-2525, appearing on behalf of Florida Interexchange
16 Carriers Association.

17 JERRY CURINGTON, Department of Legal Affairs,
18 Room 910, The Capitol, Tallahassee, Florida 32399-1050,
19 Telephone No. (904) 488-8253, appearing on behalf of
20 the Intervenor, Attorney General of the State of
21 Florida.

22 DONALD BELL, Foley & Lardner, Post Office Box 508,
23 Tallahassee, Florida 32302, Telephone No. (904) 222-6100,
24 appearing on behalf of American Association of Retired
25 Persons.

1 APPEARANCES CONTINUED:

2 RICHARD D. MELSON, Hopping Boyd Green & Sams,
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5 MCI Telecommunications Corporation.

6 MICHAEL W. TYE, 106 East College Avenue, Suite
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9 the Southern States, Incorporated.

10 C. EVERETT BOYD, JR., Ervin, Varn, Jacobs, Odom
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13 behalf of Sprint Communications Company Limited
14 Partnership.

15 CHARLES BECK and SUE RICHARDSON, Office of
16 Public Counsel, c/o The Florida Legislature, Claude
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19 488-9330, appearing on behalf of the Citizens of the
20 State of Florida.

21 ANGELA GREEN and TRACY HATCH, FPSC Division
22 of Legal Services, 101 East Gaines Street, Tallahassee,
23 Florida 32399-0863, Telephone (904) 487-2740, on behalf
24 of the Commission Staff.

25

P R O C E E D I N G S

(Hearing convened at 10:00 a.m.)

COMMISSIONER CLARK: Let's call this Status Conference to order.

I'm informed by the Staff what one of the motions that is pending is a Motion for Reconsideration of the Procedure Order from Southern Bell.

MS. GREEN: We might want to begin by taking appearances.

COMMISSIONER CLARK: Thank you. Let's take appearances.

MS. WHITE: Nancy White, for Southern Bell Telephone Company, 675 West Peachtree Street, Atlanta, Georgia.

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

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

MR. BECK: Sue Richardson and Charlie Beck, Office of Public Counsel, appearing on behalf of the Florida citizens.

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

1 Southern States, Inc.

2 MR. MELSON: Richard Melson, of the law firm
3 Hopping Boyd Green & Sams, appearing on behalf of MCI
4 Telecommunications Corporation.

5 MR. BOYD: Everett Boyd, of the Ervin law
6 firm in Tallahassee, on behalf of Sprint.

7 MS. GREEN: Angela Green and Tracy Hatch on
8 behalf of the Staff of the Public Service Commission.

9 MR. CURINGTON: Gerald Curington, appearing
10 on behalf of Robert Butterworth, Attorney General,
11 Intervenor.

12 COMMISSIONER CLARK: Jerry, if you could give
13 the court reporter a card so she can spell your name
14 right.

15 MR. CURINGTON: Okay.

16 COMMISSIONER CLARK: Okay. Angela, what is
17 the first order of business?

18 MS. GREEN: There are three motions that have
19 been filed for your consideration as the Prehearing
20 Officer.

21 The first one is a motion filed by Southern
22 Bell on May 3rd. And it requests that you grant a
23 limited reconsideration of your procedural order that
24 was entered in this docket, and that would be the order
25 of 930644 that was issued April 23rd '93.

1 There's been a response filed by the Citizens
2 in opposition to that motion.

3 COMMISSIONER CLARK: Okay. As I understand
4 it, Southern Bell has asked for authority to update the
5 original direct testimony until November 1st?

6 MS. WHITE: Yes, ma'am, that's correct.
7 That's one of the things we've asked for. The other
8 one was an extension of time on which to file rebuttal
9 testimony.

10 COMMISSIONER CLARK: Okay. What precisely do
11 you anticipate filing as updated information to the
12 direct testimony?

13 MS. WHITE: Commissioner Clark, because
14 Southern Bell will be filing its original direct
15 testimony on July 2nd, that's approximately seven
16 months prior to the hearing, we would like to file
17 updates to the direct testimony in order to provide
18 actual financial results for 1993 as far up as we can
19 have them.

20 COMMISSIONER CLARK: Well, what will that be?
21 What actuals will you have available for an update?

22 MS. WHITE: If we're given the November 1st
23 date, Commissioner, we would have through July of 1993
24 actual results. (Pause)

25 We would also have to amend the MFRs in order

1 to reflect the actual results.

2 COMMISSIONER CLARK: And what is your
3 justification? Just simply getting the up-dated
4 information?

5 MS. WHITE: Yes, ma'am, so that the
6 Commission can have the latest actual information
7 concerning the test year in order to assist it in
8 making its decision.

