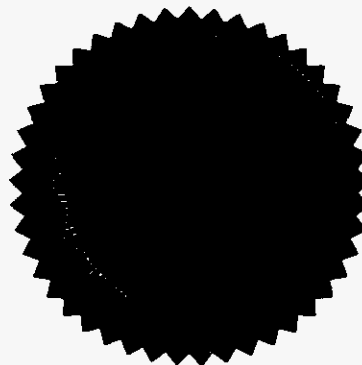


BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

IN RE: Comprehensive Review of
Revenue Requirements and Rate
Stabilization Plan of SOUTHERN
BELL.

DOCKET NO. 920260-TL



PROCEEDINGS: PREHEARING CONFERENCE

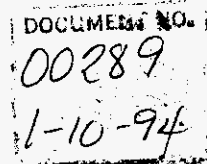
BEFORE: COMMISSIONER SUSAN F. CLARK
Prehearing Officer

DATE: Wednesday, January 6, 1994

TIME: Commenced at 9:30 a.m.
Concluded at 11:25 a.m.

PLACE: 101 East Gaines Street
Tallahassee, Florida

REPORTED BY: JANE FAUROT
Notary Public in and for the
State of Florida at Large



ASSOCIATED COURT REPORTERS

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ALSO PRESENT:

ROBIN NORTON, FPSC Division of Communications.

* * * * *

I N D E X

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PROCEEDINGS

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CERTIFICATE of REPORTER

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P R O C E E D I N G S

1
2 COMMISSIONER CLARK: Let's call the prehearing to
3 order.

4 Ms. Green, would you please read the notice?

5 MS. GREEN: Pursuant to notice this time and place
6 was set for a prehearing conference before Commissioner
7 Susan Clark as Prehearing Officer. This is Docket 920260
8 and for other consolidated dockets.

9 COMMISSIONER CLARK: Take appearances.

10 MR. ANTHONY: Hank Anthony, Doug Lackey, Nancy
11 White all on behalf of Southern Bell Telephone and Telegraph
12 Company.

13 COMMISSIONER CLARK: Mr. Gross?

14 MR. GROSS: Michael Gross, Florida Attorney
15 General's Office.

16 MR. TYE: Michael W. Tye, appearing on behalf of
17 AT&T Communications of the Southern States, Inc.

18 MR. HENRY: Mickey Henry and Rick Melson,
19 appearing on behalf of MCI.

20 MR. NYCE: Peter Nyce, Jr., on behalf of the
21 Federal Executive Agencies and the Department of Defense.

22 MS. WILSON: Laura Wilson on behalf of the Florida
23 Cable Television Association.

24 MS. KAUFMAN: Vicki Gordon Kaufman, McWhirter,
25 Reeves, McGlothlin, Davidson and Bakas, on behalf of the

1 Florida Interexchange Carrier Association.

2 MR. HOFFMAN: Kenneth A. Hoffman, Messer Vickers
3 firm, on behalf of the Florida Pay Telephone Association.

4 MR. BELL: Donald Bell on behalf of the American
5 Association of Retired Persons.

6 MR. SELF: Floyd Self of the Messer Vickers law
7 firm, on behalf of McCaw Cellular Communications.

8 MS. BRYANT: Chanthina Bryant and Everett Boyd,
9 appearing on behalf of Sprint Communications Company Limited
10 Partnership.

11 MR. SHREVE: Jack Shreve and Charlie Beck, Office
12 of the Public Counsel, appearing on behalf of Florida's
13 Citizens.

14 MR. DICKENS: Ben Dickens, Blooston, Mordkofsky,
15 Washington, D.C., Florida Ad Hoc Telecommunications Users'
16 Committee, and Doug Metcalf, on behalf of the same firm.

17 MS. GREEN: Angela Green, Tracy Hatch, Robert
18 Pierson, on behalf of the Commission Staff.

19 COMMISSIONER CLARK: Is there anyone else that
20 needs to make an appearance today? Okay. This is our last
21 prehearing conference.

22 MS. GREEN: This is the last scheduled one. The
23 parties should have before them, and I don't believe you
24 have one, but the most recent draft prehearing order. It's
25 dated January 4th at the top. What is notable is that,

1 hopefully, the corrections that all the parties gave to us
2 have been made. The witness list that's included here that
3 begins on Page 8 is not an order of witnesses. It's a mere
4 recitation of witnesses. It does not include the four
5 rebuttal witnesses whose testimony was filed yesterday. The
6 parties should also have, and I don't know if you have at
7 your station, but you will shortly, a list of five pages
8 with a suggested order of witnesses.

9 COMMISSIONER CLARK: Ms. Green, it's my
10 understanding you -- there has been some discussion about
11 the order of witnesses.

12 MS. GREEN: Yes. There has been some discussion.
13 The Staff has sent some drafts to those who had expressed an
14 interest at the last prehearing, and we had hoped to send
15 drafts out to all the parties before today. Unfortunately,
16 we did not get a chance to do that. So, the parties are
17 just seeing this for the first time, although several have
18 seen it before today.

19 COMMISSIONER CLARK: Okay.

20 MS. GREEN: But at the last prehearing conference
21 some people stayed after to work on this.

22 COMMISSIONER CLARK: What other pending matters do
23 we have to take care of?

24 MS. GREEN: Other than the motions that were filed
25 yesterday that were subject of the press conference, the

1 only ones that I am aware of -- there are a number of
2 confidentiality motions that are still being disposed of
3 through the normal process outside of the oral arguments
4 here. There is also a motion to compel that was filed by
5 FIXCA regarding some of its discovery. And then the parties
6 would need to tell you if there is something else that needs
7 to be taken up today.

8 COMMISSIONER CLARK: Well, I am just looking
9 around. I had the motions that were filed yesterday at my
10 desk but I didn't bring them with me.

11 MR. ANTHONY: I have additional copies if you need
12 copies.

13 COMMISSIONER CLARK: Sounds great. May I have
14 some copies of them?

15 MS. GREEN: And I guess as a procedural matter to
16 follow up from our last prehearing conference, the Florida
17 Consumer Action Network had filed a motion to accept its
18 late-filed prehearing statement. That was filed December
19 the 20th, which was within the period of time that you had
20 set for other parties to make corrections. So, I assume you
21 would just want to accept that motion. I've heard nothing
22 in response.

23 COMMISSIONER CLARK: Is there any objection to
24 accepting the late-filed prehearing statement?

25 MS. GREEN: I talked to Broward County, and they

1 are supposed to have something on the way to us. The only
2 issue they are taking a position on is 32a, which is,
3 "Should there be toll relief?" I have not received anything
4 from them.

5 COMMISSIONER CLARK: Well, okay.

6 MS. GREEN: I spoke with them. They know what
7 they need to do.

8 COMMISSIONER CLARK: All right. Well, we'll show
9 the motion to file a late-filed prehearing statement by the
10 Florida Consumer Action Network as accepted, and their
11 positions are incorporated into the draft prehearing order.

12 MS. GREEN: Yes, they are in there.

13 As you will recall, the problem with Broward
14 County -- I sometimes forget you have other dockets besides
15 this one -- was that they were not consolidated in the
16 docket when all the procedural orders were issued.
17 Therefore, they had no notice that they were supposed to be
18 making these filings.

19 COMMISSIONER CLARK: Okay.

20 MS. GREEN: And so due to my illness, they were
21 not contacted until last week, and they assured me that they
22 -- since they are a County Commission, the attorney cannot
23 just file something. He has to take it before the
24 Commission, get their approval and then file it. And he was
25 supposed to take it, I think, Monday or Tuesday of this week

1 and send it in.

2 COMMISSIONER CLARK: Okay. When that comes in, I
3 assume he'll serve all the parties, and bring it to my
4 attention, and we'll take action on including that in the
5 prehearing filing --

6 MS. GREEN: Yes, ma'am.

7 COMMISSIONER CLARK: -- prehearing order, if there
8 are no objections to it.

9 Ms. Green, do you have a recommendation on what to
10 take up next?

11 MS. GREEN: The motions that were filed yesterday,
12 there is only one that under the Commission's procedures you
13 could take up and that is the request to stay discovery.

14 COMMISSIONER CLARK: And that was a joint motion
15 filed by Southern Bell and Public Counsel?

16 MS. GREEN: That's correct. They have asked to
17 continue the hearing and stay discovery.

18 COMMISSIONER CLARK: Well, I can't continue the
19 hearing.

20 MS. GREEN: That's correct.

21 COMMISSIONER CLARK: And my understanding is that
22 the Staff is working on a review of the stipulation reached
23 by the parties, and we will try to have a recommendation on
24 the agenda, the 18th agenda?

