

J. Phillip Carver
General Attorney

ORIGINAL
THIS COPY

**Southern Bell Telephone
and Telegraph Company**
c/o Marshall M. Criser III
Suite 400
150 So. Monroe Street
Tallahassee, Florida 32301
Phone (305) 530-5558

November 18, 1992

Mr. Steve C. Tribble
Director, Division of Records and Reporting
Florida Public Service Commission
101 East Gaines Street
Tallahassee, Florida 32301

Re: Docket No. 910163-TL - Repair Service Investigation

Dear Mr. Tribble:

Enclosed please find an original and fifteen copies of Southern Bell Telephone and Telegraph Company's Response and Memorandum in Opposition to Public Counsel's Motion for Review of Order Establishing Procedure, which we ask that you file in the captioned docket.

A copy of this letter is enclosed. Please mark it to indicate that the original was filed and return the copy to me. Copies have been served to the parties shown on the attached Certificate of Service.

Sincerely yours,
J. Phillip Carver
J. Phillip Carver *JC*

- Ark
- ASD
- ASB
- OCT
- C

Enclosures

- cc: All Parties of Record
- 1 w/m* A. M. Lombardo
- Harris R. Anthony
- 6* R. Douglas Lackey

DOCUMENT NUMBER-DATE

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A BELL SOUTH Company

CERTIFICATE OF SERVICE
Docket No. 910163-TL

I HEREBY CERTIFY that a copy of the foregoing has been
furnished by United States Mail this *18* day of *November*, 1992,
to:

Charles J. Beck
Assistant Public Counsel
Office of the Public Counsel
111 W. Madison Street
Room 812
Tallahassee, FL 32399-1400

Tracy Hatch
Division of Legal Services
Florida Public Svc. Commission
101 East Gaines Street
Tallahassee, FL 32399-0863

J. Phillip Conner
_____ *sg*

FILE COPY

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition on behalf of Citizens)	Docket No. 910163-TL
of the State of Florida to initiate)	
investigation into integrity of)	Filed: 11/18/92
Southern Bell Telephone and Telegraph)	
Company's repair service activities)	
and reports.)	

**SOUTHERN BELL TELEPHONE AND TELEGRAPH COMPANY'S
RESPONSE AND MEMORANDUM IN OPPOSITION TO PUBLIC
COUNSEL'S MOTION FOR REVIEW OF ORDER ESTABLISHING PROCEDURE**

COMES NOW BellSouth Telecommunications, Inc., d/b/a Southern Bell Telephone and Telegraph Company ("Southern Bell" or "Company"), pursuant to Rule 25-22.038(2)(b), Florida Administrative Code, and files its Response and Memorandum in Opposition to the Office of Public Counsel's ("Public Counsel") Motion for Review of Order Establishing Procedure (the "Motion"), and states the following:

1. In its Motion dated November 6, 1992, Public Counsel takes issue with the procedural schedule set by the prehearing officer in Order No. PSC-92-1220-PCO-TL and requests, as an alternative, three unorthodox and inappropriate procedures for this docket. Public Counsel argues: (1) that no testimony should be filed until all discovery disputes are ruled upon; (2) that Southern Bell should be required to file testimony before Public Counsel's testimony is filed; and (3) that the hearing of the issues in this docket, in Docket No. 900960-TL, In re:

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Investigation into Southern Bell Telephone and Telegraph Company's Non-Contact Sales Practices and in Docket No. 920260-TL, In re: Comprehensive Review of the Revenue Requirements and Rate Stabilization Plan of Southern Bell Telephone & Telegraph Company be intermixed so that large portions of the rate case will be tried during the time at which hearings are currently set for the other two dockets. None of these unusual requests are based upon any well-founded reason and, accordingly, all should be rejected.

2. First, Public Counsel makes the argument that the deadline for filing testimony in this docket should be postponed until after final resolution of every discovery dispute in this docket. Public Counsel argues that its ability to prepare its case has been "prejudiced" by objections raised by Southern Bell to producing certain requested documents. However, when viewed in light of the totality of the discovery that has occurred in this case, as well as in light of Order No. PSC-92-1320-PCO-TL, entered in Docket No. 920260-TL, this contention is patently absurd.

3. In this docket alone, Public Counsel has propounded thirty-three sets of requests for production of documents, which include 255 individually numbered requests. In response to these requests for a massive amount of discovery, Southern Bell has

made available to Public Counsel literally hundreds of thousands of pages of documents. Public Counsel has also propounded thirty-one separate sets of interrogatories, which include 500 individually numbered interrogatories. Moreover, Public Counsel has taken almost one hundred depositions of Southern Bell employees. Despite the frequently burdensome nature of these requests, Southern Bell has regularly complied with all except in those instances in which Public Counsel has insisted upon obtaining documents that are protected by Southern Bell's attorney-client privilege or by the work product doctrine.

4. As one can readily see even from Public Counsel's version of the discovery disputes, the documents that Public Counsel has not had access to are fairly limited. Specifically, Public Counsel has noted only seven pending motions to compel, and these relate almost exclusively to disputes concerning the applicability of the attorney-client privilege. Public Counsel, nevertheless, argues that its inability to obtain this relatively small percentage of the documents that it has requested (and which, in fact, it is not entitled to receive) should form the basis for the postponement of the filing of testimony in this matter. In point of fact, however, Public Counsel has suffered no demonstrable prejudice as a result of these ongoing discovery disputes and is not entitled to the relief requested.

