

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition by MediaOne : DOCKET NO. 990149-TP
Florida Telecommunications, :
Inc. for arbitration of an :
interconnection agreement with :
BellSouth Telecommunications, :
Inc. pursuant to Section 252(b) :
of the Telecommunications Act :
of 1996. :

PROCEEDINGS: PREHEARING CONFERENCE

BEFORE: COMMISSIONER E. LEON JACOBS, JR.

DATE: Tuesday, June 22, 1999

TIME: Commenced at 9:35 a.m.
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COMMISSIONER JACOBS: Call to order.

MR. FORDHAM: Thank you.

COMMISSIONER JACOBS: We can go now.

MR. FORDHAM: Okay. We're here this morning pursuant to notice of prehearing in Docket No. 990149-TP, Petition by MediaOne Florida Telecommunications, Inc. for arbitration of an interconnection agreement with BellSouth Telecommunications, Inc., pursuant to Section 252(b) of the Telecommunications Act of 1996.

COMMISSIONER JACOBS: Good morning. Let's take appearances.

MR. GRAHAM: Yes. Commissioner, my name is Bill Graham. I'm here this morning on behalf of MediaOne Florida Telecommunications, Inc.

COMMISSIONER JACOBS: All right.

MR. KARRE: This is Dick Karre on the phone. I'm also here on behalf of MediaOne.

MS. KEESON: And Susan Keeson on the phone on behalf of MediaOne.

COMMISSIONER JACOBS: I'm sorry. That's Susan Keeson?

MS. KEESON: Keeson.

COMMISSIONER JACOBS: Okay. Mr. Carver?

1 MR. CARVER: Yes. Thank you. Phillip
2 Carver on behalf of BellSouth, 675 West Peachtree
3 Street, Atlanta, Georgia.

4 COMMISSIONER JACOBS: And it was Dick --
5 what's your last name, sir?

6 MR. KARRE: It's Karre. It's spelled
7 K-a-r-r-e.

8 COMMISSIONER JACOBS: Okay. Very well.
9 Are there any preliminary matters?

10 MR. FORDHAM: Your Honor, I think the
11 preliminary matter that I had intended was simply to
12 announce that Susan Keeson and Dick Karre wanted to
13 make the telephone appearance and see if there were
14 any objections to that, but that apparently has
15 already been done.

16 COMMISSIONER JACOBS: Very well. I'm sure,
17 Mr. Graham, you're going to be leading, and they'll
18 be --

19 MR. GRAHAM: Yes, Commissioner. They will
20 participate as needed.

21 COMMISSIONER JACOBS: Okay. With that,
22 what we would like to do -- for your benefit,
23 Ms. Keeson and Mr. Karre, do you have copies of the
24 draft Prehearing Order?

25 Hello? Ms. Keeson and Mr. Karre, do you

1 have copies of the draft Prehearing Order?

2 MR. KARRE: Yes, I believe we do.

3 COMMISSIONER JACOBS: Okay. We're going to
4 proceed through that and basically address any issues
5 that arise through that, and then take up anything
6 else in terms of any stipulations or anything of that
7 sort.

8 MR. GRAHAM: Commissioner, if I could make
9 a note, I have not received a copy of the draft
10 Prehearing Order.

11 COMMISSIONER JACOBS: Okay.

12 MR. GRAHAM: I do have a copy of the Order
13 Establishing Procedure which set today's hearing.

14 COMMISSIONER JACOBS: Okay.

15 MR. GRAHAM: But if there is one, I'll
16 certainly go through it with you.

17 COMMISSIONER JACOBS: Okay.

18 MR. FORDHAM: And, Commissioner, I failed
19 to make an appearance for myself. I'm Lee Fordham,
20 Legal Section of the Florida Public Service
21 Commission.

22 COMMISSIONER JACOBS: All right. I'm
23 sorry. I kind of cut you off, didn't I?

24 MR. KARRE: I stand corrected. I don't
25 think I have that draft order either.

1 MR. GRAHAM: That's correct, Mr. Karre, but
2 we can proceed.

3 COMMISSIONER JACOBS: Okay. We'll try to
4 be as descriptive as possible.

5 MR. CARVER: Commissioner, I had two
6 matters that I wanted to raise. They're not
7 necessarily preliminary matters, but I thought I would
8 go ahead and mention them.

9 COMMISSIONER JACOBS: Okay.

10 MR. CARVER: One of them is that there are
11 a number of issues that have been resolved, although
12 we don't have a stipulation removing them from the
13 case. But at some point we should probably talk about
14 that, because I think a lot of the issues are no
15 longer really in dispute.

16 COMMISSIONER JACOBS: Do you want to deal
17 with it now or as we go through -- before we go
18 through the issues?

19 MR. GRAHAM: It might make sense to do it
20 now. It will shorten probably the process of going
21 through the order.

22 COMMISSIONER JACOBS: Good.

23 MR. GRAHAM: Commissioner, if you looked
24 through the Prehearing Statement submitted by
25 MediaOne, you'll note that rather than state our

1 position on certain issues, we stated that they had
2 been settled. BellSouth did go ahead and state their
3 position, but in speaking this morning with
4 Mr. Carver, we each agree that those issues are
5 settled, and in an abundance of caution, BellSouth put
6 their position in there. But there is no dispute on
7 those, so if you would like to go through them now, we
8 can --

9 COMMISSIONER JACOBS: That would be great.

10 MR. GRAHAM: -- take them off the table.

11 COMMISSIONER JACOBS: That would be great.

12 MR. CARVER: The numbers -- actually, I
13 went through MediaOne's Prehearing Statement and
14 checked them, and we agree that these are the ones
15 that are resolved. And the particular numbers are 1,
16 8, 9, 10, 11, and 12.

17 COMMISSIONER JACOBS: Okay. Well, that's a
18 good one. You resolved Issue 1.

19 MR. GRAHAM: Trying to make things easier.

20 COMMISSIONER JACOBS: Great. So we still
21 show Issue 2, 3, 4 -- whoa, whoa, whoa. I picked up
22 the wrong one.

23 Do you have another copy? I picked up the
24 wrong one myself.

25 Thank you.

1 All right. Now we're cooking with gas. So
2 we still show Issues 2, 3, 4, 5, 6, 7 --

3 MR. GRAHAM: And 13.

4 COMMISSIONER JACOBS: And 13. Good, great.

5 MR. FORDHAM: Commissioner, while we're
6 addressing the elimination of the issues, as indicated
7 in our Prehearing Statement, it's the position of
8 Staff that 13 is not within the jurisdiction of the
9 Commission, but rather is a contractual issue. And so
10 if you wish to address that now and eliminate that,
11 then we could just be left with only those which will
12 be argued.

13 COMMISSIONER JACOBS: Why don't we go
14 through the rest of the order now, and I'll let you
15 guys argue, give argument on Issue 13, whether or not
16 it should be included, at the proper time when we go
17 through the issues, and then we'll make a ruling
18 there. How about that?