9 COMMISSIONER CLARK: And what is your
10 rationale for asking for extended time to file
11 rebuttal?

12 COMMISSIONER CLARK: The Staff's direct
13 testimony is due on November 22nd and the rebuttal
14 testimony is due on December 6th. That's a period of
15 two weeks with the major holiday of Thanksgiving
16 falling in between, and Southern Bell just does not
17 feel that it's an adequate time to analyze and prepare
18 a response to the issues that Staff raises. That is
19 why it is asking for an additional two weeks to file
20 the rebuttal testimony.

21 COMMISSIONER CLARK: You mean rebuttal to
22 Staff? What about rebuttal to the other?

23 MS. WHITE: Rebuttal to Staff. You know,
24 since the intervenor's direct is due on November 8th,
25 that's not the problem, it's the Staff's direct that's

1 due on November 22nd.

2 COMMISSIONER CLARK: So you don't have any
3 problem filing rebuttal to intervenors on that date?

4 MS. WHITE: No, ma'am.

5 COMMISSIONER CLARK: A month is adequate
6 time. (Pause)

7 Anything else you want to point out in your
8 motion?

9 MS. WHITE: No. Again, just that with regard
10 to the Staff's direct testimony, there is that major
11 holiday that falls in between the date that their
12 testimony is due and our filing date.

13 COMMISSIONER CLARK: Mr. Beck, do you want to
14 respond?

15 MR. BECK: Yes, please.

16 First, I guess it was the last item mentioned
17 by Southern Bell. As I understand it now, you're
18 asking for rebuttal testimony only to Staff to be
19 delayed but that you're going to file rebuttal
20 testimony to intervenors as contained in the schedule?

21 MS. WHITE: Well, no. I was responding to a
22 question by Commissioner Clark.

23 The main reason for asking for the delay is
24 because of the short time between the Staff's filing of
25 direct and the rebuttal date as it's set in the order.

1 MR. BECK: Commissioners, in response to
2 Southern Bell, first of all we oppose the date they
3 have requested for rebuttal.

4 As I understood their motion, they've
5 requested that all rebuttal be put off until December
6 20th, which is just right before the Christmas holidays
7 and only a few weeks even before the beginnings of
8 hearings. It would give us inadequate time to conduct
9 discovery. In fact, we wouldn't have time to go
10 through interrogatories and requests for production of
11 documents.

12 We have asked in our response that if you
13 grant any of the relief Southern Bell asked for that,
14 that you also order a two-week discovery turnaround on
15 whatever they put.

16 Last time or, I guess, in this case, the
17 first run-around, in Southern Bell's rebuttal
18 testimony, they put in a host of new adjustments. They
19 put in new matters in their rebuttal testimony. One of
20 them was unavoidable was the hurricane that occurred
21 after they filed the MFRs.

22 But my concern is that their scope of what
23 they file in rebuttal may actually go into new matters
24 because they've done it before. So we would ask you if
25 you grant this, that it be strictly limited to rebuttal

1 as well, what they file.

2 On the update that they have asked for,
3 they've asked to file their update on November 1st but
4 our testimony is due November 8th. We can't possibly
5 respond in that amount of time. Typically, we would
6 have to have our testimony completed. It would be a
7 very final draft or final version by the date they file
8 their updates. So we've asked that if you allow them
9 to do an update, that it be one month before that,
10 October 1st, and that the updates be strictly limited
11 to updating forecasted with actual data.

12 COMMISSIONER CLARK: What would be wrong with
13 doing updated forecasts with that actual data? I'm
14 confused as to why for July data it takes until
15 November 1st.

16 MS. WHITE: Well, Commissioner Clark, I'm
17 sorry, I don't pretend to understand how long it takes
18 to get the actual information. But what my witness is
19 telling me is that he can have July information, actual
20 financial information up through July as of November
21 1st separated out.

22 COMMISSIONER CLARK: Okay.

23 MS. WHITE: And, again, once the actual
24 information, actual financial results is received,
25 that's one thing, but then we also have to update the

1 MFRs with the actual financial --

2 COMMISSIONER CLARK: Did you request that in
3 your motion updating the MFRs? I had understood that
4 the motion only spoke to updating original direct
5 testimony.

6 MS. WHITE: Well, yes, ma'am. But when you
7 update the original direct testimony with the actual
8 information, we assume that the Staff would wish to
9 have the actual information reflected in the MFRs as
10 well.

11 COMMISSIONER CLARK: Mr. Beck, do you desire
12 to have the updated information, the July information?

13 MR. BECK: Yes. I know they would put the
14 information in regardless. You know, I'm not opposed
15 to their updating actuals with forecasted. It's the
16 timing.

