

NANCY B. WHITE  
General Attorney

Southern Bell Telephone  
and Telegraph Company  
150 South Monroe Street  
Suite 400  
Tallahassee, Florida 32301  
(404) 529-5387

ORIGINAL  
FILE COPY

August 10, 1994

Mrs. Blanca S. Bayo  
Director, Division of Records and Reporting  
Florida Public Service Commission  
101 East Gaines Street  
Tallahassee, Florida 32301

RE: Docket No. 920260-TL

Dear Mrs. Bayo:

Enclosed are an original and fifteen copies of Southern Bell Telephone and Telegraph Company's Renewal of its Motion to Dismiss the Communications Workers of America's Petition on Proposed Agency Action for Formal Hearing. Please file these documents 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 on the parties shown on the attached Certificate of Service.

ACK \_\_\_\_\_  
AFA *Jabe*

RECEIVED & FILED

Sincerely,

*Walt*  
FPSC-BUREAU OF RECORDS

*Nancy B. White (os)*  
Nancy B. White

*Norton*

Enclosures

cc: All Parties of Record  
*Hetch* A. M. Lombardo  
6 R. G. Beatty  
R. D. Lackey

PC: *Kinson*

SB: \_\_\_\_\_

WAS \_\_\_\_\_

OTH \_\_\_\_\_

RECEIVED & FILED

DOCUMENT NUMBER-DATE  
08153 AUG 10 1994  
FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

ORIGINAL  
FILE COPY

In re: Comprehensive Review of )  
the Revenue Requirements and Rate )  
Stabilization Plan of Southern )  
Bell Telephone and Telegraph )  
Company )

Docket No. 920260-TL  
Filed: August 10, 1994

SOUTHERN BELL TELEPHONE AND TELEGRAPH COMPANY'S  
RENEWAL OF ITS MOTION TO DISMISS THE COMMUNICATIONS WORKERS OF  
AMERICA'S PETITION ON PROPOSED AGENCY ACTION FOR FORMAL HEARING

COMES NOW, BellSouth Telecommunications, Inc., d/b/a Southern Bell Telephone and Telegraph Company ("Southern Bell") and renews its motion that the Florida Public Service Commission ("Commission") dismiss the Communications Workers of America's ("CWA") Petition to Dismiss the CWA's Petition Proposed Agency Action for Formal Hearing ("Petition") for the reasons set forth below.

1. By Order No. PSC-94-0172-FOF-TL, dated February 11, 1994, the Commission approved the Stipulation and Agreement Between the Office of Public Counsel and Southern Bell, as well as the Implementation Agreement for Portions of the Unspecified Rate Reductions in Stipulation and Agreement Between the Office of Public Counsel and Southern Bell (collectively, the "Settlement"). The Settlement, while effectively settling the issues in the above captioned docket, left certain sums of money available for disposition in 1994, 1995, and 1996. For example, the Settlement provided for a \$10 million revenue reduction, which was not specifically allocated, to be implemented on July 1, 1994. The Settlement allowed all parties to submit proposals as to how that \$10 million revenue reduction should be implemented. As required, on March 1, 1994, Southern Bell filed

DOCUMENT NUMBER-DATE  
08153 AUG 10 94  
FPSC-RECORDS/REPORTING

its rate design proposal in connection with this \$10 million revenue reduction.

2. On or about February 18, 1994, the Communication Workers of America ("CWA") filed a Proposal for Implementation of the \$10 Million Reduction. In its Proposal, the CWA requested that the \$10 million be used to fund the creation of a "workers/citizens cooperative." CWA suggested that such a cooperative be composed of the Public Counsel and members selected by the Commission, organized labor, and the public. The so-called purpose of the cooperative would be to allow the public to participate in the debate regarding the so-called information superhighway.

3. By Order No. PSC-94-0669-FOF-TL, dated June 2, 1994, the Commission approved Southern Bell's modified alternative proposal to provide for rate reductions as follows: elimination of Billed Number Screening charges for residential and business customers by approximately \$1.9 million; reduction of rates for DID trunk terminations by approximately \$800,000.00; and reduction of mobile interconnection usage rates by approximately \$7.3 million. These rate reductions were ordered to be implemented effective July 1, 1994.

4. In denying the CWA's proposed use of these funds, the Commission found that not only did the Commission lack statutory authority to create the cooperative suggested by the CWA, but that the Commission also lacked the authority to place the \$10 million at such a cooperative's disposal. Therefore, the Commission correctly rejected the CWA's proposal.

5. The Commission issued its order as a Notice of Proposed Agency Action. On June 22, 1994, the CWA filed a purported Petition on Proposed Agency Action for Formal Hearing ("Petition"). On July 1, 1994, Southern Bell filed a Motion to Dismiss CWA's Petition on the grounds that (1) the Commission had no authority to grant the CWA's proposal; (2) the Commission was not bound by the requirements of the Settlement to hold rate design hearings; (3) the Petition failed to adequately state a substantial interest, as required by Commission rules and Florida Statutes; (4) the Petition failed to identify any disputed issues of material fact as required by Florida Statutes; and (5) with regard to the merits of the CWA's proposal, the creation of such a cooperative would be redundant and a waste of limited resources. Southern Bell hereby incorporates the arguments made in its Motion to Dismiss into this motion as if written in full herein.

6. While Southern Bell's Motion to Dismiss was still pending, an issue identification workshop was held, resulting in an Order Establishing Procedure (Order No. PSC-94-0893-PCO-TL, issued July 21, 1994) setting forth the dates for the key activities of this case. Direct testimony was due to be filed on August 1, 1994. The CWA filed what purported to be testimony on August 2, 1994. Setting aside the issue of CWA's untimely filing of testimony, and, in addition to the grounds heretofore listed, Southern Bell hereby renews and supplements its Motion to Dismiss.