19 MR. GRAHAM: That's fine.

20 MR. CARVER: And I had one other matter.
21 And again, we can take it up now or later, but I'll
22 just mention it at this point. My understanding is
23 that MediaOne intends to do a demonstration of some
24 sort at the hearing. I'm not sure what the
25 demonstration will entail, but I take it that it does

1 go beyond the scope of the testimony summary that's
2 typically allowed. I don't know necessarily that I
3 object to it, because I don't know what they're going
4 to do, but my understanding is that they have not yet
5 requested specifically for the Commission to allow
6 them to do this. So I'm a little bit in the dark as
7 to what it's going to entail.

8 COMMISSIONER JACOBS: Okay.

9 MR. CARVER: I've spoken with Mr. Graham
10 about the possibility of deposing the witness who
11 would do the deposition next week and seeing the
12 deposition in advance, and he is agreeable to that.
13 So assuming we can work out the logistics and I can
14 see it, then by the time of the hearing, you know, I
15 could certainly be able to say at that point whether
16 we would agree to their request to do this or whether
17 we would object to it. But I just did want to note it
18 at this point.

19 COMMISSIONER JACOBS: Okay.

20 MR. GRAHAM: If I could elaborate,
21 Commissioner Jacobs, the demonstration in question
22 will be performed by our witness, Greg Beveridge. And
23 it's a simple process. He will bring for the
24 Commission's view a model that would be an example of
25 the cross-connect facility and process that MediaOne

1 proposes in this docket. The intent of the
2 demonstration -- and it will be a simple, quick
3 demonstration -- is to show how simple it would be for
4 a technician to make the cross-connect process in
5 conjunction with our position on this.

6 COMMISSIONER JACOBS: Is that within the
7 scope of his testimony?

8 MR. GRAHAM: Yes, Your Honor. It's --

9 COMMISSIONER JACOBS: Okay.

10 MR. GRAHAM: When I first brought this
11 matter up, I spoke with Staff counsel, Beth Keating,
12 and explained that, you know, we wanted to do this.
13 And it arose in the context of do I need to give a
14 copy of that model as an exhibit, because there's only
15 one model. It's on a piece of wood right now. And
16 she said, "No. Why don't you just submit to BellSouth
17 photographs of the model and we'll go from there." So
18 that's what we've done.

19 COMMISSIONER JACOBS: Okay. Well --
20 Mr. Carver?

21 MR. CARVER: Well, I was just going to
22 voice my concern, which is that I think there's sort
23 of a line, and on one side of the line you have
24 illustrative exhibits that are appropriate to have in
25 a summary. I mean, parties typically have charts that

1 they put up and that sort of thing, and I think that's
2 fine. But I think somewhere there is a line, and when
3 you get on the other side of that line, the witness is
4 augmenting their testimony by doing something or
5 saying something that's not within the scope of their
6 testimony. I don't know which this is, because I
7 haven't seen it.

8 COMMISSIONER JACOBS: Okay.

9 MR. CARVER: But I'm a little bit wary of
10 the prospect of having a witness do a live
11 demonstration that involves I guess bringing in a
12 piece of equipment and talking about the equipment and
13 demonstrating how the equipment works, because,
14 obviously, that's the kind of thing that can't really
15 be done completely in prefiled testimony. So there
16 may be something new here or something we haven't
17 seen, and I'm a little bit concerned about the
18 possibility of surprise. So, I mean, I understand
19 counsel's representation that it's within the scope of
20 the testimony, but I would feel more comfortable if I
21 could see it first, and then we could address --

22 MR. KARRE: Let me make a suggestion here
23 that might help things along. And I assume we can do
24 this.

25 MR. CARVER: Could I just finish my

1 comments, please?

2 MR. KARRE: I'm sorry.

3 MR. CARVER: Anyway, I was just saying that
4 I would feel more comfortable if I could see it first,
5 and then we could take it up if necessary at the time
6 of the hearing.

7 COMMISSIONER JACOBS: Okay. Mr. Karre?

8 MR. KARRE: Yes. Suppose we did a
9 videotape rather than doing a live demo, and you could
10 view that in advance?

11 COMMISSIONER JACOBS: Here's what I think I
12 would like to do. You guys -- I think the parties
13 should sit down and try and get as much clarification
14 up front as possible so that you know what's going to
15 come. If the concerns remain, I think you have
16 objections that are absolutely available to you at
17 hearing.

18 And quite frankly, I think it would be more
19 appropriate to rule on the objections with the
20 testimony of this witness in hand, as well as this
21 exhibit, or if it's not an exhibit, this
22 demonstration, so that the trier of fact can make a
23 determination to what extent it is inside the scope of
24 the testimony or outside of the scope of the
25 testimony. I think that's probably the best way to

1 resolve it.

2 If you guys want -- if the parties want to
3 change the media that you use, that's fine. But I
4 think probably -- what I'm hearing here is whether or
5 not this demonstration falls squarely within the
6 testimony of this witness. If it falls within that
7 scope, I see very little issues in how he wants to
8 make the demonstrative -- demonstrate that testimony.
9 But if it's outside the scope, then I think maybe
10 there may be some argument made.

11 MR. GRAHAM: Okay.

12 MR. CARVER: Fair enough.

13 MR. GRAHAM: We'll confer, and I will try
14 to explain as well as I can to Mr. Carver what it's
15 about and hopefully convince him that it is within the
16 scope of the prefiled testimony. And if not, you can
17 rule on it or the Commission can rule on it at the
18 hearing.

19 COMMISSIONER JACOBS: Okay.

20 MR. CARVER: Again, my desire would be to
21 actually see it. I mean, I would like to depose the
22 witness and have him bring the model with him and do
23 the demonstration so that we can get an idea of what
24 it is that he plans to do.

25 COMMISSIONER JACOBS: I don't think it

1 would be of any use to try and monitor that. I think
2 -- let's see how the deposition proceeds. I didn't
3 want to get to a point where we're entertaining
4 deposition objections. My goal is that if you have an
5 objection, let's go ahead and resolve it at hearing
6 rather than going through all those gyrations. If you
7 can work it out in the deposition, great. If you
8 can't, we'll just resolve it at one time.

9 MR. GRAHAM: Commissioner Jacobs, as far as
10 the deposition goes, I don't think we have a problem
11 with that. I think there may just be a problem with
12 scheduling it. I know Mr. Beveridge is hard to get,
13 frankly. That's why we had to move this hearing date
14 to accommodate his travel plans. But --

15 COMMISSIONER JACOBS: That would be great.

16 MR. GRAHAM: -- we'll work on that.

17 COMMISSIONER JACOBS: Do you have a point,
18 Staff, anything on that?

19 MR. FORDHAM: No, sir.

20 COMMISSIONER JACOBS: Okay. Great. Then
21 that's how we'll proceed. And if we can be of any
22 more assistance, then let me know.