17 COMMISSIONER CLARK: Okay.

18 MR. BECK: And my second concern is the
19 scope, that it be strictly limited to doing that.

20 COMMISSIONER CLARK: What about a two-week
21 turnaround for discovery?

22 MS. WHITE: If we are given the delay that
23 we've asked for, we would commit to a two-week
24 turnaround.

25 COMMISSIONER CLARK: Okay. I'll get an order

1 out probably by Monday on that, Monday or Tuesday.

2 MS. GREEN: Not with me involved in it. I'll
3 be out of town on depositions.

4 COMMISSIONER CLARK: Okay.

5 MS. GREEN: But are you saying that you will
6 give them the November 1st filing date?

7 COMMISSIONER CLARK: No. I haven't decided.

8 MS. GREEN: Oh.

9 COMMISSIONER CLARK: I think the next thing
10 to discuss is another Motion to Compel.

11 MS. GREEN: Mr. Hatch will address the next
12 two motions.

13 MR. HATCH: There are two pending Motions to
14 Compel identified by Public Counsel. The first one for
15 consideration is the OPC's 15th Motion to Compel,
16 response to production of documents; I believe it's the
17 36th set of requests for production.

18 COMMISSIONER CLARK: Okay. Now, let me ask
19 both of you: Is this the only Motion to Compel that's
20 outstanding at this time?

21 MS. RICHARDSON: Commissioner Clark, we still
22 have outstanding the 14th motion, but you somewhat
23 dealt with that, I believe at the last prehearing.
24 Southern Bell is compiling information. We don't have
25 a due date as to when they expect to give that to us,

1 and we have not seen what they are producing. So that
2 one is still sort of hanging out there until the
3 production is completed and I have a chance to see what
4 they have produced to see whether or not I have any
5 more arguments to make in terms of their production.

6 COMMISSIONER CLARK: Right.

7 MS. RICHARDSON: But at this point that one
8 is just sort of waiting for Southern Bell to put
9 together.

10 COMMISSIONER CLARK: All right. Refresh my
11 memory. What was the 14th Motion to Compel? What did
12 that have to do with?

13 MS. RICHARDSON: There were a couple of things
14 in that motion: One of them was the documents that
15 Southern Bell produced to the Attorney General, and we had
16 that long discussion on grand jury secrecy --

17 COMMISSIONER CLARK: Okay.

18 MS. RICHARDSON: -- in the statute.

19 And the other part of that was a series of
20 reports that we had requested that the Company run
21 against their reporting, telephone reporting system.

22 In addition, the background information of
23 the individual customer record, trouble report record
24 and billing information that corresponds to the reports
25 we requested. And that required the Company to do a

1 statistical sample, which I understand they are doing.
2 And they are -- I understand that they are producing
3 the reports, it's just I don't have an estimated date
4 of arrival yet for the documents.

5 COMMISSIONER CLARK: All right. So there's
6 nothing pending on the 14th motion until some
7 information is delivered to you?

8 MS. RICHARDSON: Correct.

9 COMMISSIONER CLARK: When is that going to be
10 delivered?

11 MS. WHITE: I will commit to Public Counsel
12 that the information that we've agreed to provide on
13 the statistical piece of this will be received by them
14 by a week from Monday.

15 COMMISSIONER CLARK: What's the date? The
16 7th?

17 MS. WHITE: Is that the 31st? The 31st.

18 COMMISSIONER CLARK: Oh, okay. All right.

19 MS. RICHARDSON: The 31st is a holiday,
20 Memorial Day. Do you want to make it June 1st?

21 MS. WHITE: June the 1st. That's on the
22 statistical piece of it. The other outstanding portion
23 of the 14th Motion to Compel concerns some Attorney
24 General or documents that Southern Bell had given to
25 the Attorney General, the Office of Statewide

1 Prosecutor.

2 COMMISSIONER CLARK: Uh-huh.

3 MS. WHITE: We have agreed to provide those
4 documents to Public Counsel. I'm in the process now of
5 trying to get them all in one place. It appears to be
6 that there are going to be like 40 or 50 boxes of those
7 things. And I was going to ask Ms. Richardson if she
8 would be willing to --

9 MS. RICHARDSON: I'm sorry -- that 40 to 50
10 boxes was a surprise. I didn't mean to interrupt you.

11 MS. WHITE: Well, that's why it's taking so
12 long. I'm trying to get them all put in one place so
13 that I can get you to go look at them and decide which
14 of it you want. And that's what they are working on
15 now. I would hope to have that completed, as well, by
16 the 1st.

17 MS. RICHARDSON: Since there is such a large
18 grouping of boxes, I don't know if this is possible,
19 but I assume the Staff is probably also going to want
20 to look at them. Is there any way you can do it in a
21 Tallahassee location, so that we don't have all that
22 travel expense?

23 MS. WHITE: I can see what I can do.

24 MS. RICHARDSON: That would be appreciated.
25 Thank you.

1 COMMISSIONER CLARK: So you're going to let
2 her know by June 1st that it is available and where it
3 is available and work out the location.