25 MS. GREEN: Yes, ma'am, that's correct, it is

1 being included in the agenda listing that's noticed out.
2 And we are presently working with the Chairman's office
3 regarding the date to file the recommendation. The
4 recommendation will not be filed today, but it is our intent
5 to have the recommendation before the Commission, the full
6 Commission, on the 18th.

7 COMMISSIONER CLARK: Okay.

8 MS. GREEN: And that's regarding the substance of
9 the agreement itself.

10 COMMISSIONER CLARK: Let me just express my
11 concern with staying discovery, because if the stipulation
12 is not accepted by the Commission, that's -- we don't have
13 much time before the hearing, and, you know, you just can't
14 add more hours to the day. So, I would like to hear from
15 both Southern Bell and Public Counsel as to, you know, how I
16 would address the issue of should we stay discovery and the
17 stipulation not be approved, and the Commission decides it
18 needs to go to hearing, we have lost a great deal of
19 discovery time.

20 MS. GREEN: All right. I would note, just before
21 you begin those arguments as well, the Commission's
22 procedural rules allow the parties time to file responses to
23 both of these motions. That time has not run. But I
24 understand just from general discussions before we convened
25 this morning, that there are parties who have viewpoints on

1 both of those motions and may wish to address the discovery
2 issue as well.

3 COMMISSIONER CLARK: It's not right for even
4 hearing oral argument?

5 MS. GREEN: I believe you can hear that, yes. And
6 I believe on your own motion you could make a decision.

7 COMMISSIONER CLARK: Okay.

8 MR. ANTHONY: Commissioner Clark, excuse me.
9 Public Counsel and Southern Bell have negotiated a
10 stipulation and agreement that we think will resolve
11 virtually all the issues in the case. The primary exception
12 -- there are two exceptions, one is the Dade/Broward toll
13 question, which had been addressed by the Commission, but
14 one of the parties to this case had protested and it had
15 been rolled back into this case.

16 The other issue is rate design, if the stipulation
17 is accepted. Other than that, it resolves all the issues.

18 One of the primary reasons, at least for Southern
19 Bell entering into the stipulation, was to avoid further
20 expense, both in terms of time that the parties' witnesses,
21 as well as just pure dollar outlays, transportation costs,
22 hotel stays, the cost of witnesses, expert witnesses, and so
23 on.

24 We think that since the stipulation does resolve
25 all of the various issues in the case, except for the few

1 that I noted, that it would make sense that the parties
2 devote their efforts to trying to get the stipulation
3 accepted by the Commission, at least Public Counsel and
4 Southern Bell certainly are going to be working towards that
5 end.

6 COMMISSIONER CLARK: Let me interrupt you right
7 there. What are you going to do? You filed something. I
8 mean, it seems to me at this point the Staff needs to look
9 at it and make recommendations.

10 MR. ANTHONY: Well, that is true, but on the other
11 hand, I have a lot of other people who can be doing a lot of
12 other things. I've got a huge amount of resources devoted
13 to discovery in this case. We still have depositions that
14 would have to be taken and so on. We have got expert
15 witnesses who would have to be deposed. There's a fair
16 amount of expense in connection with that. There's a lot of
17 time. There are other cases pending before the Commission
18 that need the attention of people. And we just think that
19 given the fact that the stipulation has been filed -- and I
20 don't know if anybody objects to the motions that we filed,
21 and I imagine that if anybody does, we will hear from them
22 today. But in the absence of anybody objecting to it, we
23 think that it would be appropriate to stay discovery.

24 COMMISSIONER CLARK: Mr. Shreve.

25 MR. SHREVE: Commissioner, we didn't want to have

1 anything be burdensome for any of the parties. And it may
2 be that some of the specific parties that are putting on
3 their case have some discovery outstanding that we weren't
4 considering. I think most of the discovery has been ours,
5 back and forth to AT&T, except for the Staff. Now, we are
6 okay. We have been into hearings before with the Public
7 Service Commission when we have not had all of our discovery
8 done because there haven't been rulings made. So, we have
9 been in that position before. We have most of our discovery
10 taken care of. So, if there is someone that has discovery
11 out there that is going to be put in a burdensome position,
12 then I don't think that should happen to them, and perhaps
13 they could say. If there is no one out there but us and
14 possibly Staff who may need to go forward, that is a
15 different matter. But I don't see any -- maybe I'm just not
16 aware of some concern, but particularly on the revenue
17 requirements, I don't know if anybody else has anything out
18 there.

19 COMMISSIONER CLARK: So, what you're saying is
20 that you have done a lot of your discovery and completed it,
21 but you're not speaking for other parties with respect to
22 whether they need to conduct?

23 MR. SHREVE: Right, and we don't want -- we are
24 ready to go to the hearing, and I think Bell, as far as
25 their case and discovery on us is ready to go to hearing.

1 We do not have a problem with us holding off discovery from
2 this point forward, at least as between these two parties
3 who primarily, along with the Staff, have been putting on,
4 primarily, the revenue requirements case in most of the
5 case. If the stipulation is not approved, we, of course,
6 will complete discovery as rapidly as we can. And I don't
7 think we will be hurt at all in our case. I think the Staff
8 may need to go forward with some. But if there is anyone
9 else that has any objection to holding off discovery, I
10 think it would be fine for them to say what their objection
11 is and go ahead and take that up. We do not have that
12 problem.

13 COMMISSIONER CLARK: Mr. Gross, do you have any
14 comment?

15 MR. GROSS: I think the Attorney General would
16 support the motion to stay the discovery and also to
17 continue the hearing, even though I heard you say that you
18 don't have authority to make that decision today.

19 COMMISSIONER CLARK: Okay.

20 Mr. Tye?

21 MR. TYE: Commissioner Clark, AT&T was just served
22 with these two motions yesterday. We don't have any
23 outstanding discovery that I am aware of, so we don't have a
24 problem with staying discovery.

25 We do have a problem with the proposed

1 stipulation, and we have a problem with the motion to
2 continue the hearings. Basically, I think that we are glad
3 to see Public Counsel and Southern Bell arrive at an amount
4 of dollars that need to be disposed of here. The problem
5 with the stipulation that they have arrived at, from our
6 standpoint, is that it doesn't really specify how those
7 dollars will be disposed of. And AT&T's position has been
8 throughout this proceeding that access charges need to go to
9 interstate levels in this proceeding. Unless we can get
10 some agreement along those lines with the parties here, and
11 get a proposal that goes before the Commission and can be
12 accepted, I'm afraid we are just going to have to go to
13 hearing. And from the standpoint of continuing the
14 hearings, I don't think that that's going to be helpful.

15 COMMISSIONER CLARK: Mr. Tye, if I understood what
16 Mr. Anthony said was rate design is just -- is left to go to
17 hearing or -- let me ask Mr. Anthony.

18 Do I read that stipulation that you would make a
19 proposal, Southern Bell would make a proposal as to how to
20 achieve the rate reductions in the settlement, and we would
21 go to hearing on that?

22 MR. ANTHONY: Absolutely, Commissioner Clark. I'm
23 somewhat surprised by AT&T's position in this. The
24 stipulation says that there will be a \$60 million rate
25 reduction come July 1st and further rate reductions in the

1 following years, \$80 million in '95 and \$84 million in '96.
2 And the way it's written, each -- Southern Bell would come
3 forth with a proposal at least 60 days prior to those
4 significant dates, and would set forth a suggested rate
5 design for each of those revenue reductions. At that time,
6 all interested parties, the Staff, any other party to this
7 proceeding, can at that time participate and say that they
8 think it's a wonderful rate design or disagree. And if
9 there is disagreement, there is a mechanism by which it will
10 go to hearing and let the Commission decide. So, I don't
11 understand why AT&T's feeding at the trough quite like it is
12 at this moment.

13 MR. TYE: Well, with all due respect to Southern
14 Bell, Commissioner Clark, I was somewhat surprised by
15 yesterday's press conference.

16 The problem is that this agreement disposes of
17 about \$104 million in revenues up front, effective
18 immediately. Now, I think we are entitled if, in fact, we
19 can't work out an agreement, we are entitled to have a
20 hearing on how those are disposed of.

21 MR. ANTHONY: And the settlement allows for that
22 hearing, so I don't understand the concern.

23 MR. TYE: I don't think it does. I don't think it
24 does. It doesn't allow for a hearing on the 55 million.

25 COMMISSIONER CLARK: Mr. Tye, if I can interrupt

1 you. It's clear to me that your concern is where the rate
2 reductions are going to be.

3 MR. TYE: Yes, ma'am.

4 COMMISSIONER CLARK: And it is likewise clear to
5 me that this is a stipulation between some of the parties,
6 not all of the parties.