23 MR. CARVER: Thank you.

24 MR. GRAHAM: Thank you.

25 COMMISSIONER JACOBS: Okay. We're going to

1 go through the draft Prehearing Order, and we'll do it
2 section by section. We'll begin -- now, Mr. Graham,
3 in terms of appearances at hearing, will Ms. Keeson
4 and Mr. Karre enter formal appearances?

5 MR. GRAHAM: Yes, Commissioner, they will.
6 I have not yet filed with the Commission a request for
7 their appearance as qualified representative, but we
8 will.

9 COMMISSIONER JACOBS: Okay. Very well.
10 We'll go to Section I. Any comments or
11 revisions there? That's standard language on the
12 conduct of the proceedings and the administrative
13 guidelines that apply.

14 Section II is case background. Pretty
15 short and succinct. Any corrections there?

16 Section III is procedure for handling
17 confidential information. That's pretty much
18 boilerplate language. No revisions there?

19 We'll go to Section IV, which has to do
20 with standard post-hearing procedures.

21 Okay. Section V has to do with procedures
22 for filing prefiled testimony and exhibits and for
23 witnesses. That is pretty much standard procedure,
24 and we've already discussed how we'll handle the one
25 particular demonstration.

1 And with that, if there are no corrections
2 or revisions in any of those sections, we'll go to the
3 order of witnesses, which is in Section VI.

4 MR. GRAHAM: Okay.

5 COMMISSIONER JACOBS: Are we going to have
6 witnesses testify both direct and rebuttal?

7 MR. GRAHAM: MediaOne will be.

8 COMMISSIONER JACOBS: Separately?

9 MR. CARVER: I think my preference would be
10 to combine them.

11 COMMISSIONER JACOBS: Combine direct and
12 rebuttal?

13 MR. CARVER: Rather than have them take the
14 stand twice.

15 COMMISSIONER JACOBS: Okay.

16 MR. GRAHAM: That's satisfactory.

17 COMMISSIONER JACOBS: That's fine? Okay,
18 good.

19 Any revisions or corrections to any of the
20 information regarding the witnesses and their scope of
21 testimony?

22 MR. GRAHAM: Commissioner Jacobs, I think
23 one matter would be the fact that certain of the
24 BellSouth witnesses as it is right now are listed to
25 testify on issues that have been settled between the

1 parties. That's not a big deal, really.

2 COMMISSIONER JACOBS: Okay. Normally I
3 believe what happens is that that testimony remains a
4 part of the record, or --

5 MR. GRAHAM: I guess my question is, at the
6 hearing, I would assume that their testimony on issues
7 that are no longer on the table is not going to be
8 brought forward and we're not going to have to deal
9 with it. That's really my clarification.

10 COMMISSIONER JACOBS: It's my
11 understanding that the prefiled remains, but, no, that
12 won't be -- they won't testify at hearing, no, for the
13 issues that have been stipulated.

14 MR. FORDHAM: Commissioner, I believe
15 there's one correction, and that is Daonne Caldwell
16 will be testifying on Issue 7 as opposed to Issue 1.

17 MR. GRAHAM: Right.

18 MR. CARVER: Yes.

19 COMMISSIONER JACOBS: Okay.

20 MR. GRAHAM: And I think Jerry Hendrix --
21 I think that got transposed. Is that correct,
22 Mr. Carver?

23 MR. CARVER: Well, Jerry Hendrix is not 7.
24 I'm not sure which he was supposed to be. Is he
25 supposed to be 1? Okay.

1 MR. FORDHAM: So those did just get
2 transposed?

3 MR. CARVER: Right.

4 COMMISSIONER JACOBS: And so will
5 Mr. Hendrix testify at all now, since we've settled
6 Issue 1?

7 MR. CARVER: I think -- I'm not sure.
8 There are two witnesses that I think this conceivably
9 affects. Dave Coon I think will not testify, because
10 his testimony specifically addressed performance
11 measurements, and I think that part is gone now.

12 My initial reaction is that Mr. Hendrix
13 probably will not be testifying, but if I may, I would
14 just like to take a look at his testimony one more
15 time before we get going.

16 COMMISSIONER JACOBS: We'll leave them both
17 and then just clear it up as a preliminary matter at
18 hearing.

19 MR. CARVER: Okay.

20 COMMISSIONER JACOBS: You guys know whether
21 or not you want them to come or not.

22 Okay. Any other on the order of witnesses?

23 Okay. We'll move to basic positions.

24 MR. CARVER: Actually, I had one question
25 on order.

1 COMMISSIONER JACOBS: Okay.

2 MR. CARVER: We have -- I was trying to
3 look through and see which witnesses we have who have
4 just direct and which we have who have just rebuttal,
5 and it looks to me like perhaps Mr. Maher is the only
6 witness with just rebuttal.

7 COMMISSIONER JACOBS: Okay. Yes.

8 MR. CARVER: So I assume he would probably
9 be last.

10 MR. KARRE: I think that's right.

11 COMMISSIONER JACOBS: Is that
12 satisfactory? Fine. We'll make Mr. Maher last.

13 Okay. Anything else?

14 Okay. Basic positions. Any corrections on
15 BellSouth?

16 MR. CARVER: No, sir.

17 COMMISSIONER JACOBS: How about MediaOne?

18 MR. GRAHAM: If you'll just give me a
19 moment, I'll skim through this.

20 That's correct, taken from our Prehearing
21 Statement.

22 COMMISSIONER JACOBS: Okay. Staff?

23 MR. FORDHAM: No, Commissioner.

24 COMMISSIONER JACOBS: Okay. Going to
25 Section VIII, which is the statement of individual

1 issues and positions.

2 Now, it's my understanding that what
3 happens now is that Issues 1, 8, 9, 10, 11, and 12,
4 those would be removed from this section and put into
5 the back, so I won't even go through those for the
6 moment.

7 Let's go to Issue 2. The statement of the
8 issue is correct?

9 MR. GRAHAM: Yes.

10 COMMISSIONER JACOBS: Should calls
11 originated from or terminated to Internet Service
12 Providers be defined as local traffic for purposes of
13 the MediaOne --

14 One of the questions that came to me on
15 this is to what extent this issue continues to have --
16 to what extent the federal has any kind of
17 precedential effect here. I would be interested in
18 hearing the thoughts from the parties on that.

19 MR. CARVER: Our position generally
20 speaking is that the FCC has, in effect, resolved this
21 issue on a going-forward basis. I think in the order
22 that they entered recently, they basically said that
23 to the extent commissions have categorized this
24 traffic as local in the context of specific
25 interconnection agreements, they were not necessarily

1 going to disturb those rulings. But prospectively, I
2 think the FCC has been fairly clear in saying that
3 it's not local traffic.