4 MS. RICHARDSON: Yes, ma'am.

5 COMMISSIONER CLARK: All right. Anything
6 else?

7 MR. BECK: Commissioner Clark, there is one
8 other item. It's not pending --

9 COMMISSIONER CLARK: Well, no, wait a minute.
10 I'm still on the 14th.

11 MR. BECK: I'm sorry.

12 COMMISSIONER CLARK: Does that take care of
13 the 14th?

14 MS. RICHARDSON: To my memory, my
15 recollection, it does.

16 COMMISSIONER CLARK: All right. Now, let's
17 go to the 15th. (Pause) Motion to Compel.

18 MS. RICHARDSON: Did you want me to address
19 that, Commissioner Clark?

20 COMMISSIONER CLARK: Yes, let me get it in
21 front of me. Because I'm going to rely on the
22 representations that that -- the 14th and the 15th are
23 the only two outstanding at this point, and the 14th
24 may be resolved.

25 MS. RICHARDSON: There is another motion to

1 answer to compel answers to deposition questions by a
2 Ms. Etta Martin, who is a systems programmer for the
3 Company, and a Mr. Danny L. King, who is a vice
4 president who conducted the statistical audit.

5 COMMISSIONER CLARK: What's the number of
6 that motion?

7 MS. RICHARDSON: It doesn't have a number.
8 It's a Motion to Compel answers to deposition
9 questions. It was filed on February 24th, 1993, the
10 same date I filed the 15th Motion to Compel.

11 COMMISSIONER CLARK: Let's deal with the 15th
12 and then we'll go to the deposition.

13 MS. RICHARDSON: All right. Did you wish me
14 to begin?

15 COMMISSIONER CLARK: Hang on a minute.

16 MS. RICHARDSON: All right. (Pause)

17 COMMISSIONER CLARK: And you have requested
18 an in camera inspection; is that right?

19 MS. RICHARDSON: Yes, ma'am.

20 COMMISSIONER CLARK: Okay. Why don't I take
21 oral argument, brief argument, five minutes, both
22 sides. And then I'll probably need to work out with
23 you when you can deliver those documents.

24 MS. WHITE: Okay.

25 COMMISSIONER CLARK: Go ahead.

1 MS. RICHARDSON: I'd like to take this, I
2 believe, by item.

3 The first item that we requested were notes
4 made by Mr. Dave Mower, M-O-W-E-R, who is a human
5 resource manager working in the, I believe, North
6 Florida section of Southern Bell's operations.

7 He assisted with the disciplining of a number
8 of network employees and was involved in discussions,
9 panel discussions, held through Mr. Cuthbertson's
10 office.

11 We believe that Mr. Mower's notes are not
12 privileged. They were notes made of summaries of a
13 presentation made to him by other personnel people, I
14 believe Mr. Cuthbertson. And for that reason, since no
15 attorney wrote the notes, his information was derived
16 not from communication by an attorney but from another
17 personnel manager. We believe his notes are not
18 privileged. We believe that since they deal with the
19 disciplining of employees and discipline has been found
20 to be a business matter, that the notes are not
21 privileged.

22 Further, I believe that you have already
23 handled the substantive law on this area in prior
24 motions, specifically your Order 294, which was
25 affirmed by the Commission, Order No. 517, basically

1 dealing with personnel notes that deal with discipline
2 matters. And these were found not to be privileged in
3 prior orders.

4 The second item that we requested were the
5 1992 and 1993 reaudits of the '91 allegedly privileged
6 audits for the five systems. And because those were
7 found to be not privileged by you in Order 151 -- and
8 I'm abbreviating the order numbers here -- and affirmed
9 by the Commission in Order 292, we believe that the
10 reaudits are not privileged. They deal with business
11 matters; they were created for a business purpose.

12 The other reason that I feel that the
13 reaudits are not privileged is because the Company has
14 a policy of routinely reauditing through their internal
15 auditing department any audit that has been rated
16 statistical adverse findings.

17 The Company has already admitted that at
18 least four of these audits were so rated, and that
19 admission is in their Attachment A to their response to
20 our first Motion to Compel in the 260 docket.

21 The '91 audits, as you know, are on appeal to
22 the Supreme Court in Case No. 81,487.

23 The third item that we requested were the
24 1992 grievances filed by different employees who had
25 been disciplined for falsification of trouble reports.

1 Again, discipline is a business matter. We feel that
2 these grievances filed by employees are not privileged
3 and should be disclosed.

4 I believe that the discipline -- the legal
5 issues involving discipline in business matters were
6 again covered in your Order 294 and affirmed by the
7 full Commission in Order 517.

8 The fifth item that we requested were all
9 discipline documents prepared after January 1992
10 relating to the same type of information and
11 investigation.