7 MR. TYE: That's correct.

8 COMMISSIONER CLARK: And it is my understanding
9 that Southern Bell and Public Counsel will be working to
10 achieve a settlement or have other parties agree to this
11 stipulation?

12 MR. SHREVE: Commissioner, that's right. Up to
13 this point there is absolutely no way there could be an
14 agreement between all the parties in the case. Now, all
15 over the years I've said, and still believe you cannot have
16 a stipulation and dispose of a case without the agreement of
17 all the parties.

18 What we tried to do is exactly what you said. We
19 tried to set aside -- and we were the primary movers, along
20 with the Staff, of the revenue requirements case. We feel
21 that we have gotten a good deal for the people on this. We
22 knew that there are many, many parties that wanted, and
23 deserved, a piece of that. But whether or not that can be
24 arrived at by agreement, I don't know. I'm willing to work
25 on it and work with the parties on it. If not, the Public

1 Service Commission would have this pot of money and be able
2 to make that decision.

3 True, we did dispose of \$55 million as Touch-Tone
4 charges. We heard that from one end of this state to the
5 other about the Touch-Tone charges, and we have taken care
6 of that. That of the settlement part -- now, I believe what
7 Mr. Tye is talking about is the 49 million, which really was
8 not derived from this case but was derived from a win in the
9 last case. But of the settlement part, the only part that
10 was earmarked was 11 million to cover the Broward/Dade,
11 which has already been voted out by the Commission, but that
12 still has to go to hearing, and the 55 million for the
13 Touch-Tone of the part derived from this case.

14 COMMISSIONER CLARK: Okay. Mr. Tye, let me just
15 narrow this conversation to what I have control over, and
16 that is the discovery. And what I hear you saying is that
17 it's not a problem to you if discovery is stayed.

18 MR. TYE: Continuance or -- excuse me, stay of
19 discovery is not a problem, Commissioner. Continuance of
20 the hearing would be a problem until we can get some
21 agreement with Southern Bell.

22 COMMISSIONER CLARK: Okay. And you have an
23 opportunity to file written --

24 MR. TYE: Yes, ma'am. I think we have got until
25 next Wednesday to file something on that.

1 COMMISSIONER CLARK: Okay. Mr. Henry?

2 MR. HENRY: Commissioner, we are in the same boat
3 with AT&T. We have no problem with staying discovery, but
4 we would have a problem with the continuance of the
5 hearings.

6 You know, it appeared to me, and I know you don't
7 have any authority over this, but the stipulation was
8 basically on revenue requirements and one rate design item.
9 So that at a minimum, unless some other party had some
10 objection, all the issues regarding revenue requirements
11 would be substantially -- well, would be disposed of,
12 leaving you with the hearing on how to dispose of the money.

13 Rather than putting us in the position of having
14 to respond to Southern Bell's tariffs, perhaps we could just
15 proceed in those hearings to put our case on how that money
16 ought to be disposed of. And then we don't have to wait 60
17 days after the stipulation is adopted, if it is, to come in,
18 object and start the hearings anew or start the process of
19 the hearings. But, as to what you have control over, we
20 have no problem with staying discovery.

21 COMMISSIONER CLARK: Mr. Nyce?

22 MR. NYCE: The Department of Defense has no
23 problem with staying discovery. We also join with AT&T and
24 MCI in a concern about the rate design portion of the case.

25 MS. WILSON: Commissioner, we have no problem with

1 staying discovery.

2 COMMISSIONER CLARK: And you don't want to comment
3 on continuing the hearing?

4 MS. WILSON: We don't have a position on that.

5 COMMISSIONER CLARK: Ms. Kaufman?

6 MS. KAUFMAN: Commissioner, as mentioned by
7 several other parties previously, FIXCA was not aware of the
8 settlement until we heard it at the press conference. And
9 we had no input into --

10 COMMISSIONER CLARK: We were in the same boat, at
11 least I was.

12 MS. KAUFMAN: Well, as a party to the case, that
13 was somewhat surprising to us. And we would have an
14 objection to continuing discovery because, as you heard
15 Ms. Green say, we have an outstanding motion to compel on a
16 topic that was not touched on at all in the proposal that's
17 before you, having to do with the corporate network. We
18 have also indicated our intention to depose at least one of
19 Southern Bell's witnesses if we could not get some
20 information on an informal basis. And we have several very
21 specific concerns about the proposal, because, as I said, it
22 does not address several issues that FIXCA raised in this
23 docket, including the corporate network, the legal
24 prohibition on serving areas where the 25-cent plan is in
25 effect, and a myriad of other issues that I will be happy to

1 have Mr. Gillan talk to you about if you are interested in
2 hearing that now.

3 COMMISSIONER CLARK: Well, let me ask you this.
4 Are they rate design issues?

5 MS. KAUFMAN: Yes. But as Mr. Henry pointed out,
6 we have the same concern about the way the proposal is
7 structured in that Southern Bell would come in, make a
8 proposal, the other parties would have a limited amount of
9 time. We think that would unnecessarily delay any refund
10 that might be ordered, as opposed to going straight to
11 hearing and saying, "There's this much money. Parties, put
12 up your proposal as to how you think it ought to be disposed
13 of." But back on the question of discovery, we do have
14 outstanding discovery that needs to be completed.

15 COMMISSIONER CLARK: Well, let me be sure. You
16 have outstanding discovery in the one instance, in a motion
17 to compel that's before me now?

18 MS. KAUFMAN: Yes, ma'am.

19 COMMISSIONER CLARK: And if you cannot get some
20 information informally, you will want to depose one witness?

21 MS. KAUFMAN: That's right.

22 COMMISSIONER CLARK: Is there anything else?

23 MS. KAUFMAN: No, ma'am.

24 COMMISSIONER CLARK: Okay.

25 MR. HOFFMAN: Commissioner Clark, the Florida Pay

1 Telephone Association does not object to staying discovery.
2 Our interest in this case primarily centered on
3 the ELS plan, the expanded local service plan, and
4 components of that. It was through that plan that the pay
5 phone providers would have received reduced rates that they
6 paid to Southern Bell. That component of this case is
7 eliminated through the stipulation. In addition, per the
8 prehearing statement, the draft prehearing order, the bill
9 number screening issue reflected that Southern Bell did not
10 have any opposition to eliminating that charge as well,
11 which would have been a benefit to the pay phone providers.
12 I say that simply to give you a very brief background on
13 what our interests have been in this case.

14 Having said that, we will take a hard look at the
15 stipulation, and we commit to you that we are going to work
16 with Mr. Shreve and with Southern Bell to try to come to a
17 solution. Since the stipulation does contain a provision
18 for going to hearing on the disposition of revenues, I'll
19 say to you at this point that we will not object to a
20 continuance of the hearing as it's presently scheduled.

21 COMMISSIONER CLARK: Mr. Self -- oh, Mr. Bell, I'm
22 sorry.

23 MR. BELL: Commissioner, AARP supports both the
24 stay of discovery and the continuance. And our support of
25 the stay of discovery is based on my understanding that it's

1 not intended to prevent parties like FIXCA from going ahead
2 with the small amounts of discovery that they have
3 scheduled, and we do think a continuance would be
4 appropriate.

5 COMMISSIONER CLARK: Mr. Self?

6 MR. SELF: Thank you, Commissioner. McCaw has no
7 discovery pending, so it has no position with respect to the
8 continuance, whatever is in the best interests of the other
9 parties.

10 With respect to the continuance of the hearing, as
11 a general matter, I would agree with the statements that
12 Mr. Tye and Mr. Henry and others have made with respect to
13 that.

14 You know, quite frankly, certainly McCaw, and I
15 suspect most of the other parties, whether we would be
16 willing to ultimately agree to the proposed settlement is
17 perhaps to a large measure a function of what is going to
18 happen to the money. We have a serious concern with the
19 idea that Southern Bell would be making proposals as late as
20 60 days before the effectiveness. It would seem to me, and
21 I don't know what Mr. Shreve or Mr. Anthony have in mind,
22 but it might be appropriate even -- I don't know if today is
23 a good time or next week sometime -- to have the parties sit
24 down and discuss the various ideas with respect to the
25 disposition of the money. Unfortunately, I suspect that

1 Southern Bell has some information that would be useful, and
2 certainly to McCaw and perhaps to the other parties as well,
3 that would help them in the decision-making process, that
4 perhaps through some kind of meetings or conference call we
5 would be able to move that process along.

6 COMMISSIONER CLARK: Ms. Bryant?

7 MS. BRYANT: Commissioner Clark, Sprint has no
8 outstanding discovery, so we would not object to staying
9 discovery.

10 However, as far as continuing the hearings, we
11 would have to concur with AT&T and MCI. We would object to
12 continuing the hearings at this point.