4 So our position, and I think the position
5 that Mr. Varner states in his testimony and what we'll
6 have in our brief, is that this has been resolved by
7 the FCC. So from a legal standpoint, we think that
8 basically it has been resolved.

9 Now, in fairness, I have to say there has
10 been some debate about the scope of the FCC order and
11 all the specific requirements and the question of
12 whether at this point the State Commission has the
13 latitude to do something different than the FCC or
14 whether it simply has to be followed. So I think
15 that's probably why it's an issue, and that's probably
16 why we haven't been able to resolve this in
17 negotiations.

18 But BellSouth's position is that the FCC
19 has ruled I think pretty unequivocally that ISP
20 traffic is not local traffic and should not be -- and
21 I think it follows from that logically that if it's
22 not local traffic, then it shouldn't be compensated as
23 local traffic in the originating or terminating
24 sections of the agreements in terms of the exchange of
25 traffic. So that's our position.

1 And in terms of the way it's handled, I
2 think it's in large part a legal issue. I don't know
3 that it's entirely a legal issue because of this sort
4 of side issue of what at this point the Commission can
5 do, if anything, other than simply applying the FCC
6 order. So to the extent there are policy issues or
7 questions as to what the appropriate thing is to do,
8 Mr. Varner has tried to address that in his testimony,
9 and he would be available at the hearing to answer any
10 questions the Commission might have. To the extent
11 it's a legal issue, I assume we'll also address it in
12 our briefs.

13 COMMISSIONER JACOBS: Okay. Mr. Graham?

14 MR. GRAHAM: Yes. Commissioner Jacobs,
15 just by way of background, the FCC order came out --
16 chronologically, it came out in between the time that
17 MediaOne filed its petition and BellSouth filed its
18 response. We do believe that we would like to
19 introduce some testimony at the final hearing. I
20 believe that there is still some jurisdiction on this
21 issue retained by the Florida Commission.

22 I would ask Mr. Karre if he has any
23 additional comments on this issue to please add them
24 at this time.

25 MR. KARRE: Yes. The FCC order that

1 Mr. Carver was addressing did clearly state that the
2 traffic is interstate jurisdictionally, but the FCC
3 has rulemaking that they've started in which they
4 propose to leave it to the negotiation process to
5 determine what sort of compensation ought to be paid.
6 So I don't think it totally resolves the issue. I
7 think there are still things that the PSC can do. But
8 I do agree with them that it is pretty much a legal
9 issue that we can argue in brief.

10 COMMISSIONER JACOBS: And the reason I
11 bring it up here is to what extent we want have
12 witnesses come in and offer factual evidence on this
13 as opposed to purely doing it in the brief.

14 What I would like to do is defer ruling on
15 this until the hearing. And as I can tell, there's no
16 witness who is only testifying on Issue 2, and I guess
17 probably 3 would be the same. So if we defer ruling
18 until the hearing as to whether or not it's a factual
19 or legal issue, that doesn't affect any witness
20 scheduling.

21 MR. GRAHAM: They'll be here anyway.

22 COMMISSIONER JACOBS: Okay. And I think it
23 would probably be wise for the full Commission to hear
24 arguments on this and then make a determination as to
25 whether or not there should be factual evidence

1 offered as opposed to just handling it in brief.

2 MR. GRAHAM: Okay.

3 COMMISSIONER JACOBS: Now, as to the --
4 we'll go ahead and keep the issues in for now, and
5 your positions as well.

6 How about -- any corrections to your
7 positions on Issue 2?

8 MR. CARVER: None.

9 MR. GRAHAM: None for MediaOne.

10 MR. CARVER: None for BellSouth.

11 COMMISSIONER JACOBS: Okay. Issue 3. No
12 corrections?

13 MR. CARVER: None for BellSouth.

14 MR. GRAHAM: No, sir.

15 COMMISSIONER JACOBS: Issue 4.

16 MR. CARVER: No corrections.

17 MR. GRAHAM: No corrections.

18 COMMISSIONER JACOBS: Okay. Well, let me
19 -- I was going to digress a bit just to understand
20 your position, but I'm sure we'll hear about it at
21 hearing, so I won't try and get into it now. It will
22 be interesting to hear more about that.

23 Let's move on to Issue 5. Any corrections
24 to the parties' positions there?

25 MR. CARVER: None for BellSouth.

1 COMMISSIONER JACOBS: Okay.

2 MR. GRAHAM: None for MediaOne.

3 COMMISSIONER JACOBS: Okay. And then
4 Issue 6.

5 MR. CARVER: None for BellSouth.

6 COMMISSIONER JACOBS: I assume that these
7 are vastly different concepts, or BellSouth, is your
8 position a subpart of MediaOne's position here? In
9 other words, is your position one of the options that
10 will be available under MediaOne's position?

11 MR. CARVER: We're on Issue 6?

12 COMMISSIONER JACOBS: Yes.

13 MR. CARVER: No, I don't think so. I think
14 essentially our interpretation of MediaOne's proposal
15 is something that would be contrary to the rules of
16 the Commission.

17 COMMISSIONER JACOBS: Okay.

18 MR. CARVER: So our view is that the
19 Commission rule governs.

20 COMMISSIONER JACOBS: Okay.

21 MR. CARVER: And we think that that
22 forecloses the prospect of doing what they've
23 suggested.

24 COMMISSIONER JACOBS: Okay. Very well.

25 MR. GRAHAM: Commissioner Jacobs, the

1 position as stated is accurate for MediaOne. I wonder
2 if Mr. Karre or Ms. Keeson have anything they would
3 like to comment on that point.

4 MR. KARRE: Yes. We did have some
5 confusion, frankly, in our testimony, and I'm sure
6 Mr. Carver has picked up on it, that Mr. Beveridge's
7 testimony between his direct and rebuttal seems to
8 say two different things. The direct testimony is
9 incorrect on this point where it says that we're
10 asking to move the demarcation point. We are not.

11 COMMISSIONER JACOBS: Okay.

12 MR. KARRE: I just want to make sure you
13 understand that, so we're clear on that. The position
14 as stated in our position statement is accurate.

15 COMMISSIONER JACOBS: Okay. Okay. So it
16 remains an issue of dispute.

17 MR. KARRE: I'm sorry. I couldn't --

18 COMMISSIONER JACOBS: I just wanted to make
19 it clear that it remains an issue of dispute.

20 MR. KARRE: Oh, yes.

21 COMMISSIONER JACOBS: Okay. Good.

22 MR. FORDHAM: Commissioner, before we
23 leave that, do they wish to amend their position
24 statement wherein the last phrase is that MediaOne
25 takes no position on the subject?

1 MR. GRAHAM: Mr. Karre?

2 MR. KARRE: I don't think so, because I
3 don't think we care for purposes of this proceeding
4 where the demarcation point is.

