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November 6, 1992

Steve Tribble, Director  
Division of Records and Reporting  
Florida Public Service Commission  
101 East Gaines Street  
Tallahassee, FL 32399-0850

Re: Docket No. 910163-TL

Dear Mr. Tribble:

Enclosed for filing in the above-captioned proceeding on behalf of the Citizens of the State of Florida are the original and 15 copies of Citizens' Motion for Review of Order Establishing Procedure.

Please indicate the time and date of receipt on the enclosed duplicate of this letter and return it to our office.

Sincerely,

Charles J. Beck  
Deputy Public Counsel

Enclosure

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DOCUMENT NUMBER-DATE

13099 NOV-6 1992

FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Investigation into the )  
Integrity of Southern Bell's )  
Repair Service Activities and )  
Reports )  
\_\_\_\_\_ )

Docket No. 910163-TL  
Filed: November 6, 1992

MOTION FOR REVIEW OF ORDER ESTABLISHING PROCEDURE

Pursuant to Commission Rule 25-22.038(2), the Citizens of Florida ("Citizens"), by and through Jack Shreve, Public Counsel, move the full Commission to review Commission Order number PSC-92-1220-PCO-TL issued October 28, 1992.

1. Order No. PSC-92-1220-PCO-TL issued October 28, 1992 is an order by the prehearing officer establishing a procedural schedule. The Citizens request the full Commission to review that order.

The procedural order should not set dates for filing testimony  
without ruling on pending motions

2. We have been prejudiced in our ability to prepare this case because of the failure of the Commission to make timely rulings on motions to compel. Time after time, Southern Bell refuses to provide information, the Citizens then move to compel, and the Commission does not rule on the motion for months.

Southern Bell succeeds in hampering and delaying our investigation because of this failure to rule.

3. We now have motions to compel filed on April 8, 1992, May 21, 1992, July 2, 1992, July 20, 1992, July 23, 1992, August 21, 1992, and October 8, 1992. None of these have been ruled on. Time has been irrevocably lost by these delays, and many of these motions address fundamental discovery necessary to proceed further in a meaningful way.

4. Dates for filing testimony should not be set until a period well after these motions are determined with finality by the Commission. An order by the prehearing officer will not necessarily provide a final determination; it is possible that such orders would then be reviewed by the full Commission and even the courts before complete resolution.<sup>1</sup>

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<sup>1</sup>The Florida Supreme Court is currently reviewing an order by the Commission directing Southern Bell, among other things, to provide the names of persons known to Southern Bell to have knowledge of the falsifications at issue in this docket. The interrogatory was served in July, 1991, and was subject to three orders at the Commission before Southern Bell took the last Commission order to the Florida Supreme Court.

**Southern Bell should be required to file testimony first**

5. Southern Bell owes this Commission a full accounting about the falsification of its repair records and the falsification of the quality of service reports it files with the Commission. This is particularly important now that the Tenth Statewide Grand Jury has squarely placed the question of punitive action against Southern Bell in the hands of the Commission.<sup>2</sup>

6. So far the Citizens, as well as the Commission staff, have faced a recurring barrage of objections by Southern Bell to providing important information, and those objections hinder an effective investigation. Delays in rulings on motions to compel further compound these problems.

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<sup>2</sup> The final report of the Tenth Statewide Grand Jury states "In closing, it must be noted that the proposed settlement agreement does not contain any "punishment", per se, of the company for its alleged failure to properly report to the Public Service Commission actual repair time for restoration of telephone service to customers whose telephones were out of service. This issue was raised in our investigation, but we have been advised that the United States Supreme Court's ruling H. J. Inc., et al v. Northwest Bell Telephone Company, 112 S. Ct. 2306 (1992), casts doubt on our ability, or the ability of the criminal courts, to directly sanction the company for such conduct, if it in fact occurred. We specifically note, however, that the Florida Public Service Commission has both the jurisdiction and the concomitant discretion to impose severe monetary penalties on the company if it finds that the company has falsified reports required by PSC rules. We therefore strongly recommend that the Public Service Commission, in conjunction with its publicly mandated responsibility, investigate this matter, exercise its penal authority, and take into consideration this possible fraudulent conduct on the part of the company in determining an appropriate rate of return." Final Report of the Tenth Statewide Grand Jury, September, 1992, at page 2.