13 MR. SHREVE: Commissioner, I think everyone
14 talking to each other and getting the information they need
15 and seeing where they can go from here is fine.

16 There have been several comments about everyone
17 being surprised by not having the information on the
18 settlement. I hope that it's not a surprise to them that
19 they are surprised, because in every settlement we have had
20 for the last 15 years you do not let the terms of the
21 settlement out until it's done, particularly to the
22 Commissioners, because you're not supposed to know there is
23 any offers on the table from any of the other parties. And
24 with this many parties in it, anyone that thinks you're
25 going to keep it out of the press and from the

1 Commissioners' information is fooling themselves. I was
2 very surprised, happily, that word did not get out of any of
3 the details from the people that were involved in it. We
4 felt that we were doing what was in the best interest of the
5 customers in trying to establish what we really considered,
6 with a couple of exceptions, the revenue requirements part
7 of the case. We knew there were going to be these problems.
8 We knew we would not be able to get a settlement between all
9 of the parties on the other issues as to what was going to
10 happen to the money and who was going to get it. And I
11 think it's moving in the direction that we expected.

12 Please don't be surprised if nobody was informed,
13 specifically about the elements. I've talked to several
14 people in here, and they knew we were in settlement
15 negotiations, but it was certainly by design that the
16 elements, specific elements of the negotiation were not put
17 out, particularly to the public or particularly for your
18 consumption, because that would have been wrong. And it
19 just can't be done that way because the settlement was not
20 actually totally completed. As a matter of fact, the press
21 conference was set, and then it was not completed after
22 that, until that night. Things started changing a little
23 bit. So, it was finished up, and, happily, the word did not
24 get out. Because had that settlement fallen apart,
25 specifically the Commissioners and probably the Staff,

1 should not have known what the parties had given up or
2 offered in it. It just didn't make sense.

3 So, I don't want anybody to be insulted by not
4 receiving the information on it, because it was by design.

5 COMMISSIONER CLARK: It strikes me that most
6 concern is with the rate design, and I certainly think that
7 will be taken into consideration in a continuance. I have
8 not asked the Staff for any discovery they may have pending
9 in their --

10 MS. GREEN: Yes, I need to make some comments, and
11 I'm not sure if there are a couple of people behind the
12 bench that still had comments for you.

13 COMMISSIONER CLARK: Mr. Dickens, I'm sorry.

14 Mr. Belote, do you want to make an appearance?

15 All right. Let me hear from Mr. Dickens, and then
16 I'll take your appearance and your position.

17 MR. DICKENS: As far as Ad Hoc's position goes, we
18 don't have any outstanding discovery, so I don't believe we
19 would have an objection to a stay on discovery.

20 I would like first to congratulate Mr. Shreve and
21 his office for the revenue requirement reduction they
22 negotiated. I think it's commendable.

23 As far as Ad Hoc agreeing to continue the hearings
24 -- and I don't feel like we got this thing sprung on us.
25 It's just that the settlement was announced yesterday and

1 today is the prehearing conference, so we haven't had time
2 to examine the stipulation in great detail. From what we
3 have seen of it, we think that a greater priority should
4 have been given to reductions in business services. As you
5 may know, our concern has been that our clients are
6 literally being priced off the network, and we had a
7 workshop with the Commission and the Staff on that subject
8 this summer. So, we would like to see some greater
9 priorities given to business reductions. We'll be glad to
10 work with Public Counsel and Southern Bell informally to see
11 if we can reach an agreement. Otherwise, I think we would
12 also like a hearing on rate design. Thank you.

13 COMMISSIONER CLARK: Mr. Belote?

14 MR. BELOTE: I'm Monte Belote on behalf of Florida
15 Consumer Action Network, 4100 West Kennedy Boulevard, Tampa.

16 The Florida Consumer Action Network has taken a
17 position endorsing the proposed settlement. We have no
18 discovery outstanding and would not object to the suspension
19 of discovery. And one of the reasons we endorsed the
20 proposed settlement agreement is because of the opportunity
21 provided in it for all the parties to come forward in future
22 hearings and discuss rate design issues. So we believe that
23 staying the hearings at this point would not create a
24 problem.

25 COMMISSIONER CLARK: Staff?

1 MS. GREEN: The Staff would have no objection to
2 the parties staying discovery between and amongst
3 themselves. However, the Staff still has several items, I
4 don't believe it's a lot, but we have several items that we
5 are awaiting responses on that we need to receive in order
6 to prepare for the hearing. In addition, we have three
7 persons that we believe we must depose in order to be
8 properly prepared for the hearing. We would be willing to
9 stay those temporarily with an understanding that they would
10 be set after the 18th agenda if the Commission -- if we are
11 going to proceed to hearing, I would be willing to postpone
12 the depositions with the understanding that they would need
13 to be taken up again. Staff is preparing to go to this
14 hearing, and we are not 95 percent prepared. But these last
15 items were scheduled for this week and next week. The
16 discovery cutoff was the 14th, so it was going to stop in
17 any event in another week. We need these items.

18 COMMISSIONER CLARK: Let me ask you, there are
19 requests pending with Southern Bell?

20 MS. GREEN: There are a few items that the
21 responses are not in yet, either because we have had verbal
22 agreements to wait a few days, or they may be here and I
23 don't even know it because they haven't worked their way
24 through. But there is just probably a couple of items out
25 there.

1 MR. TYE: Commissioner Clark, could I ask --

2 COMMISSIONER CLARK: Yes, Mr. Tye.

3 MR. TYE: -- one question through the Chair to
4 Staff. We've got some interrogatories in a document
5 production that I think is due next week. Could you all
6 give us until after the 18th on that?

7 MS. GREEN: I'm sorry, I could not hear you.

8 COMMISSIONER CLARK: You have discovery from Staff
9 that's likewise pending, and you want to stay that?

10 MR. TYE: And I think it's due on the 12th or the
11 13th. If we are going to stay it, I would like to have a
12 few days on that.

13 MS. GREEN: We still need it, but we can wait for
14 the response until after a decision is made at the agenda.

15 MR. TYE: That's fine.

16 COMMISSIONER CLARK: What about the information
17 from Southern Bell, can you wait until after the 18th,
18 likewise, for that?

19 MS. GREEN: I'm not sure of the extent of it, but
20 I believe that would be reasonable. I just don't see the --
21 I think everything is in the pipeline. I think it's just
22 maybe in their copying department. It may even be in their
23 regulatory office.

24 MS. KAUFMAN: Commissioner, FIXCA also has some
25 discovery that Staff has sent to FIXCA that would be due

1 next week that we would ask to be postponed as well, if the
2 same is done for AT&T.

3 COMMISSIONER CLARK: Ms. Kaufman, you mentioned
4 that you had one witness you might want to depose. Could
5 you wait until after the 18th?

6 MS. KAUFMAN: I think we could.

7 COMMISSIONER CLARK: Well, it seems to me that we
8 can stay discovery until the 18th.

9 MS. GREEN: Did you say "can"?

10 COMMISSIONER CLARK: Can, yes.

11 MS. GREEN: Okay.

12 COMMISSIONER CLARK: So, I'll make an order
13 staying discovery. But that order is conditioned on the
14 fact that if the stipulation is not agreed to by all the
15 parties or is otherwise not accepted by the Commission, if
16 it doesn't go forward, the discovery, the written discovery
17 in the form of interrogatories or production of documents
18 that is still pending will be due by 5:00 on the 19th. And
19 depositions for -- and that goes for everyone who has --
20 that would include AT&T and FIXCA. And I will allow the
21 deposition of the three people Staff has identified to
22 Southern Bell, I hope.

23 MS. GREEN: I have identified two, which is Nancy
24 Sims and Walter Reid. The third person is Robin Madden.

25 COMMISSIONER CLARK: Okay. And, Ms. Kaufman, who

1 is the other person you might need to depose?

2 MS. KAUFMAN: Mr. Gray.

3 COMMISSIONER CLARK: Mr. Gray. Their depositions
4 will be taken as soon as possible thereafter.

5 MS. GREEN: We could do them that week, the week
6 of the --

7 COMMISSIONER CLARK: All right. It makes sense to
8 do them that week, because the hearing starts the next,
9 right?

10 MS. GREEN: Yes, ma'am.

11 MR. ANTHONY: Commissioner Clark, I hate to do
12 this, but there will be people that -- if the stipulation is
13 not approved by the Commission, Southern Bell will have
14 witnesses that it will need to depose. And we can do that
15 during the week following the 18th as well, but --

16 COMMISSIONER CLARK: All right. Are the parties
17 aware of who that might be?

18 MS. GREEN: Well, I have not been noticed.

19 MR. ANTHONY: We have not yet noticed those
20 depositions, but we can let the parties know, so that
21 they'll have --

22 COMMISSIONER CLARK: If you will let them know
23 that if this does not go through that you will need to
24 depose certain people, please.