5 COMMISSIONER JACOBS: Ah, so I'm back to my
6 original position. Can this be -- do we need to keep
7 this as an issue in dispute?

8 MR. KARRE: Oh, I'm sorry. Maybe I
9 misunderstood your question. I don't -- I don't think
10 it is, and if we created the impression that it was,
11 then I apologize for that. We're not asking to move
12 the demarcation point. I apologize. I'm having a
13 little trouble hearing you.

14 COMMISSIONER JACOBS: Okay. I'm sorry. So
15 the question I originally wanted to pose, and probably
16 didn't do it too artfully, in Issue 6 it appears as if
17 there's no dispute among the parties as to where the
18 demarcation point should be.

19 MR. CARVER: If I understand MediaOne's
20 position correctly, it sounds to me like they're
21 saying that they are no longer advocating a minimum
22 point of entry, because they acknowledge that that's
23 contrary to the Commission's rule. And if that's the
24 case, we agree with that, and we think it can be
25 stipulated.

1 MR. KARRE: For purposes of this
2 proceeding, I'll agree to that.

3 COMMISSIONER JACOBS: Sounds okay.

4 MR. GRAHAM: I certainly will defer to my
5 client, but --

6 COMMISSIONER JACOBS: Let's do this. Let's
7 do this. Because you've got -- why don't we give you
8 an opportunity to review it. I'm going to go ahead
9 and say that we'll try to move into a stipulation, but
10 leave you an opportunity at the beginning of the
11 hearing if you want to come back and raise it. Okay?

12 MR. GRAHAM: Okay. I think that --

13 COMMISSIONER JACOBS: After you've had a
14 chance to review it.

15 MR. GRAHAM: That would be great. So the
16 way we'll leave it is, that has been stipulated to,
17 with the caveat that I might inform counsel that we
18 have receded from that stipulation, and we would do
19 that with plenty of time prior to the hearing.

20 COMMISSIONER JACOBS: Okay. With that,
21 we're at Issue 7. Any modifications to any of the
22 positions?

23 MR. CARVER: No change to BellSouth's
24 position.

25 MR. KARRE: Are we on 7?

1 COMMISSIONER JACOBS: Yes. That's --

2 MR. KARRE: Okay.

3 MR. GRAHAM: That's an accurate depiction
4 of MediaOne's position.

5 COMMISSIONER JACOBS: Okay. If that's
6 correct, then that takes us all the way to Issue 13.

7 Okay. What I would like to do is give each
8 side five minutes, and what I would like for you to
9 give me is why this should be an issue, where our
10 jurisdiction lies with regard to determining this
11 issue. I'm kind of flexible on the five minutes,
12 because I know you may have to collect your thoughts.
13 But there's a concern here as to whether or not our
14 jurisdiction is properly exercised in resolving this
15 issue.

16 Mr. Graham, I assume it's your issue, so
17 I'll let you go first.

18 MR. GRAHAM: Okay. I'll lead off and ask
19 Mr. Karre and Ms. Keeson to jump in or fill in the
20 blanks that I may omit.

21 Our position on this, Commissioner Jacobs,
22 is really one of common sense, if you will. The
23 intent of the Act was to foster competition. That is
24 sort of our bottom line on this.

25 And we believe that in this situation,

1 you're not dealing with the standard arm's length
2 transaction. MediaOne is dealing with the incumbent
3 in this case, and human nature being what it is, it is
4 not in the incumbent's best interest to assist a
5 competitor. I mean, that is not any ill reflection
6 whatsoever on BellSouth. That's just common sense.

7 And in order to get around that or in order
8 to ameliorate that fact, we believe that incentive
9 payments as proposed in our brief are a viable and
10 useful means for ensuring appropriate compliance by
11 BellSouth with the interconnection agreement. That's
12 kind of a common sense approach.

13 COMMISSIONER JACOBS: Now, are you -- I
14 want to be clear. In your mind, are incentive
15 payments the same as liquidated damages, or are you
16 asking for one or the other?

17 MR. GRAHAM: I think in application,
18 there's very little difference between the two. To
19 answer your question, I think in my mind they are
20 quite the same.

21 COMMISSIONER JACOBS: Well, the first
22 thought that came to me was, do you have to have a
23 breach in order to -- in the instance of incentive
24 payments, should there be some need of breach in order
25 to invoke those? It would be -- and I guess it's up

1 to the whims of the drafters. But for purposes of our
2 discussion here, I'm wondering, do you want to have a
3 condition where, in order to put in incentive
4 payments, there has to be some form of breach?

5 MR. GRAHAM: I think that you do have to
6 have a triggering point, a breach, if you want to call
7 it that. We were not able to get into that level of
8 discussion with BellSouth, because they frankly don't
9 believe that the Commission has jurisdiction to
10 consider this, so they wouldn't discuss the issue with
11 us at all. But, yes, I think you do have to have a
12 point after which an incentive payment would apply, a
13 breach, if you want to call it that.

14 COMMISSIONER JACOBS: Okay. Go ahead.

15 MR. GRAHAM: Mr. Karre, do you have
16 something you would like to add?

17 MR. KARRE: No, I don't.

18 COMMISSIONER JACOBS: Okay. Mr. Carver.

19 MR. CARVER: Thank you. I'll just start by
20 saying that I think this is an issue that the
21 Commission has ruled upon already in a number of
22 different cases. The first one was the arbitration
23 with AT&T and MCI which took place, at this point, if
24 my memory serves me, almost two years ago. The
25 precise same issue was raised.

1 The Commission ruled that it did not have
2 jurisdiction to award liquidated damages. And I
3 believe that every arbitration proceeding in which
4 this has been raised since then, the Commission has
5 ruled consistent with that. So I think the issue has
6 been resolved against finding jurisdiction for
7 liquidated damages again and again.

8 I would like to talk a little bit about why
9 that's an appropriate decision, though, even though
10 it's one that, again, I think has already been made.

11 First of all, I think the term "incentive
12 payments" is something of a euphemism here. An
13 incentive to me indicates a situation where one party,
14 for example, pays another party something for an
15 enhanced level of performance or for meeting some goal
16 or some aspiration.

17 Basically what's going on in this contract,
18 it's an effort to incent BellSouth by penalizing it if
19 it doesn't meet the contract. So it's not really an
20 incentive. I mean, we can call it that, but the
21 reality is that it's a penalty, or if it's not a
22 penalty, it's liquidated damages. There are really no
23 other alternatives. It's either a penalty or it's
24 liquidated damages. To call it an incentive is really
25 -- again, I think it's somewhat euphemistic.

1 As to a penalty clause, I think it's well
2 settled in Florida and in every jurisdiction that I'm
3 aware of that you can't have penalty clauses per se in
4 contracts, that when parties contract and there is a
5 breach of the contract, then damages are what's
6 awarded, and the measure of damages is the measure of
7 injury.