12 Southern Bell made two objections: One that
13 this request was ambiguous. And the second, that there
14 were some pages being withheld under a claim of
15 privilege.

16 Again, discipline is a business matter. I
17 believe this has been covered by prior Commission
18 orders, and that these documents are not privileged.

19 Finally, Southern Bell continues to raise a
20 number of general objections. One of them is to Public
21 Counsel's definition of "documents," and our definition
22 of "you" and "your."

23 I thought that you had handled this and
24 decided that matter; yet, we are still getting general
25 objections on this.

1 The other one is that they are objecting to
2 our directions to provide an index listing of documents
3 that are being withheld under privilege. We are
4 requesting this. The federal government requests it in
5 multi-party litigation where they have complex cases as
6 a standard matter under the federal rules.

7 I believe that in this case that has gotten
8 to be so large, and where we have no idea to the extent
9 of the volume of documents that are being withheld,
10 that it would be helpful for all parties if the Company
11 would identify those documents that are being withheld
12 under a claim of privilege so that when we do a motion
13 we'll know what we're talking about, or at least I
14 will, since I don't get to see them in camera.

15 The third direction that they have raised a
16 general objection to was our instruction to provide a
17 listing or a description of the sequence and order of
18 certain types of customer records, like the DLETHs,
19 which are individual customer records by telephone
20 number. If I request a listing of numbers and ask for
21 the DLETHs that correspond to them, at one point
22 earlier in our discovery I got a full box of these
23 things that were in no discernible order.

24 I thought I was just mistaken and I couldn't
25 figure out the sequence, so I took them over to Mr.

1 Wayne Tubaugh. Mr. Tubaugh couldn't determine the
2 sequence and made a phone call to the individual who
3 put these together. It turned out that they were not
4 in the sequence that I had requested; that they weren't
5 in numerical sequence; they were not also in date order
6 sequence. They also gave us some customer records that
7 we had not even requested.

8 So because of that particular production, I,
9 after that point, put an instruction in asking them to
10 at least describe the sequence that these were being
11 produced in so that I would be able to figure out how
12 to match them up.

13 It took a paralegal in our office a full week
14 to reorder that box of DLETHs to match them with my
15 request. And I just submit that that is too much time
16 to spend on just reordering and sequencing of documents
17 that have been produced.

18 COMMISSIONER CLARK: Anything else?

19 MS. RICHARDSON: At this point, no, ma'am.

20 COMMISSIONER CLARK: Ms. White?

21 MS. WHITE: Yes, ma'am. I'll work backwards
22 through Public Counsel's argument.

23 First off, with regard to the index of
24 documents, there was an index provided to Public
25 Counsel in Southern Bell's opposition to the Motion to

1 Compel.

2 With regard to the general objections made by
3 Southern Bell as to "you" and "your," and the
4 definition of the word "document," there were no
5 documents withheld from Public Counsel as a basis for
6 those general objections. As Southern Bell stated in
7 its opposition, the objection to the definition of the
8 word "document" by Public Counsel does remain in
9 Southern Bell's response to the PODs, because, again,
10 it is so broad that we made a good-faith, reasonable
11 effort search; but we still felt that we had to object
12 to it just in case something might come up later.

13 COMMISSIONER CLARK: Let me ask you again.

14 Is this the same definition that you have
15 used in requesting documents?

16 MS. WHITE: Yes, ma'am, it is.

17 COMMISSIONER CLARK: Okay.

18 MS. WHITE: With regard to the sequential
19 listing of customer records that Ms. Richardson refers
20 to, there were no customer records requested in this
21 POD, so, therefore, the request made by Public Counsel
22 was moot. It had nothing to do with this particular
23 document request.

24 With regard to the substance of their
25 request, the reaudit and the work notes, there have

1 been two reaudits done. One of the network operational
2 review and one of the original MOOSA audit.

3 We disagree that they were routine audits
4 because the original audits were not routine audits to
5 begin with. They were specifically requested at the
6 direction of counsel and performed for counsel in order
7 that counsel could render legal advice.

8 COMMISSIONER CLARK: You disagree that if the
9 original audits are not privileged, that these would,
10 likewise, not be privileged?

11 MS. WHITE: Yes, ma'am.

12 With regard to the work notes of Mr. Mower,
13 and I believe there were also some of Mr.
14 Cuthbertson's, an index that Southern Bell provided in
15 its opposition, again, this is a summary of facts
16 derived from the investigation and prepared as part of
17 the investigation. And on that basis Southern Bell
18 feels they are privileged.

19 COMMISSIONER CLARK: Did I understand from
20 your response that some of them were not necessarily
21 privileged, but you would, nonetheless, request
22 confidential treatment?