25 MS. GREEN: I am going to say this is unfair

1 surprise. This is an ambush. I have been asking these
2 people to schedule my witnesses, and they have not been
3 forthcoming. I have held conference calls regarding
4 deposition schedules. I sat before you and was directed to
5 coordinate discovery, and this is the first I have heard
6 about my witnesses being deposed.

7 MR. LACKEY: Wait a minute.

8 COMMISSIONER CLARK: I am not sure he identified
9 them as being Staff witnesses that he needed to depose, is
10 that correct?

11 MR. ANTHONY: I haven't identified whoever they
12 are. There may be some Staff witnesses. But we have had
13 discussions where -- we have never set forth our position
14 that we weren't going to take any deposition of Staff
15 witnesses. I don't know why there would be any surprise
16 about this. In fact, I've had conversations where people
17 have said that they were surprised that we hadn't noticed
18 the depositions yet, and we didn't make any representations
19 there wouldn't be discovery. So, I am somewhat surprised.
20 I apologize if there was a misunderstanding, because there
21 certainly was no intent on our part, but we may need to take
22 some discovery. I hope that it's a moot point, but --

23 COMMISSIONER CLARK: Hold up just a minute.

24 Mr. Tye, did you want to say something?

25 MR. TYE: Commissioner Clark, it occurs to me that

1 the notices would be untimely if they were issued today. We
2 had a January 14th discovery cutoff, and I don't see how we
3 can have a 30-day notice period if they were even issued
4 now. So, I think that appears to be a moot point, in my
5 opinion, at least with respect to my witnesses. I'm not
6 sure about what deadlines you all set for the NARUC audit,
7 and that kind of thing.

8 MR. ANTHONY: We'll notice everybody we have to
9 today, but first of all, there's no 30-day cutoff for
10 noticing depositions, that I am aware of. It's a reasonable
11 time for discovery. And we'll notice everybody today, and
12 we'll just take care of that if that is a problem. But we
13 are trying to work here in the spirit of compromise, not to
14 be acrimonious. And if anybody is surprised, I'm sorry; I
15 apologize. I think that our efforts are best directed
16 trying to work out the rate design issues as some people
17 have said. But I don't think Southern Bell can sit here and
18 be told that it has waived all rights to discovery, because
19 the cutoff point isn't here yet.

20 MR. GROSS: Commissioner Clark, the Attorney
21 General has one witness whose attendance cannot be secured
22 through subpoena because he is out-of-state. And we would
23 like to take his deposition if this case is going to go to
24 hearing to preserve his testimony for use at trial, not for
25 discovery purposes, but this would be the trial testimony.

1 And we would just like to call that to everyone's attention.

2 COMMISSIONER CLARK: Who is this witness?

3 MR. GROSS: This is Harry Van Gordon, who lives in
4 Georgia. And it is my understanding that he does not have
5 to -- he is not under legal compulsion via a Florida-issued
6 subpoena to come to Florida to testify. So, we would have
7 to go to his place of residence and take his trial testimony
8 by deposition.

9 COMMISSIONER CLARK: Does anyone else have some
10 witnesses that they were going to depose?

11 MS. WILSON: Yes, Commissioner. We would like to
12 depose Mr. Sappington. That deposition was canceled, and we
13 have contacted both Staff and Southern Bell to try to
14 reschedule that deposition. In addition to that, we had
15 filed a motion on January 3rd, requesting additional time to
16 respond to some interrogatories that Staff had sent us, on
17 the basis that we needed more time because we would -- the
18 Staff served the interrogatories to us on December 3rd and
19 December 8th, and we did not receive either of the
20 interrogatories in the mail until December 30th. And I have
21 checked with counsel for the Commission and learned that
22 perhaps the envelopes had been incorrectly addressed. We
23 just needed some additional time, and we were going to
24 request until January 21st to respond to those
25 interrogatories.

1 COMMISSIONER CLARK: Anyone else?

2 Ms. Green, with respect to responding, the Cable
3 TV people responding to you on the 21st, is that a problem?

4 MS. GREEN: That's satisfactory.

5 COMMISSIONER CLARK: And, likewise, you had been
6 informed about the need to reschedule the witness --
7 Sappington, is that -- what was the witness?

8 MS. WILSON: Mr. Sappington.

9 COMMISSIONER CLARK: Sappington.

10 MS. GREEN: That had been mentioned to me, but
11 since he is not my witness, I was willing to forego the
12 deposition. I was trying to pare this down to just those
13 people I felt -- I'm here speaking only for myself -- of
14 those ones that the Staff believes we absolutely have to
15 depose to keep it at a minimum.

16 COMMISSIONER CLARK: Okay.

17 MS. GREEN: Of course, what's going to happen is
18 this snowballs every deposition that's set, everyone wants
19 to come to, then they want to have another one. But, in any
20 event, those are the three people that the Staff feels they
21 have to depose in order to be prepared for the hearing. And
22 two of those were noticed and one -- the one that was not
23 noticed was discussed. And I am willing to forego the
24 scheduled depositions and wait until after the Commission's
25 decision on the 18th.

1 COMMISSIONER CLARK: Okay. Well, then, I'm still
2 inclined to stay discovery, and for those outstanding
3 discovery that are written discovery, they will be due by
4 5:00 on the 19th if the stipulation is not accepted.
5 Moreover, any depositions will be stayed. Those three
6 depositions mentioned by Staff, the one by Ms. Wilson and
7 the one by Ms. Kaufman, will have to be held after the 18th,
8 but before --

9 MS. GREEN: The 21st is Friday.

10 COMMISSIONER CLARK: The 21st. Likewise,
11 Mr. Anthony, you better get the names to the parties today.

12 MR. ANTHONY: We will do that.

13 COMMISSIONER CLARK: And if there is any problem
14 with the scheduling of those witnesses, I will have Staff
15 inform me.

16 MS. GREEN: Yes, ma'am.

17 COMMISSIONER CLARK: I would urge you to keep it
18 at a minimum. But I, too, hope that we will not have to
19 have that discovery take place.

20 MR. ANTHONY: Commissioner Clark, there is one
21 other element here that, again, hopefully, we will never get
22 to, but there are the 30-something people who have been
23 subpoenaed by Public Counsel.

24 COMMISSIONER CLARK: I'll get to that. I'm just
25 -- I have that on my list of things to do, so if you will

1 just hold off. Okay.

2 MS. KAUFMAN: Commissioner, excuse me. Would your
3 discovery rulings include a ruling on FIXCA's motion to
4 compel, so that if that were granted --

5 COMMISSIONER CLARK: No. No, we'll take that up
6 separately.

7 MS. KAUFMAN: Thank you.

8 COMMISSIONER CLARK: Okay. Is it clear what
9 discovery is stayed and the conditions to that stay?

10 I think it's appropriate to next discuss the order
11 of witnesses. It's my understanding that this is the first
12 time many of you have seen this separate sheet, that is what
13 we should be looking at.

14 MS. GREEN: Commissioner, could I ask -- it
15 appears we may have run out of copies. Are there some
16 parties who need a copy? Raise your hand if you need one.
17 Do parties have them? Okay. I'm sorry.

18 COMMISSIONER CLARK: Angela, I understand that
19 there has been some discussion of this, and Staff has
20 informally tried to work with some of the parties on this.

21 MS. GREEN: That's correct.

22 COMMISSIONER CLARK: I think it is important for
23 us to resolve the issue of the order of witnesses,
24 notwithstanding the possibility of a continuance. But
25 having -- taking note of the fact that many people have just

1 seen this this morning, what I would like to do is simply
2 put that aside. And as soon as I take -- listen to
3 arguments on the motion to compel, we will take a break for
4 20 minutes to half an hour to see if you all can look at it,
5 and then we will get back together to see if we can have
6 some agreement on the order of witnesses.

7 MS. GREEN: Okay. I have a small administrative
8 item, as well.

9 COMMISSIONER CLARK: And I wanted to mention one
10 other thing. When we come back -- well, probably before we
11 break, I need -- we need to talk about these witnesses that
12 were subpoenaed by Public Counsel for which we are seeking
13 immunity.

14 MS. GREEN: Okay.

15 COMMISSIONER CLARK: All right. so, what was the
16 administrative thing you wanted to take up?

17 MS. GREEN: Page 7 of the order refers to a
18 deadline, deadline for the size of the parties' post-hearing
19 briefs, and we haven't set a page limit for that. Staff has
20 done some polling in the various industries with the large
21 dockets, and we actually believe the Public Counsel's
22 suggestion of 150 pages is an appropriate limit for this
23 type of a proceeding. We have two large hearings and a
24 third small hearing rolled into one docket.