8 It's not appropriate to put in a contract
9 something that -- you know, just to give you an
10 offhand example, that, you know, Party A contracts to
11 sell Party B something for \$100, and if the deal
12 doesn't go through because Party B rejects it, then
13 they have to pay a million dollars. That kind of
14 penalty has been held again and again and again to be
15 void and to be against public policy.

16 So in a contract, in order to have damages
17 assessed in advance, which is, in effect, what you do
18 with liquidated damages, it necessarily has to be a
19 reasonable projection of what damages really would
20 be. And the test in a lot of instances when courts
21 have looked at liquidated damages is to try to
22 determine whether the parties have gotten together in
23 the negotiation stage and tried to really come up with
24 their best estimate of damages, or whether it's simply
25 a penalty, because if it is a penalty, then it's void

1 as a matter of law. It simply cannot be enforced.

2 So in this instance, again, I think the
3 proper characterization for what they're asking for is
4 liquidated damages. So now we come to the question:
5 Does the Commission have jurisdiction to do that? And
6 I think the answer very clearly is no, for this
7 reason.

8 The Commission can fine parties. I think
9 that's clear. The Commission can compel parties to --
10 I say compel. Within certain limits, the Commission
11 can order parties to comply with its rules. The
12 Commission cannot, however, resolve disputes that
13 involve damages. If one party comes to you and claims
14 that another party has damaged them in the context of
15 some telecommunications dispute, you can resolve the
16 issue to the extent it's within your jurisdiction.
17 But when it comes to the actual award of damages, the
18 parties have to go to court for that. And I think it
19 has been held again and again and again that the
20 Commission cannot award damages.

21 So when you look at liquidated damages,
22 what you're really talking about is awarding damages
23 before the fact of a breach. Again, for it to be
24 legally valid, that's what the entire process of
25 liquidated damages involves, which would be for the

1 Commission to assess the contract, to assess sort of
2 the up side and the down side, if you will, to decide
3 what a breach would constitute in terms of actual
4 damage and then to set a liquidated damages amount.
5 That's the process you would have to go through.

6 To the extent the Commission doesn't have
7 jurisdiction to award damages, you obviously don't
8 have the jurisdiction to make the assessment to award
9 damages in advance, but simply you can't award them at
10 all. You can't award retroactively, or you can't
11 award them on the basis of a breach that has
12 occurred. You can't award them on the basis of a
13 prospective breach that might occur.

14 So as a matter of law, this is simply
15 outside of the Commission's jurisdiction. And again,
16 I think this is -- frankly, what I just told you is
17 precisely the legal argument that BellSouth made two
18 years ago, and I think it's an argument that the
19 Commission accepted at that time. It's in the AT&T
20 and MCI order, and it has been followed uniformly
21 since then, so I think this is well settled.

22 COMMISSIONER JACOBS: What are the
23 performance measures here that would guide?

24 MR. GRAHAM: Well, there's performance
25 measures on nearly aspect of the contract. I'm not

1 sure I understand your question.

2 COMMISSIONER JACOBS: Let me just do a
3 hypothetical. If you were to make the argument that
4 what's at issue are incentive payments, then in
5 looking at your position, it seems to be based on the
6 idea that there are some performance measurements in
7 the contract which I assume BellSouth will be required
8 to adhere to.

9 MR. GRAHAM: To meet, yes, sir.

10 COMMISSIONER JACOBS: And in my mind, if I
11 say that you're going to want to see incentive
12 payments in there, then what happens I think would be,
13 you would give some measure of benefit. To the extent
14 BellSouth meets or exceeds a performance measurement,
15 or meets or exceeds some particular factor in the
16 contract, then as a reward for meeting or exceeding
17 that, an incentive is invoked.

18 MR. GRAHAM: I think I've misled you. What
19 we're looking for is the flip side of that. If
20 BellSouth does not meet the performance measure, then
21 there would have been a predetermined amount,
22 liquidated damages, whereby BellSouth will be required
23 to pay that amount for failure to meet that
24 performance measure.

25 And again going to like a common sense

1 approach again, the reason we believe that's necessary
2 is because there's a lack of motivation perhaps on
3 their side as the competitor to meet that performance
4 measure. So without teeth, there's not a great
5 motivating need for them to meet that, because right
6 now, if we don't have these performance measures,
7 we're limited to either arbitration or coming back to
8 the Commission. And as you're certainly well aware,
9 that is a rather cumbersome means whereby you can try
10 to force compliance. I mean, you can't do that all
11 the time.

12 COMMISSIONER JACOBS: Okay. Let's go with
13 your characterization. In that instance, what are you
14 looking at? What's the --

15 MR. GRAHAM: How much?

16 COMMISSIONER JACOBS: Yes, when. When do
17 you determine that some --

18 MR. GRAHAM: Well, that would have to be
19 agreed upon between the parties. And as I said a
20 moment ago, the parties haven't been able to even
21 discuss the topic.

22 COMMISSIONER JACOBS: They haven't looked
23 at what would --

24 MR. GRAHAM: BellSouth will not discuss it
25 because they don't believe in it. And that is the

1 point that we think the Commission could assist us in,
2 frankly.

3 COMMISSIONER JACOBS: Why aren't existing
4 enforcement mechanisms sufficient?

5 MR. GRAHAM: Satisfactory? I think because
6 going to the Commission or seeking arbitration are two
7 very significant steps. They take a while. They're
8 significant. And they I think are in a different
9 magnitude, if you will, from the sort of liquidated
10 damage situation that we're talking about.

11 You know, we don't want to crank up all
12 this machinery if BellSouth just fails to repeatedly
13 meet this performance measure of whatever. They're
14 all throughout the contract. We think that what we're
15 proposing will be a much cleaner and easier and
16 simpler process to ensure contract compliance.

17 COMMISSIONER JACOBS: Okay. Here's the way
18 -- based on what I'm hearing, the provisions that are
19 anticipated by MediaOne would sound very close to
20 liquidated damages and/or a penalty provision. It
21 sounds like what's anticipated is that you would want
22 to establish some minimum performance criteria that if
23 BellSouth does not meet them, you would want to invoke
24 some damages, and you would have to prove up those
25 damages.

1 MR. GRAHAM: Well, I guess the damages
2 would have been predetermined. If they don't meet
3 that, then it is going to cost them whatever, \$100.

4 COMMISSIONER JACOBS: Okay.

5 MR. CARVER: May I comment on that point?
6 I think that's really the crux of the whole problem.
7 I mean, if there was an alleged breach and they were
8 willing to prove up their damages, they could do that.
9 That's the way contracts work. That's the way it's
10 done here. When someone thinks we don't comply with a
11 contract, they file a complaint against us, and
12 although the Commission can't award damages, it
13 certainly handles it.

14 The problem is that what they want to do,
15 and something that's pretty regularly disfavored under
16 law, is, they want the Commission to, in effect, set
17 the amount of the penalty in advance in a way that
18 would be self-executing.