5. The lack of prejudice to Public Counsel is also evident in the fact that the Order that Public Counsel protests does not require testimony to be filed until February 1, 1992. Although Public Counsel complains vehemently that it has suffered some prejudice as a result of what it calls the "failure of the Commission to make timely rulings on motions to compel," it provides no example of this prejudice. Given the fact that testimony is not due for another two and one half months, it is easy to understand why Public Counsel lists no examples to support its claim of prejudice. In reality, there are no such examples. Furthermore, Public Counsel can no longer argue that it must have the information subject to the discovery disputes for purposes of the hearings scheduled in Docket No. 920260-TL in January and February. By Order No. PSC-92-1320-PCO-TL, Commissioner Clark acting as the Prehearing Officer in that docket, has ruled that evidence relating to Docket Nos. 900960-TL, 910163-TL and 920727-TL will not be heard until April. Thus, Public Counsel has not in any way been prejudiced.

6. Moreover, Public Counsel is largely responsible for the situation of which it complains. Less than one week ago Public Counsel served on Southern Bell yet another Motion to Compel that again raises attorney-client privilege and work product issues. At the same time, Public Counsel continues to propound new

discovery. Thus, Public Counsel has generated a continuing deluge of discovery and elected to pursue motions to compel in response to every well placed objection while, at the same time, requesting an open-ended extension for filing testimony until all disputes are resolved. Public Counsel's contentions notwithstanding, any problem that it is experiencing in completing the preparation of its testimony is neither the fault of Southern Bell, nor of this Commission. Instead, it is a direct result of its own election to engage in massive discovery that is seemingly unending, frequently unnecessary and burdensome, and quite frequently objectionable on the basis of the attorney client and work product privileges.

7. Based upon essentially the same argument, Public Counsel also contends that this Commission should sanction a procedure whereby Southern Bell would be required to file testimony first while Public Counsel would be allowed to review this testimony before deciding what testimony to file in response. To put it simply, Public Counsel has it backwards.

8. Public Counsel has done everything within its power to cast itself in the role of "prosecutor" in this action. Although it cannot be discerned from the argument in its motion, the Office of Public Counsel must surely understand that it is its burden to come forward with some evidence that Southern Bell has

engaged in wrongdoing. In the absence of some evidence to this effect, there simply is nothing to consider in this docket. Accordingly, under a proper view of the burden of proof, it would be logical for Public Counsel to file its testimony first, before Southern Bell is required to respond. Southern Bell has, of course, not requested this procedure, but instead is willing to go forward with the procedure that has been ordered, i.e., both parties will file testimony at the same time.

9. Public Counsel, however, has argued on the basis of nothing more than inflammatory accusations for a procedure that is the reverse of what should actually occur. Specifically, Public Counsel tries to buttress its argument by claiming that "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" before Public Counsel should be required to file testimony. (Motion at p. 3) Thus, Public Counsel once again asks this Commission to presume without due process that Southern Bell is "guilty" then, based upon this preemptive assumption, order an otherwise

insupportable process.¹ Although Public Counsel has made similar arguments in the past, this type of argument becomes no less surprising nor more persuasive with repetition.

10. Finally, Public Counsel argues that the "incentive plan" proposed by Southern Bell should be separated from the main body of the rate case and tried at the same time that the issues in this docket are heard. Public Counsel argues for this result by claiming that this docket as well as Docket No. 900960 and the rate case all relate to quality of service. Therefore, Public Counsel concludes that a major portion of the rate case should be severed from the consideration of related issues in that case and, in effect, consolidated with the investigative dockets.

11. The fallacy of Public Counsel's argument is the contention that the isolated issues that are a part of this inquiry (specifically, whether Southern Bell violated Rule 25-4.110(2), Florida Administrative Code) are the primary and overriding matters to be considered by the Commission in judging Southern Bell's quality of service throughout the last four years. To the contrary, the quality of service portion of the

¹ Public Counsel has previously made this same argument in support of its contention that its allegations as to wrongdoing by Southern Bell should be accepted by the Commission and used as a basis to strip Southern Bell of the attorney-client privilege. See Citizens Ninth Motion to Compel, filed October 5, 1992.

rate case hearing will entail a consideration of Southern Bell's performance as measured by a wide variety of service indicators that go well beyond the limited matters that are at issue in this docket.

12. In any event, as noted above, the prehearing officer in Docket No. 920260-TL has ordered a procedure that will effectively deal with all of Public Counsel's concerns without resort to the inappropriate procedures Public Counsel advocates. Specifically, Commissioner Clark has ordered that there should be a portion of the April hearings in Docket Nos. 920260-TL in which the Commission will hear evidence as to whether the outcome of either of the two investigative dockets should have an effect on the rate case. Order No. PSC-92-1320-PCO-TL, issued November 13, 1992. The final order on the proposed incentive plan would only be issued after the conclusion of these investigative dockets and, therefore, after there has been ample time to consider what effect, if any, the findings in those hearings should have on Southern Bell's proposals. This procedure gives the Office of Public Counsel a full and fair opportunity to make its case as to whether these investigative dockets should have any such impact. At the same time, this procedure will treat the issues in this investigative docket as what they are: a

legitimate, but relatively small, part of the larger issues to be considered in the rate case.

WHEREFORE, Southern Bell respectfully requests the entry of an order denying in full the Motion of the Office of Public Counsel for Review of Order Establishing Procedure.

Respectfully submitted,

ATTORNEYS FOR SOUTHERN BELL
TELEPHONE AND TELEGRAPH COMPANY

Harris R. Anthony
HARRIS R. ANTHONY
J. PHILLIP CARVER
c/o Marshall M. Criser III
150 So. Monroe Street
Suite 400
Tallahassee, Florida 32301
(305) 530-5555

R. Douglas Lackey
R. DOUGLAS LACKEY
SIDNEY J. WHITE, JR.
4300 Southern Bell Center
675 W. Peachtree St., NE
Atlanta, Georgia 30375
(404) 529-3862