23 MS. WHITE: Southern Bell did, when we got
24 Public Counsel's Motion to Compel, we did review this
25 again. And we did find that some of the document

1 requests that had been objected to, we withdrew our
2 objection to that and provided that information to
3 Public Counsel. And some of that information, I
4 believe it had to do with the grievance records, we did
5 request confidential treatment of. But that was on
6 information that was provided to Public Counsel.

7 COMMISSIONER CLARK: Does that cover it?

8 MS. WHITE: That covers it.

9 COMMISSIONER CLARK: I did want to ask one
10 thing: What about the providing the index of --
11 providing an index of what is withheld?

12 MS. WHITE: Well, in our opposition to Public
13 Counsel's Motion to Compel, we did give them a general
14 index of the documents that pertain to this particular
15 Motion to Compel in this particular production of
16 document requests. And it was a general index.

17 COMMISSIONER CLARK: Is that your
18 understanding what is required under, is it federal
19 discovery?

20 MS. RICHARDSON: Yes. It's for the large
21 cases, the multiparty, multidistrict litigation cases.
22 It's not just in the federal rules. It's in the other
23 set.

24 COMMISSIONER CLARK: Okay.

25 MS. WHITE: Well, with regard to this, it's a

1 little different I think, in regard to these particular
2 documents, because these documents are claimed to be
3 privileged by Southern Bell. So if you have give too
4 much information, you could be giving the privileged
5 information away. And so we are trying to protect the
6 privilege as well as give the general information that
7 we feel that can be given without betraying the
8 privilege.

9 COMMISSIONER CLARK: Okay. Is that it on the
10 15th motion?

11 MS. RICHARDSON: Commissioner Clark, just to
12 get the specific instruction in, it's on our December
13 23rd, 1992, 36 POD. But it asks for the date, the
14 sender, the recipients, the recipients of copies, the
15 subject matter of the document in a general statement,
16 and the basis upon which such privilege is claimed.

17 These are general information items that go
18 to establishing the existence of the privilege itself,
19 not to revealing the substance of the document.

20 So the idea is that when a privilege is
21 claimed for a specific document, we can look at the
22 information. And it requires Bell to pretty much
23 establish the privilege on the front end rather than
24 doing it after we have done a Motion to Compel.

25 COMMISSIONER CLARK: Okay.

1 MS. RICHARDSON: Thank you.

2 COMMISSIONER CLARK: You were requesting that
3 be done when they answer your --

4 MS. RICHARDSON: When they answer our POD so
5 that when I do a Motion to Compel, I know what I'm
6 compelling.

7 COMMISSIONER CLARK: Ms. White, let me ask
8 you again: The listing of the last point Ms.
9 Richardson made on the sequence, the box of records
10 that was delivered.

11 MS. WHITE: Yes, ma'am.

12 COMMISSIONER CLARK: And what did you say,
13 that there was an index?

14 MS. WHITE: Well, in this particular document
15 production request, there weren't any customer records
16 requested. So, therefore, the instruction had no
17 meaning because they didn't request any customer
18 records.

19 COMMISSIONER CLARK: Well, let me suggest
20 that the two of you get together, you go look at the
21 box and the difficulty you're having with it, and then
22 if I need to resolve it, let me know. Because I'll go
23 over there and look at them and we'll decide whether
24 you have delivered something that they can look through
25 or not. I mean, you need to -- I would hope that

1 you're delivering it in the order that is used for
2 business purposes.

3 MS. WHITE: Well, I can only speak for
4 myself, and I can assure you that the ones that I have
5 been involved in, I have been assured they are being
6 sent in the right order. And if that is not the case,
7 then I can surely speak with Mr. Beck and Ms.
8 Richardson and attempt to work something out.

9 COMMISSIONER CLARK: Why don't you do that
10 today so that you're clear as to what your problem is;
11 she's clear as to what your problem is; and that it
12 won't be duplicated in the future.

13 MS. RICHARDSON: Thank you, Commissioner
14 Clark. I raised it because I felt like it was a
15 procedural point; that if we got it cleared now, it
16 wouldn't continue to be a problem in the future.

17 Thank you.

18 COMMISSIONER CLARK: All right. Now, I
19 understand the next Motion to Compel is -- Dan King and
20 Etta Martin?

21 MS. RICHARDSON: E-T-T-A, Martin, and Danny
22 L. King.

23 COMMISSIONER CLARK: Okay. Go ahead.

24 MS. RICHARDSON: This is a Motion to Compel
25 answers to deposition questions by Ms. Martin and Mr.

1 King. It is also a Motion to Strike Mr. King's
2 affidavit, which was submitted in support of the
3 privilege claim for the statistical analysis that was
4 conducted by Mr. King for the Company.

5 I believe that an in camera inspection has
6 already been made of that statistical analysis, and
7 that you and the Commission have decided that that
8 analysis is a business document and is not privileged.
9 That is on appeal to the Supreme Court at this point.