7. One of the fundamental issues in this matter is that of the Commission's authority vel non to enact the proposal made by the CWA. The CWA has the obligation in this matter of proving that the Commission's decision regarding the rejection of the CWA's proposal was incorrect. This they have not done. The testimony of the CWA in this matter completely ignores this fundamental issue. Rather, it assumes that the Commission has the burden of somehow making the CWA proposal legal. It is axiomatic that it is incumbent upon the petitioner to bring forth proposals for Commission action which are within the legitimate authority of the Commission to undertake. The CWA has failed to address this issue in their direct testimony and thus, they have not met their burden. For this additional reason, their Petition should be dismissed.

WHEREFORE, Southern Bell requests that the Commission issue an Order dismissing the Petition on proposed Agency Action of the CWA for the reasons described herein.

Respectfully submitted this 10th day of August, 1994.

SOUTHERN BELL TELEPHONE  
AND TELEGRAPH COMPANY

*Robert G. Beatty*  
ROBERT G. BEATTY  
J. PHILLIP CARVER  
c/o Marshall M. Criser  
150 South Monroe Street, #400  
Tallahassee, FL 32301  
(305) 347-5555

*R. Douglas Lackey*  
R. DOUGLAS LACKEY  
NANCY B. WHITE  
675 W. Peachtree St., N.E., #4300  
Atlanta, GA 30375  
(404) 529-3862  
(404) 529-5387

**CERTIFICATE OF SERVICE**

**Docket No. 920260-TL**

**Docket No. 900960-TL**

**Docket No. 910163-TL**

**Docket No. 910727-TL**

I HEREBY CERTIFY that a copy of the foregoing has been  
furnished by United States Mail this 10th day of August, 1994 to:

Robin Norton  
Division of Communications  
Florida Public Service  
Commission  
101 East Gaines Street  
Tallahassee, FL 32399-0866

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

Joseph A. McGlothlin  
Vicki Gordon Kaufman  
McWhirter, Grandoff & Reeves  
315 South Calhoun Street  
Suite 716  
Tallahassee, FL 32301-1838  
atty for FIXCA

Kenneth A. Hoffman  
Messer, Vickers, Caparello,  
Madsen, Lewis & Metz, PA  
Post Office Box 1876  
Tallahassee, FL 32302  
atty for FPTA

Michael W. Tye  
AT&T Communications of the  
Southern States, Inc.  
106 East College Avenue  
Suite 1410  
Tallahassee, Florida 32301

Dan B. Hendrickson  
Post Office Box 1201  
Tallahassee, FL 32302  
atty for FCAN

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

Michael J. Henry  
MCI Telecommunications Corp.  
780 Johnson Ferry Road  
Suite 700  
Atlanta, Georgia 30342

Richard D. Melson  
Hopping Boyd Green & Sams  
Post Office Box 6526  
Tallahassee, Florida 32314  
atty for MCI

Rick Wright  
Regulatory Analyst  
Division of Audit and Finance  
Florida Public Svc. Commission  
101 East Gaines Street  
Tallahassee, FL 32399-0865

Laura L. Wilson, Esq.  
c/o Florida Cable Television  
Association, Inc.  
Post Office Box 10383  
310 North Monroe Street  
Tallahassee, FL 32302  
atty for FCTA

Chanthina R. Bryant  
Sprint Communications Co.  
Limited Partnership  
3065 Cumberland Circle  
Atlanta, GA 30339

Benjamin H. Dickens, Jr.  
Blooston, Mordkofsky,  
Jackson & Dickens  
2120 L Street, N.W.  
Washington, DC 20037  
Atty for Fla Ad Hoc

C. Everett Boyd, Jr.  
Ervin, Varn, Jacobs, Odom  
& Ervin  
305 South Gadsen Street  
Post Office Drawer 1170  
Tallahassee, Florida 32302  
atty for Sprint

Angela Green  
Florida Public  
Telecommunications Assn., Inc.  
Suite 710, Barnett Bank Bldg.  
315 South Calhoun Street  
Tallahassee, FL 32302

Monte Belote  
Florida Consumer Action Network  
4100 W. Kennedy Blvd., #128  
Tampa, FL 33609

Donald L. Bell, Esq.  
104 East Third Avenue  
Tallahassee, FL 32303  
Atty for AARP

Joseph Gillan  
J.P. Gillan & Associates  
P.O. Box 541038  
Orlando, FL 32854-1038

Mark Richard  
Attorney for CWA  
Locals 3121, 3122, and 3107  
304 Palermo Avenue  
Coral Gables, FL 33134

Gerald B. Curington  
Department of Legal Affairs  
2020 Capital Circle, SE  
Alexander Building, 2nd Floor  
Tallahassee, FL 32301

Mr. Douglas S. Metcalf  
Communications Consultants,  
Inc.  
631 S. Orlando Ave., Suite 250  
P. O. Box 1148  
Winter Park, FL 32790-1148

Mr. Cecil O. Simpson, Jr.  
General Attorney  
Mr. Peter Q. Nyce, Jr.  
General Attorney  
Regulatory Law Office  
Office of the Judge  
Advocate General  
Department of the Army  
901 North Stuart Street  
Arlington, VA 22203-1837

Mr. Michael Fannon  
Cellular One  
2735 Capital Circle, NE  
Tallahassee, FL 32308

Floyd R. Self, Esq.  
Messer, Vickers, Caparello,  
Madsen, Lewis, Goldman & Metz  
Post Office Box 1876  
Tallahassee, FL 32302-1876  
Attys for McCaw Cellular

Stan Greer  
Division of Communications  
Florida Public Svc. Commission  
101 East Gaines Street  
Tallahassee, FL 32399-0863

*Nancy B. White* (2)