19 COMMISSIONER JACOBS: I want to make sure
20 -- excuse me a second. Are you okay? Okay. I'm
21 sorry.

22 MR. CARVER: So what they want -- well,
23 first of all, what they want is to negotiate, and
24 failing that, what they want the Commission to do is
25 basically say, okay, BellSouth has a duty to make this

1 connection in X amount of time, and every time it
2 fails to do it, it has to give us \$5,000. And they
3 want this to be self-executing so that they can
4 basically just send us a bill for whatever it is.

5 It's a really harsh procedure, and it's one
6 that, as I say, I believe is generally disfavored in
7 law, and that's one of the reasons why parties have to
8 negotiate liquidated damages very, very specifically.
9 And that's also why courts have been quick to toss out
10 liquidated damage provisions if they look like
11 penalties, because generally speaking, that's just not
12 the way contracts work, where two parties come
13 together and negotiate, with the provision that if one
14 even allegedly breaches the contract in some way,
15 then the other one gets to say, in effect, sort of,
16 you know, "Got you. That will be \$10,000."

17 So that's really the crux of the problem,
18 is that they want us to agree in advance that we would
19 pay them money if particular things did or didn't
20 happen. And we don't think that's fair, and we don't
21 think that's appropriate, and that's why they're
22 asking the Commission to set this.

23 But again, in order for it to be legally
24 valid, it has to be an assessment that is basically
25 the best estimate of actual damages, which means that

1 you have to award damages. And that's the part that
2 the Commission does not have jurisdiction to do.

3 COMMISSIONER JACOBS: Okay. Here's what I
4 think the ruling should be. First of all, I look at
5 the actual phrasing of the issue, should the PSC
6 arbitrate such provisions as these. And I think that
7 in and of itself is persuasive to me. We are here as
8 arbitrators, which presumes the parties having had
9 prior negotiations and prior consultation on this
10 issue.

11 It in my mind is not consistent with that
12 process for the arbitrator to impose on that process
13 provisions having to do with anything, let alone
14 liquidated damages, you know, if you would have come
15 with any issue that in my mind is not consistent with
16 our role as an arbitrator to say you parties must
17 engage in discussions on this issue. That is exactly
18 what you are to determine.

19 Now, I'm sensitive to the assertions of
20 MediaOne that BellSouth will not entertain those
21 discussions. And that is a matter of some concern,
22 but I think within the context of this issue, not
23 dispositive of the question that we have here.

24 I'm persuaded by the prior Commission's
25 decisions that the subject matter, i.e., whether or

1 not the -- even if you had had some discussions and
2 failed to agree on whether or not these should come
3 in, I think that -- if I'm not mistaken, that was the
4 case in the decision that the Commission looked at.
5 The parties had discussed it, could not agree on it,
6 and then came to the Commission to determine whether
7 or not those provisions should be in the arbitration
8 agreement. And in that instance, the decision was
9 that the Commission should not arbitrate liquidated
10 damages, and I'm persuaded by the rationale that
11 existed there.

12 So I guess what I'm saying to you,
13 MediaOne, is that even though you haven't been able to
14 reach that point here, even if you were to reach that
15 point, I think this issue would probably be controlled
16 by that prior decision.

17 However, I would hasten -- so my ruling is
18 that it would probably not be proper for it to be an
19 issue of dispute in this proceeding. And you have
20 full opportunity to take advantage of reconsideration
21 and so forth to bring that to the full Commission.

22 Let me go a bit further here. This issue
23 is one that is of significant concern to me, not your
24 issue here, i.e., whether or not we should even bring
25 these provisions up; the substance of your issue,

1 i.e., to what extent you have reasonable recourse in
2 the event that there's not sufficient execution of a
3 arbitration agreement.

4 That is an issue that I think there has
5 been significant discussion on. We've had one
6 particular round of discussion and vote on to what
7 extent we should have informal dispute resolution
8 procedures in that event.

9 We're in the process -- and I'm going to
10 ask Staff to, if they would, expedite that for me. I
11 had asked to pull together some background information
12 on to what extent we have a body of litigation out
13 there in which arbitration agreements have been
14 entered into, we have approved them, but now disputes
15 arise under those agreements, and how we are resolving
16 those.

17 And suffice it to say that I do share a
18 concern that how we are resolving those can cause some
19 added and undue overhead for parties attempting to
20 move into the marketplace, and I think it's reasonable
21 to pursue ways of minimizing that delay. And to the
22 extent that it's possible, I would like to look at
23 that. I think the Commission should look at that
24 issue.

25 But as to this proceeding and as to this

1 issue, I'll rule that Issue 13 should not be a part of
2 the record.

3 MR. GRAHAM: Okay. We understand your
4 ruling.

5 COMMISSIONER JACOBS: Okay. With that, we
6 move to Section IX, which is the exhibit list.

7 Now, the demonstration, as I understood, is
8 not identified as an exhibit.

9 MR. GRAHAM: It is, Commissioner Jacobs.

10 COMMISSIONER JACOBS: It is?

11 MR. GRAHAM: It's on the second page of the
12 exhibit list under -- at the very bottom, GB-7.

13 COMMISSIONER JACOBS: Okay.

14 MR. GRAHAM: The model NID with wall jack,
15 and then on the next page, GB-8, the model
16 cross-connect.

17 COMMISSIONER JACOBS: Okay.

18 MR. GRAHAM: That's what we're talking
19 about.

20 COMMISSIONER JACOBS: Okay. So the essence
21 of the demonstration is to bring out those two
22 exhibits?

23 MR. GRAHAM: Correct.

24 COMMISSIONER JACOBS: Okay.

25 MR. GRAHAM: The demonstration will be to

1 show those two exhibits and show to the Commission how
2 they would be applied in an actual workplace setting.

3 COMMISSIONER JACOBS: Okay. Well, what
4 I'll just ask is, are there any corrections or
5 revisions to the witness exhibit lists?

6 MR. GRAHAM: None from MediaOne.

7 MR. CARVER: None for BellSouth.

8 COMMISSIONER JACOBS: Okay. Very good.
9 And stipulations, we now -- well, I see
10 already that those issues haven't been listed here, so
11 we'll list those as stipulations.

12 MR. GRAHAM: I think you can also put --

13 MR. CARVER: We need to add No. 6.

14 MR. GRAHAM: Currently it just says
15 MediaOne believes.

16 COMMISSIONER JACOBS: Oh, I'm sorry.
17 Right. So it will be revised to indicate that they're
18 official stipulations.

19 MR. GRAHAM: And insert Issue No. 6.

20 COMMISSIONER JACOBS: That's correct.

21 MR. GRAHAM: With the caveat that we may
22 back off of that.

23 COMMISSIONER JACOBS: Okay. No pending
24 motions, except we'll note the whole issue of Issue 2
25 and Issue 3 to be resolved, whether or not those are

1 legal issues or not.