10 Generally, Public Counsel asked questions about
11 the preparation and the factual contents of the allegedly
12 privileged 1991 audits and the statistical analysis.

13 In Prehearing Order 294 you found that the
14 analysis was not privileged, and in Prehearing Order
15 151 you found that the audits were not privileged.
16 Both were affirmed by the full Commission and now on
17 appeal in Case No. 81716.

18 The additional argument, the fact that the
19 audits were not privileged and the analyses are not
20 privileged so questions about them should not be
21 privileged, the additional argument I have to raise is
22 that facts are not privileged under Upjohn. Our questions
23 to both Ms. Martin and Mr. King were factual in nature.
24 They asked generally about the factual information
25 provided; how the audits were done; what kind of programs

1 were written. And to these types of questions, we
2 received objections as to attorney-client privilege.

3 Mr. King also refused to answer and explain
4 statements in his affidavit. We asked him specific
5 questions regarding quotations from his affidavit,
6 quoting material from his affidavit, and he refused to
7 answer based upon attorney-client privilege.

8 Public Counsel asserts that the
9 attorney-client privilege is not to be used as both a
10 sword and a shield. There's case law on that.
11 International Paper Company v. Fibreboard 63 FRD 88.
12 And there is also Rollins Burdick v. Euroclassics 502
13 So.2d 959, Florida Third DCA 1987.

14 Southern Bell has pursued a policy of
15 withholding all information from Public Counsel in
16 terms of documents, and then any questions we may ask
17 in deposition of the individuals who were responsible
18 for creating those documents under a claim of
19 privilege. We assert that that is too broad a
20 definition of the claim of privilege and it's not
21 supportable by case law. For that reason, we ask that
22 the Commission compel Ms. Martin and Mr. King to answer
23 our questions, and that the Commission strike Mr.
24 King's affidavit.

25 Thank you.

1 COMMISSIONER CLARK: Ms. White.

2 MS. WHITE: Yes, ma'am. Southern Bell feels
3 that the -- of course, feels that the statistical
4 analysis and the original audits are subject to the
5 attorney-client privilege or alternatively, to the
6 work-product doctrine and, therefore, should not be
7 inquired into. Questions to Mr. King or Ms. Martin --
8 Mr. King who was involved in the statistical analysis
9 and Ms. Martin who was involved in the audits, as to
10 the substance and nature and procedures of those
11 privileged documents we feel are also privileged and
12 they should not be required to answer those questions.

13 COMMISSIONER CLARK: Let me ask you a
14 question. If the court affirms that the audits and the
15 analysis are not privileged, would that likewise
16 indicate that the question should be answered? Would
17 there be any further basis for not answering the question?

18 MS. WHITE: I hate to do this to you but I
19 think I'm not -- I can't say right now.

20 COMMISSIONER CLARK: All right. I'll look at
21 it then. It seems to me if the underlying basis for
22 which the privilege is sought is not upheld, then it
23 would open it up to questions about it.

24 Okay. Are there any other motions
25 outstanding?

1 MR. HATCH: None that I'm aware of.

2 COMMISSIONER CLARK: None?

3 MS. WHITE: Commissioner Clark, if I could
4 just ask, the two motions to compel, are you taking
5 those under advisement right now?

6 COMMISSIONER CLARK: Yes. Yes.

7 MS. WHITE: Okay. Thank you.

8 COMMISSIONER CLARK: They'll be out shortly.

9 I would like to ask the status of the appeal.
10 I think I was told that briefs are due June 1st?

11 MS. RICHARDSON: Response briefs are due June
12 1st, and then Southern Bell's reply brief is due June
13 11th. And that reply so far would be to Public Counsel
14 and I assume the Commission, and I believe the Attorney
15 General is going to be filing.

16 COMMISSIONER CLARK: Okay. I'm sorry.
17 You've already filed a brief?

18 MS. WHITE: Yes, Commissioner, I believe you
19 had to file one with your petition for appeal.

20 COMMISSIONER CLARK: Because this is not a
21 final order.

22 MS. WHITE: That's correct.

23 COMMISSIONER CLARK: Okay.

24 MS. RICHARDSON: Commissioner Clark, there
25 are two appeals that Southern Bell has filed. The

1 court has only asked for responsive briefs to the first
2 appeal, 81 -- I believe it's 487. The second appeal
3 we're still waiting on, which is 81716. Southern Bell
4 did file a petition for review of nonfinal
5 administrative order that covers the employee's
6 statements, and I believe the statistical analysis is
7 included in that second appeal. The court has not
8 issued a request for a responsive brief yet on that.

