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FLORIDA PUBLIC SERVICE COMMISSION

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M E M O R A N D U M

July 11, 1994

TO : DIRECTOR, DIVISION OF RECORDS AND REPORTING

FROM : DIVISION OF LEGAL SERVICES [HATCH] *FL*
 DIVISION OF COMMUNICATIONS [NORTON] *John*

RE : DOCKET NO. ~~920260~~-TL: COMPREHENSIVE REVIEW OF THE
 REVENUE REQUIREMENTS AND RATE STABILIZATION PLAN OF
 SOUTHERN BELL TELEPHONE AND TELEGRAPH COMPANY

AGENDA: JULY 19, 1994 INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: EMERGENCY ITEM - I:\PSC\LEG\WP\920260.RCM

CASE BACKGROUND

This docket was initiated pursuant to Order No. 25552 to conduct a full revenue requirements analysis and to evaluate the Rate Stabilization Plan under which Southern Bell (SBT or the Company) had been operating since 1988. On January 5, 1994, a Stipulation and Agreement Between OPC and Southern Bell was submitted. On January 12, 1994, Southern Bell filed an Implementation Agreement for Portions of the Unspecified Rate Reductions in Stipulation and Agreement Between OPC and Southern Bell. Other parties filed motions in support of the Stipulation and Implementation Agreement. The Commission voted to approve the terms of the settlement at the January 18, 1994 agenda conference (Order No. PSC-94-0172-FOF-TL). The terms require, among other things, that rate reductions be made to certain of Southern Bell's services. Some of the reductions specified particular services. Other scheduled reductions were unspecified, and interested parties were allowed to submit their own proposals for disposition of the monies.

According to the terms of the Stipulation and Implementation Agreement, approximately four months before the scheduled effective dates of the unspecified rate reductions, Southern Bell is to file its proposals for permanent disposition. Interested parties are also to file proposals at that time. Parties which have already

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received or are scheduled to receive rate reductions for the services to which they subscribe, are generally precluded from taking positions that would benefit themselves.

Under the terms of the Agreement and Order, Southern Bell submitted its proposal to reduce its rates by \$10 million. Its filing contained a primary and an alternative proposal. Three local chapters of the Communications Workers of America (CWA), as well as McCaw Communications, Inc., submitted proposals as well. The Commission ultimately approved a modified version of Southern Bell's alternative proposal which called for approximately \$7 million to be used to fund SBT's required flow through of switched access reductions to mobile interconnection rates, and the remaining \$3 million to be used to eliminate Billed Number Screening Charges to end users and to reduce DID trunk termination charges (Order No. PSC-94-0669-FOF-TL).

On June 22, 1994, CWA filed a "Petition on Proposed Agency Action for Formal Hearing," which served to vacate Order No. PSC-94-0669-FOF-TL. This development will be handled at a later time. On June 29, 1994, Southern Bell filed a Motion For Emergency Relief seeking to implement the rate reductions described in Order No. 94-0669-FOF-TL pending resolution of CWA's protest. CWA responded to the Motion on July 7, 1994. Please note that Southern Bell has already implemented the rates that are the subject of the Motion For Emergency Relief. This recommendation addresses that motion on an emergency basis for reasons discussed below.

DISCUSSION OF ISSUES

ISSUE 1: Should Southern Bell's Motion for Emergency Relief be granted?

RECOMMENDATION: Yes, Southern Bell's Motion for Emergency Relief should be granted. However, in addition, the refund requirement in the settlement agreement should also be modified.

STAFF ANALYSIS: On June 29, 1994, Southern Bell filed a Motion for Emergency Relief seeking approval of the Commission to implement the rate reductions set forth in the proposed agency action, Order No. PSC-93-0669-FOF-TL. In support of its petition Southern Bell argues that the likelihood of CWA's success in securing its proposed result is remote given the legal infirmities of CWA's proposal. Further, Southern Bell argues that only the ratepayers will be harmed by the delay in implementing the proposed rate reductions. Finally, in order to avoid prejudicing any potential claim that CWA may have related to the disposition of the \$10 million, Southern Bell states that "money could still be set aside for the cooperatives proposed by CWA."

CWA responded on July 7, 1994. CWA argues that Southern Bell's Motion for Emergency Relief is for the purpose of circumventing the remedies available to CWA as prescribed by law. CWA also states that "this matter is of such importance to the CWA that oral arguments must be heard prior to any action being taken by the Public Service Commission."

On balance, Staff believes that Southern Bell's proposal to implement the rate reductions pending resolution of CWA's protest of the Order disposing of the \$10 million is appropriate and should be approved. The reductions directly benefit the customers of the services whose rates are reduced. Further, the reductions avoid Southern Bell's retention and accumulation of the revenues that are required by the Settlement to be returned to the benefit of ratepayers.

CWA's argument that the requested rate reductions will circumvent CWA's potential remedies is incorrect. CWA's substantial interests are not in any way affected by the implementation of the rate reductions. The rate reductions requested by Southern Bell will be only for the period until a final disposition is reached. To the extent CWA is successful in persuading the Commission to adopt its view of the appropriate disposition of the \$10 million, the decision implementing such disposition will be prospective only. Under the settlement there

is no retroactive distribution of the funds that accumulate during the pendency of the dispute to the "winners" of the Commission's distribution decision. Accordingly, the rate reductions can not prejudice any claim that CWA may have. With respect to CWA's request for oral argument, it will have ample opportunity to address its concerns during the agenda conference at which this matter is being discussed.

It must be noted that authorizing the implementation of the rate reductions requires, by implication, a modification of the provision of the settlement agreement as it relates to the disposition of the first \$10 million increment. Pursuant to Paragraph 10 of the settlement agreement, if there is a delay in the implementation of rate reductions to dispose of amounts set aside by the settlement, the revenues accumulated during the pendency of the dispute shall be refunded to customers. Southern Bell intends the rate reductions it has put into place will be in lieu of making a refund. The settlement does not provide any alternatives to a refund. There is a conflict between Southern Bell's intent and the refund requirement in the settlement. To reconcile the conflict requires a modification of the refund provision of the settlement. If the modification is not made Southern Bell would be required to refund the money twice, once as the rate reductions and again as a cash refund to customers. If the Commission approves Southern Bell's emergency motion, the refund requirement in the settlement should also be modified to avoid having to also refund the money. If the Commission makes the modification, it should make clear that the modification would not affect the disposition of any subsequent increment under the terms of the settlement agreement.

It should also be noted that on July 1, 1994, Southern Bell went ahead and put the reductions into effect without any Commission authorization. Part of the problem stems from the issuance of Order No. 94-0669-FOF-TL and the associated protest period. In order to comply with the Order if it had become final, Southern Bell had to begin the implementation process before the protest period had expired. It appears logistically difficult if not impossible to have stopped the reductions before the July 1 effective date at the point CWA's protest was filed on June 22, 1994. However, it is troubling to Staff that Southern Bell has left the reductions in place without any authorization in anticipation that the Commission would approve the emergency motion. On balance, under these circumstances, Staff does not believe a show cause is appropriate.

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ISSUE 2: Should this docket be closed?

RECOMMENDATION: No, this docket should remain open.

STAFF ANALYSIS: Regardless of the decision in Issue 1, this docket should remain open pending the filing and approval of the remaining tariffs required by Order No. PSC-94-0172-FOF-TL.