7. Southern Bell should be required to make an initial accounting and explanation of these falsifications. No other party should be required to file testimony until Southern Bell makes this initial showing. The parties should then be given an opportunity to respond after Southern Bell makes this initial accounting and explanation.

This hearing in this docket should be combined with the review of Southern Bell's "incentive plan," its proposal for further "incentive" regulation, the review of its sales programs, and quality of service issues from its rate case

8. Quality of service is a necessary part of any rate case. This case deals with a specific, important quality of service issue and whether Southern Bell falsified the reports about quality of service it files with the Commission.

9. Quality of service is a particularly important issue because of the "incentive regulation" given by the Commission to Southern Bell.

10. Order no. 20162 issued October 13, 1988 implemented an incentive regulation plan for Southern Bell. The Commission

adopted many of the incentives that had been proposed by Southern Bell in petitions it filed on January 13, 1988. However, a number of parties expressed concern that providing Southern Bell additional incentives to maximize profits might affect quality of service. The Commission addressed this by stating:

"There is a concern that the company might improve earnings over the short run by letting quality of service slip. In order to discourage and detect such actions, our staff will continue its ongoing review of service quality as required by Commission rules and will consider more expanded service audits if any significant slippage in quality is detected. The Commission will be notified if service quality significantly deteriorates during the course of this plan, or if Commission rules concerning service standards are violated. The Commission may then consider imposing a penalty on Southern Bell." Order 20162 at page 26.

11. This docket, docket 900960-TL, and docket 920260-TL all deal with quality of service. It would make sense to hear all quality of service issues at the same time. Otherwise, we will be in a position of dealing with only one side of an issue at a time.

12. For example, with respect to Southern Bell's incentive plan, if these matters are not heard together we will be in the incongruous position of listening to Southern Bell describe what it claims to be an exceptional quality of service provided during the incentive plan, while we will be precluded from responding to this

in the same proceeding by providing other evidence of a completely unsatisfactory quality of service in the way Southern Bell treated its customers. We would be precluded from showing that Southern Bell provided false quality of service reports to the Commission during the incentive plan. Similarly, Southern Bell will try to persuade the Commission about the positive effects of "incentive" regulation, while we are precluded from providing evidence about the negative effects. Such a one-sided presentation of evidence during the January and February hearings should not be approved by the Commission.

13. Thus, we request the Commission to conduct a "plain vanilla" rate case during the rate case hearings set for the end of January and beginning of February, 1993, in Southern Bell's rate case. All quality of service items should be deferred until combined hearings to be held in April, 1993.<sup>3</sup> Eight days are already set aside for hearings in April. At that time the Commission would review Southern Bell's quality of service, its actions during the incentive plan, its proposal for alternative regulation, the issues in this docket, and the issues in docket 900960-TL.


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<sup>3</sup> Assuming we obtain timely, final rulings on all motions to compel and are given sufficient time to complete an investigation after those rulings are made. This further assumes we obtain a ruling from Southern Bell's appeal to the Florida Supreme Court in enough time to complete the investigation.

WHEREFORE, the Citizens respectfully request the full Commission to review the prehearing officer's order establishing a procedural schedule.

Respectfully submitted,

Jack Shreve  
Public Counsel

  
Charles J. Beck  
Deputy Public Counsel

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Attorneys for the Citizens of  
the State of Florida



**CERTIFICATE OF SERVICE  
DOCKET NO. 910163-TL**

I HEREBY CERTIFY that a correct copy of the foregoing has been furnished by U.S. Mail or hand-delivery to the following persons on this 6th day of November, 1992.

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Inc. (Southern Bell Telephone  
& Telegraph Co.)  
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