9 COMMISSIONER CLARK: When was it filed? I mean,
10 when were -- how long does the court usually take?

11 MS. RICHARDSON: Southern Bell filed in what,
12 end of March, early April on the first one?

13 MS. WHITE: I believe that's correct. I
14 believe that's correct.

15 MS. RICHARDSON: I don't have that before me
16 so I can't give you the exact date, but it seems to me
17 it was around that time period.

18 COMMISSIONER CLARK: And when was the next
19 one filed about?

20 MS. RICHARDSON: Last week, I think. Last
21 week or two weeks ago.

22 COMMISSIONER CLARK: Are the parties going to
23 request consolidation?

24 MS. WHITE: I believe so, Your Honor.

25 COMMISSIONER CLARK: Somebody has already

1 requested consolidation, haven't they? Has Southern
2 Bell asked for that?

3 MS. RICHARDSON: I can't say because,
4 frankly, I have not read the second brief yet. I'm
5 waiting to get through with my response to the first
6 brief before I start on the second, but I believe
7 that's the case.

8 COMMISSIONER CLARK: Okay. And will Public
9 Counsel and the other parties be supporting --

10 MS. RICHARDSON: I would concur with that. I
11 would support a motion to consolidate those two.

12 COMMISSIONER CLARK: Okay.

13 What is the time frame for filing an appeal
14 to a nonfinal order?

15 MS. WHITE: I believe it's 30 days.

16 COMMISSIONER CLARK: Okay.

17 MS. RICHARDSON: I think it's 30 days. It's
18 under Florida Rule of Civil Procedure 9.100 is what
19 they're filing under. And there is no responsive time
20 frame. The court sets the time if the court decides to
21 review the petition. The court first makes the
22 decision whether or not they will review. If they
23 don't review they just deny it. If they decide to
24 review then they ask for either responses or they issue
25 a show cause order. And then the courts sets the time

1 for response.

2 COMMISSIONER CLARK: But --

3 MS. RICHARDSON: They set it for 15 days on
4 the first appeal, the response time was 15 days.

5 COMMISSIONER CLARK: Good. I had one
6 question I wanted to ask about on the NARUC audits. I
7 have asked the Staff to review the turnaround time
8 we're getting on the responses because I have been told
9 that sometimes they get -- you know, that when the five
10 days comes there's a response that we'll have the
11 information in 30 days. I've asked them to look at it.
12 I would encourage you to turnaround those requests as
13 soon as possible because I will be looking at it, and
14 if I'm not satisfied I will be setting a deadline for you
15 to make those responses. So do try and make sure that the
16 Company is quick in their turnaround. All right?

17 MS. RICHARDSON: Yes, ma'am.

18 COMMISSIONER CLARK: Angela, is there
19 anything else to bring up today?

20 MS. GREEN: That's all the matters that we're
21 aware of. The next status conference is set for
22 Monday, June 21st at 1:00 p.m.

23 COMMISSIONER CLARK: Okay. I'll see you all
24 in a month.

25 MR. MELSON: Commissioner Clark, could MCI be

1 excused from attendance at future conferences?

2 COMMISSIONER CLARK: Yes. If you -- any of
3 the parties who do not believe that they have anything
4 pending and have no need to be at the conference, you
5 will be excused.

6 MR. MELSON: Thank you.

7 (Thereupon, the status conference concluded
8 at 10:45 a.m.)

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

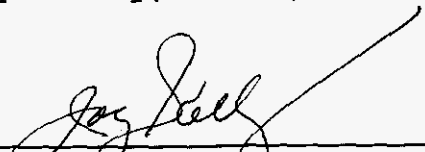
CERTIFICATE OF REPORTER

4 I, JOY KELLY, CSR, RPR, Official Commission
5 Reporter.

6 DO HEREBY CERTIFY that the hearing in this
7 cause, Docket Nos. 920260-TL, 900960-TL, 910163-TL, and
8 910727-TL, was heard by the Florida Public Service
9 Commission at the time and place herein stated; it is
10 further

11 CERTIFIED that I stenographically reported
12 the said proceedings; that the same has been
13 transcribed under my direct supervision, and that this
14 transcript, consisting of 36 pages, constitutes a true
15 transcription of my notes of said proceedings;

16 DATED this 25th day of May, A. D., 1993

17 
18 _____
19 JOY KELLY, CSR, RPR
20 Chief, Bureau of Reporting

21 STATE OF FLORIDA)
22 :
23 COUNTY OF LEON)

24 The foregoing certificate was acknowledged
25 before me this 25th day of May, 1993, by Pamela A.
Canell, who is personally known to me.

26 
27 _____
28 PAMELA A. CANELL
29 Notary Public - State of Florida



30 PAMELA A. CANELL
31 MY COMMISSION # CC 246413 EXPIRES
32 December 16, 1996
33 BONDED THRU TROY FAIR INSURANCE, INC.