25 COMMISSIONER CLARK: Okay.

1 MR. ANTHONY: 150 pages we think would be
2 appropriate.

3 COMMISSIONER CLARK: Is there anyone that has an
4 objection to 150 pages? Okay. We'll show that as the page
5 limit for post-hearing filings.

6 MS. GREEN: Thank you.

7 COMMISSIONER CLARK: Okay. I'm going to ask FIXCA
8 to wait until the end, but let's turn to the witnesses that
9 have been subpoenaed. It's my understanding that at least
10 the state attorneys from Gainesville and Orlando --

11 MR. HATCH: It's my understanding those two have
12 no objection.

13 COMMISSIONER CLARK: -- have no objection. And we
14 sent out yesterday a memo for the state attorney to sign,
15 indicating he had no objection to seeking -- to the grant of
16 immunity for those individuals who are in the -- or the
17 circuit covered by -- that Orlando is in and that
18 Gainesville is in. And we are drafting an order for the
19 signature of those chief circuit judges to memorialize that
20 grant of immunity. Likewise, we have heard from the state
21 attorney from --

22 MR. HATCH: Miami.

23 COMMISSIONER CLARK: Miami and --

24 MR. HATCH: And I believe you had discussions from
25 Jacksonville. I think the one from Jacksonville requested

1 more information on the individuals involved before they
2 would make a final determination.

3 COMMISSIONER CLARK: Well, with respect to the
4 other -- let's see. I have it in front of me now. With
5 respect to Jacksonville, we faxed another copy of the letter
6 to the state attorney's secretary, have not heard from them.
7 The state attorney for the Fifteenth Circuit has indicated,
8 yes, that he talked to the statewide prosecutor and her
9 advice was she didn't see any reason to grant the immunity.
10 And it was my feeling that it might be appropriate for
11 Public Counsel to get more information to him to indicate
12 why we need to have these people testify.

13 MR. SHREVE: We will be glad to pursue that.

14 COMMISSIONER CLARK: And, likewise, what I would
15 like to inform the parties is I will be letting -- as I
16 understand it, these are all Public Counsel witnesses.

17 MR. SHREVE: (Indicating affirmatively.)

18 COMMISSIONER CLARK: I am going to let you know
19 what kind of response we have from them. And, likewise, I
20 will let you all know. When they ask for more information,
21 I am going to ask that you provide them that, with that
22 information. It's my feeling that we need to pursue
23 securing that immunity, and take the position that the
24 hearing is going to go forward, and get our ducks in a row
25 so that we are prepared to do that. Is that satisfactory to

1 you that we handle getting those grants of immunity in that
2 way?

3 MR. ANTHONY: I have no objection to that. The
4 only question we would have is if any of these witnesses are
5 granted immunity, we will need to depose them. And, of
6 course, we can't until the grant is made. So, there may be
7 some logistical problems with that.

8 COMMISSIONER CLARK: Well, I can tell -- all
9 right. We will keep you informed as to where we are on
10 that, and you may need to depose them while the hearing is
11 going on.

12 MR. LACKEY: Commissioner, that is what I was
13 going to suggest. Some of these people are in the second
14 and maybe even the third week. If this settlement doesn't
15 work out and isn't approved, we may take discovery while the
16 hearing is going on. Now, we can do that, if that would be
17 permissible.

18 COMMISSIONER CLARK: Okay. I just wanted you to
19 know that we are pursuing getting it resolved one way or the
20 other. Now, did you have anything else you wanted to say
21 about those witnesses, only that you might want to conduct
22 discovery?

23 MR. ANTHONY: Yes, ma'am, that was the only point.

24 COMMISSIONER CLARK: Okay. Mr. Beck, anything
25 else on those witnesses?

1 MR. BECK: No, ma'am.

2 COMMISSIONER CLARK: What I will do is let Staff
3 know what definite response or need for further information
4 we have gotten from the state attorney, and they will let
5 you all know, Southern Bell and Public Counsel.

6 Okay. If there is nothing else, I would like to
7 hear argument on the motion to compel, and then we will take
8 a break for half an hour and reconvene to discuss the order
9 of witnesses.

10 Ms. Kaufman, it is your motion to compel.

11 MS. KAUFMAN: Thank you, Commissioner. The
12 discovery that is at issue in FIXCA's motion to compel,
13 relates to Issue No. 2b in the draft prehearing order, which
14 is an issue that was raised by FIXCA. And that issue is
15 whether Southern Bell's investment in its interLATA
16 corporate network is prudent and should be paid for by the
17 ratepayers?

18 Now, if the Commission finds that the network or
19 any portion thereof was an imprudent expenditure, then the
20 Commission has to decide what action it should take.
21 It's FIXCA's position that in order to make that decision,
22 the Commission has to have the pertinent financial
23 information in the record, and this is the information that
24 FIXCA is seeking through the discovery that Southern Bell
25 has refused to answer.

1 Specifically, we sought to find out the
2 undepreciated value of the dark fiber on Southern Bell's
3 private toll network. The suggestion in our testimony for
4 the remedy of what we believe is an imprudent expenditure is
5 that the Commission removed the value of this undepreciated
6 fiber from rate base. And to do so we have to know the
7 value. Such information is entirely in the hands of
8 Southern Bell, and FIXCA has no way to duplicate it without
9 the discovery.

10 Now, we sent the discovery to Southern Bell and
11 they refused to provide the information, stating that our
12 request was overly broad, unduly burdensome and oppressive.
13 And they said it would take a lot of time for them to
14 respond to the request. I would point out to you that they
15 didn't argue in their response to our request that the
16 information was irrelevant, just that it would take some
17 time for them to get it together. And I would suggest to
18 you that the fact that it would take some effort on Southern
19 Bell's part to compile the information is not an appropriate
20 objection. And that is especially true in light of the fact
21 that FIXCA's request was framed in terms of give us your
22 best estimate of the undepreciated value of the fiber.

23 When I originally read Southern Bell's response, I
24 thought that they were objecting on the basis that it would
25 cost them too much money to compile the information, but

1 their response to our motion to compel makes it clear that
2 that is not the basis of their objection.

3 Now, while they didn't object on the basis of
4 relevancy, when they objected in response to discovery, they
5 did raise the issue of relevancy in their response to our
6 motion to compel. And they said that FIXCA hasn't shown why
7 the undepreciated value of the fiber is relevant to the
8 investment, to whether the investment is prudent. And I
9 would say to you, Commissioner, that Southern Bell has not
10 read the second part of Issue 2b, which is if the investment
11 is found imprudent, what action should be taken?

12 Now, I have already told you what FIXCA's
13 suggestion is. I would tell you that your Staff, as well,
14 has taken the position in the draft prehearing order that
15 Southern Bell's network is overbuilt and that investment
16 associated with certain links ought to be removed. And as I
17 said earlier, in order to reach the appropriate remedy we
18 have got to know the value.

19 Quickly, Southern Bell cites three cases in their
20 response to our motion in support of their contention that
21 our request is oppressive. None of those cases are even
22 close, close to being on point to the situation before you.
23 One of them is that Caribbean Security case that is
24 frequently cited. And in that case the court found that
25 seven very broad inclusive production requests were, quote,

1 "Too broad in scope as to time and lack of specificity as
2 relating to the issues in the pleadings." Clearly, here our
3 discovery is right on point with an articulated issue in
4 this case.

5 COMMISSIONER CLARK: Let me ask you this question.
6 Didn't they give you total -- I understand their difficulty
7 because of the way they keep records of their investment.
8 And as I understood their response they gave you total
9 investment minus what -- they said, "The network is
10 estimated to be 13 million, while the incremental cost of
11 the spare or dark fibers is estimated to be only 1.8
12 million."

13 MS. KAUFMAN: So, we know that the number is
14 something below 1.8, if that's what you're suggesting.

15 COMMISSIONER CLARK: Well, does it bear the same
16 ratio as the total investment? I mean, could we assume that
17 there is a -- I guess what I'm trying to suggest is maybe
18 you really don't need what depreciation has taken place with
19 respect to specific plant for which they don't account for
20 it separately.

21 MS. KAUFMAN: Well, we do need to know that
22 because that is the only way that the Commission can remove
23 that from rate base, if that is the remedy they choose to
24 follow. We know it's something less than that number, but
25 that's all we know. And I think the only way we can find

1 that out is from Southern Bell.

2 COMMISSIONER CLARK: Anything else?

3 MS. KAUFMAN: Well, I was just going to go on to
4 say that the other two cases they've cited also are not on
5 point with the situation before you. I think the
6 information here is clearly relevant to an issue before you.
7 The only party that has that information is Southern Bell,
8 and we would ask that the Commission order them to produce
9 it to us.