2 MR. GRAHAM: Commissioner on that question,
3 something occurred to me.

4 The discovery cutoff in this is currently
5 set for July 2nd. Staff sent out a second or third
6 set of discovery that -- I think they called and asked
7 permission. I wasn't in the office that day. But the
8 bottom line is, that discovery is due on July 7th,
9 five days after the cutoff date, which MediaOne
10 doesn't have a problem with that at all. I wonder if
11 it would be appropriate for us to seek a similar
12 liberty whereby if we chose to do some additional
13 discovery, we could also have a due date of July 7th
14 instead of July 2nd, which is what it currently says
15 in the order.

16 MR. CARVER: I object to that.

17 COMMISSIONER JACOBS: That was going to be
18 my first question.

19 MR. CARVER: Basically, Staff sent out
20 their discovery quite some time ago, and they have
21 asked us to comply by the 2nd. Our response has been
22 that we'll do our best, but we don't intend to object
23 to Staff serving it late, because, again, we're going
24 to try to comply with that, and because they did get
25 it out fairly close to the deadline. I mean, on

1 interrogatories or production requests, it has to be
2 sent out 30 days before the deadline, and it looks
3 like they sent it out about 25 before, so we're pretty
4 close.

5 But I definitely have an objection when we
6 reach the point of the parties trying to bootstrap
7 onto that accommodation to Staff and extension of the
8 discovery period, because the hearing is the 9th. So
9 to extend discovery generally to the 7th would be
10 something that would be, first of all, fairly unusual,
11 and secondly, I just don't think it's workable. The
12 7th is two days before the 9th. I mean, we could have
13 a situation where basically parties are deposing each
14 other, you know, two days before the hearing.

15 The other thing I would add is that at
16 this point, if parties have not sent out discovery to
17 each other, it's too late to do it and to meet the
18 30-day rule even by the 7th. So we're too late either
19 way for written discovery. The only thing extending
20 the deadline by five days would do is set up a
21 situation where parties are deposing each other on the
22 eve of hearing.

23 We don't have that many witnesses.
24 Frankly, I think if everyone were to be deposed, we
25 could do it next week with no problem. We can

1 probably do it in a day or two with no problem.

2 MR. GRAHAM: If I can -- go ahead. Excuse
3 me.

4 MR. CARVER: So I just don't see that -- I
5 see it as being a problem, and I don't understand the
6 point of doing that, actually.

7 MR. GRAHAM: Just to elaborate, I didn't
8 explain myself fully. If we chose to pursue it, it
9 would be written discovery to obviate the need and
10 cost of a deposition, and that's the whole point of
11 it. If need be, we'll take a deposition.

12 MR. CARVER: And that's also what I have a
13 problem with, because again, for written discovery to
14 be timely, it would have had to have been sent out --
15 let's assume it's sent by hand delivery. It would
16 have had to have gone out 30 days before the 2nd. So
17 at this point, we don't have 30 days before the 7th.

18 So I guess what counsel is suggesting is
19 that he not only wants the discovery deadline extended
20 to the 7th; he also wants the deadline for responding
21 to discovery to be cut down to ten days, basically.
22 Well, actually, my math is wrong. Fifteen days.

23 So it's really two things. I mean, again,
24 the 7th is too late. It's too late to send out
25 interrogatories and have them answered by the 7th. So

1 if he's asking that the discovery period be extended
2 until two days before the hearing and that he be
3 allowed to send out written discovery now, it would be
4 answered by the 7th, and that's also cutting the
5 discovery period in half.

6 Sometimes these discovery requests get
7 pretty long, and it's hard to answer them in 30 days.
8 To try to do them in two weeks, particularly when
9 we're going to be taking depositions and getting ready
10 for hearing I think is too much. And I would also add
11 that there's really no point to it. I mean, this case
12 has been around since March. Neither side has filed a
13 lot of discovery, but I think both sides have had
14 ample opportunity to file whatever they want to. So
15 again, I object at this point to anyone trying to do
16 expedited discovery on the eve of hearing.

17 COMMISSIONER JACOBS: You say that you can
18 do depositions, and that would take care of your
19 issues?

20 MR. GRAHAM: It would. It's just a more
21 costly process, but we can abide by that.

22 MR. FORDHAM: Commissioner, excuse me. May
23 I give you the historical perspective on what happened
24 here? These were provided following a communication
25 with both parties wherein they both said that if we

1 hand delivered or got them to them immediately, that
2 they could provide it by the 2nd. So based on that
3 verbal assurance that they would provide the response
4 by the 2nd, we hand delivered the one to BellSouth and
5 faxed the one to MediaOne based on a prior verbal
6 assurance that that was okay with them and that they
7 could respond by the 2nd and not the 7th. And so
8 based on that assurance, we went ahead and issued that
9 by hand delivery and fax based on their assurances
10 that they would provide the response by the 2nd.

11 COMMISSIONER JACOBS: I'm hearing no real
12 objections to responding to Staff.

13 MR. GRAHAM: Not at all. I don't mean to
14 be stirring up a hornets' nest. We've got no problem
15 with the Staff whatsoever.

16 COMMISSIONER JACOBS: Why don't we do this.
17 We'll go ahead and grant Staff the extension to -- or
18 you the extension to reply, rather, to them by that
19 date. And go ahead, and you can do telephonic
20 depositions, and if there are late-filed deposition
21 exhibits, that should take care of most of what I'm
22 hearing --

23 MR. GRAHAM: That will be fine.

24 COMMISSIONER JACOBS: Is that okay?

25 MR. CARVER: That's fine.

1 COMMISSIONER JACOBS: Okay. That takes us
2 through pending motions.

3 Any other matters to be brought before the
4 Commission today?

5 MR. GRAHAM: None at this time. Thank
6 you.

7 COMMISSIONER JACOBS: The hearing is
8 scheduled for when on this?

9 MR. GRAHAM: The 9th.

10 COMMISSIONER JACOBS: Okay. Anything else,
11 Staff?

12 MR. FORDHAM: No, Commissioner.

13 COMMISSIONER JACOBS: Okay. The prehearing
14 is adjourned.

15 (Proceedings concluded at 10:27 a.m.)

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STATE OF FLORIDA)
:
COUNTY OF LEON)


CERTIFICATE OF REPORTER

I, MARY ALLEN NEEL, RPR,

DO HEREBY CERTIFY that the hearing in Docket No. 990149-TP was heard by Commission E. Leon Jacobs, Jr. at the time and place herein stated; it is further

CERTIFIED that I stenographically reported the said proceedings; that the same has been transcribed under my direct supervision; and that this transcript, consisting of 52 pages constitutes a true transcription of my notes of said proceedings.

DATED this 26th day of June, 1999.



MARY ALLEN NEEL, RPR
100 Salem Court
Tallahassee, Florida 32301
(850) 878-2221

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