10 COMMISSIONER CLARK: Okay. Ms. White?

11 MS. WHITE: Thank you, Commissioner Clark.

12 I think the bottom line on this is that FIXCA's
13 request, especially in light of the original response by
14 Southern Bell is just totally unreasonable and
15 inappropriate. The bottom line is that Southern Bell
16 originally told FIXCA that in order to make a best estimate,
17 which they asked for, of this amount, Southern Bell would
18 have to go through ten years of records, a lot of which is
19 archived that are located in 13 different cities and 13
20 different offices. It would take a lot of people working on
21 it full-time, and it would take them about three months to
22 come up with it. If we had started on the day that we got
23 the response, we would still be working on it while the
24 hearing was going on. So, they say, "Well, guess." Well,
25 you know, I don't think -- we are going to have to defend

1 that guess against attacks by FIXCA. The estimate has to
2 have some basis in reality. And in order to get that basis
3 in reality you have to go through this kind of search. And
4 the Florida Rules of Civil Procedure specifically allow for
5 relief from discovery requests that are burdensome. And I
6 think this definitely fits in that mold. As you have noted,
7 we have given in the testimony and in the attached affidavit
8 to our response the total value of the initial investment in
9 the network and the total cost of the spare fiber. We know
10 that it has to be something less than 1.8 million, but to
11 come up with a number that, as I said, bears any relation to
12 reality, we would have to go through this search. And I
13 feel that for that it's just unreasonable to put Southern
14 Bell in that position.

15 COMMISSIONER CLARK: Let me ask you this. Do you
16 know what amount of interLATA transport is corporate fiber
17 communication?

18 MS. WHITE: I think we -- I don't know if we have
19 that information on a route-specific basis.

20 COMMISSIONER CLARK: Okay.

21 MS. WHITE: And, therefore, for all of those
22 reasons, I feel that it's imperative that FIXCA's motion to
23 compel should be denied.

24 COMMISSIONER CLARK: Anything further?

25 MS. KAUFMAN: Yes, Commissioner. I would note, as

1 I said earlier, we asked for their best estimate. And if
2 1.8 million is their best estimate, we would be willing to
3 accept that.

4 MS. WHITE: No, 1.8 million is not my best
5 estimate.

6 COMMISSIONER CLARK: Thank you. All right. Is
7 there anything else?

8 We will take a break until 11:00, and give people
9 an opportunity to look at the witness list. And then we
10 will take up the order of witnesses.

11 (Recess.)

12 COMMISSIONER CLARK: Let's call the prehearing
13 back to order.

14 Have the parties had an opportunity to review the
15 order of witnesses?

16 MS. WILSON: Commissioner Clark, if I may, before
17 we turn to the order of witnesses, I would like to also
18 identify Mr. Billingsley as a witness that we would like to
19 depose.

20 COMMISSIONER CLARK: Okay.

21 MS. WILSON: Thank you.

22 COMMISSIONER CLARK: He's cost of capital? What
23 is Mr. Billingsley's equity ratio? Do you really think you
24 will get anything out of him? I'm sorry. It's just --

25 MR. LACKEY: It's good training for him, you know.

1 COMMISSIONER CLARK: Yes. Okay.

2 MR. ANTHONY: Actually, it's Mr. Keck you ought to
3 be making fun of because they have got it reversed.
4 Billingsley is return on equity. Keck is equity ratio.

5 COMMISSIONER CLARK: Okay. All right. So, that
6 needs to be fixed in the direct as a notation as to what --
7 okay.

8 Now, Ms. Green, is it appropriate to poll the
9 parties on the suggested order of witnesses or do you know
10 if we have agreement on it?

11 MS. GREEN: I'm going to pass the mike to
12 Ms. Norton.

13 COMMISSIONER CLARK: Okay.

14 MS. NORTON: There are a couple of folks who came
15 and told me they had some problems, and we switched the days
16 around, and I have got it. And there is no dispute or any
17 other issues that I'm aware of with this.

18 COMMISSIONER CLARK: All right. So, you think
19 with the changes you have talked to the parties about that
20 there is an agreement on the order of witnesses?

21 MS. NORTON: Yes.

22 COMMISSIONER CLARK: Is that everyone's
23 understanding? Okay.

24 MS. KAUFMAN: Excuse me. Could you tell us what
25 those switches were?

1 MS. NORTON: I'm sorry?

2 MS. KAUFMAN: Could you tell us the changes that
3 you have made?

4 MS. NORTON: Yes. On Thursday, February 3rd, Fred
5 Rock cannot appear, so we're putting him on Friday, February
6 4th. And probably moving David Dismukes to February 3rd.
7 On Wednesday, February 9th, we are going to add Mr. Weitz's
8 rebuttal testimony because he cannot appear on the 23rd.
9 And my plan is to not have Mr. Cuthbertson and Mr. Sanders
10 appear on Friday, February 11th, because they are already
11 scheduled to appear on Thursday, February 24th, and
12 Wednesday, February 23rd. Finally, instead of having
13 Mr. Cicchetti testify on both cost of capital and incentive
14 regulation on Tuesday, January 25th, he will only testify on
15 cost of capital on Tuesday, January 25th. And he will
16 testify on incentive regulation on Friday, February 25th.

17 COMMISSIONER CLARK: Well, where does he appear in
18 the order of witnesses?

19 MS. NORTON: Who is that?

20 COMMISSIONER CLARK: Well, if he is moved to
21 Friday, where on Friday?

22 MS. NORTON: Oh, following Steve Stewart.

23 COMMISSIONER CLARK: Okay. Anything else?

24 MS. NORTON: That's it.

25 COMMISSIONER CLARK: All right. With those

1 changes, the suggested order of witnesses will become the
2 order of witnesses in the prehearing order.

3 With respect to your motion to compel, I would
4 like the opportunity to meet with Staff, but an order will
5 be out either this afternoon or tomorrow. And, certainly, I
6 think we could notify you orally what the order will contain
7 if we cannot get it out by first thing tomorrow morning.

8 Is there anything further we need to take up?

9 MR. GROSS: Commissioner Clark, I have noticed
10 that three of the Attorney General's subpoenaed witnesses
11 are not listed as Attorney General witnesses, but they are
12 included among Public Counsel's witnesses because, I
13 believe, we had those witnesses in common. I don't see any
14 point in calling the witnesses on separate occasions, but I
15 would like the opportunity for direct examination of those
16 witnesses.

17 COMMISSIONER CLARK: Okay. At the same time by
18 you?

19 MR. GROSS: At the same time as Public Counsel.

20 COMMISSIONER CLARK: Okay. Which are the --

21 MR. GROSS: Those are Michael Jansen, James Powell
22 and James H. Ramsey. And I can give you the dates. Michael
23 Jansen is February 2nd; James Powell, February 11th; James
24 Ramsey, February 17th.

25 COMMISSIONER CLARK: Okay. We'll show them as

1 being OPC and Attorney General's witnesses, so that it is
2 clear that you can conduct direct questioning of those
3 witnesses.

4 MR. GROSS: Thank you.

5 COMMISSIONER CLARK: Anything else?

6 MR. HATCH: Yes, ma'am. There was an issue to be
7 proposed to be added to the list of issues. It is not a
8 substantive issue. It has to deal with the information, or
9 lack thereof, in the NARUC audit process. The text of the
10 issue was Staff is proposing it is as follows. "What, if
11 any, adjustments should be made to account for Bell's
12 possible failure to produce information in a timely manner
13 to the auditors?" We understand that this is a late issue,
14 that it really came about as a result of the lateness of the
15 NARUC audit process. Once the NARUC report was compiled,
16 the experiences through that process drove this issue.

17 COMMISSIONER CLARK: Mr. Lackey.

18 MR. LACKEY: We're going to object to that issue
19 being added. First of all, the NARUC draft audit report was
20 out November 24th, so it had to have been completed before
21 then. All the testimony has now been filed. There is no
22 more opportunity to add testimony on this issue. There is
23 no reason why this couldn't have been raised earlier and
24 addressed in one of our -- either our testimony that was
25 filed on the 4th, which was yesterday, I guess. There was

1 plenty of opportunity. There is no reason to have an issue
2 like this at this juncture. On top of that, it's my
3 recollection that we went through this iteration about when
4 the data was to be filed. We have had our hearings on that.
5 I don't think we have had any motions to compel or any other
6 issues on that for the last three or four status
7 conferences. And it just seems like to me it's too late to
8 be raising such an issue. And I don't know why it's
9 occurring now, other than perhaps it's connected in some way
10 with our testimony we filed on Tuesday. I just don't have
11 any idea.

12 COMMISSIONER CLARK: Okay. It seems to me that
13 there is a concern that adequate, timely information was not
14 given to complete the audit, or at least all the points in
15 the audit. Am I correct?

16 MR. HATCH: Yes, ma'am.

17 COMMISSIONER CLARK: And I think that has been a
18 continuing issue. I think it would be -- how is that issue
19 worded?

20 MR. HATCH: It says, "What, if any, adjustments
21 should be made to account for Bell's possible failure to
22 produce information in a timely manner to the auditors."
23 Mr. Lackey is quite right, and it ultimately coalesced with
24 the filing of their testimony, because they directly address
25 the issue of timely provision of information.

1 COMMISSIONER CLARK: Well, Mr. Lackey, I can tell
2 you that, as you know, Commissioners can raise issues at any
3 time. And I would only suggest that that issue be changed
4 to, "What action, if any, should be taken by possible
5 untimely responses to audit requests." Because whether or
6 not Staff makes it an issue, it's going to be an issue with
7 the Commissioners, certainly with me. I want to know if the
8 information could have been provided in a more timely
9 manner. To be honest, I have not looked at the audit. I
10 want to see if there are limitations on scope and things
11 like that. And then I will want to ask questions. So, you
12 might as well prepare your witnesses for that.

13 MR. LACKEY: And we, of course, have no objection
14 to that. We filed a response on Tuesday that I suspect was
15 about six inches thick. And I think there are going to be a
16 lot of issues that are raised by that, but the point is --
17 and, certainly, my witnesses, if asked, will have a position
18 on the *timeliness* of their response. I'm just concerned
19 about an issue, after all the testimony has been filed and
20 closed, being added to this list. I certainly would expect
21 that there might be some questions about the *timeliness*, you
22 know.

23 COMMISSIONER CLARK: Well, they are going to come
24 from the Commissioners, I think. And, certainly, they will
25 come from me, so you might as well be prepared to answer

1 them.

2 MR. LACKEY: And I understand that, and our people
3 will be prepared to respond, but it's hard to --

4 COMMISSIONER CLARK: And I can, likewise, tell you
5 whether it's an issue or not, there may be some desire on
6 the part of the Commissioners to take some action if they
7 think there has been -- the Company hasn't responded the way
8 they should. I just think that needs to be explored and you
9 need to be prepared for it. And whether it's an issue, you
10 know the Commissioners, themselves, can make something an
11 issue and take action on it.

12 MR. LACKEY: Sure. And I don't -- I understand
13 that, completely. I would have -- if I had known, however,
14 that this was an issue before the testimony was filed on the
15 4th, the testimony would have been a little bit different in
16 a couple of respects, if I had known I was going to have to
17 defend myself against a late filing charge.

18 COMMISSIONER CLARK: Well, you will have the
19 opportunity for cross examination of -- for redirect of your
20 own witnesses. So, if it does --

21 MR. LACKEY: I may cross them, too. I have been
22 known to do that. It just sort of happens.

23 COMMISSIONER CLARK: Okay. So, I think it should
24 be added as an issue, but it should be, "What action, if
25 any, should be taken?"

1 MR. HATCH: That's fine. Then we would need to
2 solicit positions from the parties to accompany that for
3 inclusion in the final draft.

4 COMMISSIONER CLARK: If they have a position.

5 MR. HATCH: If they have a position. We would
6 request the parties provide a position on that issue by
7 tomorrow, if possible.

8 MR. LACKEY: We are going to have to think about
9 that a little bit, because I may want to put some -- my
10 problem is going to be is I'm not going to be able to tie it
11 back to a witness' testimony when I put a position in. So
12 it may be more than just the normal, you know, one or
13 two-line, "Southern Bell thinks they did everything right."
14 I may have to point out a few things. So, it may take me a
15 little longer than a day to get that done.

16 MR. HATCH: Tuesday of next week?

17 COMMISSIONER CLARK: Okay. Tuesday of next week.

18 MR. LACKEY: We can do it next week, sure.

19 COMMISSIONER CLARK: All right.

20 MR. SELF: Commissioner Clark, with respect to
21 that issue, can Staff just assume that if a party doesn't
22 respond, they have no position?

23 COMMISSIONER CLARK: I think that is a good idea.
24 If you don't respond --

25 MR. HATCH: If I don't hear from you by noon

1 Tuesday of next week, it will reflect "no position."

2 COMMISSIONER CLARK: All right. Anything further?

3 MS. GREEN: Can I continue on that topic? I would
4 ask you to go ahead and issue that as a supplemental
5 prehearing order, so we can begin issuing the one we have
6 here. It takes quite a bit of time to reproduce.

7 COMMISSIONER CLARK: That's fine.

8 MS. GREEN: Okay, Mr. Beck.

9 COMMISSIONER CLARK: You mean it would be a
10 supplement as in a couple of pages, not re-issue --

11 MS. GREEN: Yes, we'll just have a brief order
12 dealing with the additional issue and positions.

13 COMMISSIONER CLARK: Good.

14 Mr. Beck.

15 MR. BECK: Yes. Commissioner, of course, we are
16 hopeful that the Commission is going to accept the
17 settlement agreement we have reached with Southern Bell.
18 But if you don't, we still have the matter of the Supreme
19 Court appeals pending. I think when the Commission, as we
20 hope, adopts the settlement, the Supreme Court appeals on
21 our motions will become moot. But if the Commission should
22 deny that, we will be seeking relief. We will ask for a
23 continuation of the hearing, and perhaps other relief, if we
24 don't have a decision. If a decision does come down, we
25 will have to deal with whatever that decision is and ask for

1 relief based on the decision.

2 COMMISSIONER CLARK: Don't they issue opinions
3 today?

4 MR. BECK: Ten o'clock, supposedly.

5 COMMISSIONER CLARK: Well, let's call over -- I'm
6 aware of that, Mr. Beck. And, certainly, between now and
7 the 18th if -- I think it may be appropriate to take that
8 issue up on the 18th, if there is a recommendation that the
9 settlement not be accepted.

10 MR. BECK: Uh-huh.

11 COMMISSIONER CLARK: That brings up another point
12 that I would like Southern Bell to think about. It occurs
13 to me that while we have a settlement on the revenue
14 requirements, we don't have a settlement on the rate design,
15 if I understand that. Was any thought given to going ahead
16 with maybe the last two weeks scheduled for this hearing to
17 address that?

18 MR. ANTHONY: Yes, ma'am. In fact, the parties
19 have had some discussions. I don't know what the position
20 of each of the parties is. But we have discussed trying to
21 meet next week to see if the parties, including the Staff,
22 can reach some agreement on a proposed rate design, and if
23 that was not possible, whether it would be feasible to file
24 testimony fairly quickly on proposed rate design issues,
25 have a quick week of discovery, and then have a week, or

1 however long the Commission thought it would take.

2 COMMISSIONER CLARK: Good. So --

3 MR. ANTHONY: Southern Bell would be agreeable to
4 that.

5 COMMISSIONER CLARK: So, we may be able to use
6 some of that time reserved. Good. I think that would be
7 helpful.

8 If there is nothing further to come before this
9 prehearing conference, it's adjourned.

10 MR. LACKEY: I need an issue number.

11 COMMISSIONER CLARK: Just a minute. Just a
12 minute.

13 Mr. Lackey.

14 MR. LACKEY: I need an issue number on the issue
15 that was just added.

16 MR. HATCH: It would be after 17t, whatever the
17 next -- U.

18 MR. LACKEY: U?

19 MR. HATCH: U. It's been a long day already.

20 COMMISSIONER CLARK: If there is nothing further,
21 this prehearing conference is adjourned.

22 (The prehearing conference was concluded at 11:25 a.m.)
23
24
25

CERTIFICATE OF NOTARY

STATE OF FLORIDA:

COUNTY OF LEON:

I, DEBBIE L. HERZOG, Notary Public in and for the State of Florida at Large:

DO HEREBY CERTIFY that the foregoing deposition /hearing/trial was submitted to me by Jane Faurot as a true and accurate transcript, numbered from pages 1 to 62, reported by this court reporter at the time and place therein designated; and that before testimony was taken, the witness was duly sworn.

I FURTHER CERTIFY that I am not a relative, employee, attorney, or counsel of any of the parties in this litigation, nor interested in the financial outcome of such litigation.

Sworn to and subscribed before me this 10 day of January, 1994, by Jane Faurot, who is personally known to me.

NOTARY PUBLIC, STATE OF FLORIDA AT LARGE
MY COMMISSION EXPIRES APRIL 23, 1995
BONDED THRU HUCKLEBERRY & ASSOCIATES



DEBBIE L. HERZOG, NOTARY PUBLIC
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