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December 22, 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. 920260-TL - Rate Stabilization

Dear Mr. Tribble:

Enclosed please find an original and fifteen copies of Southern Bell Telephone and Telegraph Company's Reply to the Responses and Opposition to Southern Bell's Motion to Strike the Testimony of Michael R. Maloy, R. Earl Poucher, Mark N. Cooper and Joseph P. Cresse of Public Counsel, the Attorney General and Florida Cable Television Association, 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 (cc)

- ACK 1
- AFA 3
- APP _____
- CAF _____
- CMJ _____
- CTR _____
- EAG _____
- LEG 1
- LIN 6 Enclosures
- OPD _____
- BOB _____
- SMI 1
- WLF _____
- WTR _____

cc: All Parties of Record
A. M. Lombardo
H. R. Anthony
R. Douglas Lackey

A BELLSOUTH Company

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CERTIFICATE OF SERVICE
Docket No. 920260-TL

I HEREBY CERTIFY that a copy of the foregoing has been
furnished by United States Mail this *22nd* day of *December*, 1992

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Comprehensive Review of) Docket No. 920260-TL
the Revenue Requirements and Rate)
Stabilization Plan of Southern) Filed: December 22, 1992
Bell Telephone & Telegraph Company)

**SOUTHERN BELL TELEPHONE AND TELEGRAPH
COMPANY'S REPLY TO THE RESPONSES AND
OPPOSITION TO SOUTHERN BELL'S MOTION TO STRIKE
THE TESTIMONY OF MICHAEL R. MALOY, R. EARL
POUCHER, MARK N. COOPER AND JOSEPH P. CRESSE OF
PUBLIC COUNSEL, THE ATTORNEY GENERAL AND
FLORIDA CABLE TELEVISION ASSOCIATION**

COMES NOW BellSouth Telecommunications, Inc., d/b/a Southern Bell Telephone and Telegraph Company ("Southern Bell" or "Company"), and hereby files its Reply to the Responses and Opposition to Southern Bell's Motion to Strike the Testimony of Michael R. Maloy, R. Earl Poucher, Mark N. Cooper and Joseph P. Cresse of the Office of Public Counsel ("Public Counsel"), the Attorney General of the State of Florida (the "Attorney General"), and Florida Cable Television Association ("FCTA") (Collectively referred to as the "Respondents") and states as grounds in support thereof the following:

1. Public Counsel lacks standing to file its response and opposition to Southern Bell's motion to strike the testimony of witnesses Michael R. Maloy and Joseph P. Cresse because the testimony of both of these witnesses has been filed by a party to this action other than Public Counsel. Likewise, the Attorney

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General lacks standing to oppose the Motion to Strike the Testimony as it relates to all witnesses except Michael R. Maloy, and FCTA lacks standing as to all except Joseph P. Cresse. Thus, each respondent's opposition to the part of Southern Bell's Motion to Strike that is directed to witnesses other than those whose testimony it sponsors is plainly improper and should not be considered by this Commission. More importantly, Respondents' various Responses and Opposition are totally lacking in substantive merit.

2. Public Counsel filed its Response on December 4, 1992. On December 7, 1992, the Attorney General filed a Response that is essentially a reconstituted version of Public Counsel's Response. FCTA then filed, on December 15, 1992, a Response that adopts by reference the Responses of Public Counsel and the Attorney General. Since the substantive content of all three responses is essentially the same, Southern Bell will refer throughout this Reply only to the first of the Responses that was filed, Public Counsel's. The reasons that Public Counsel's opposition should fail, however, apply equally to the position of the Attorney General and FCTA.

3. Public Counsel first argues that Southern Bell's Motion to Strike is not "ripe" because the full Commission has not yet ruled upon Citizens' Motion to Review the Additional Order on

Prehearing Procedure that was entered by the Prehearing Officer on November 13, 1992. This is tantamount to an argument that as long as Public Counsel has appealed the order of the Prehearing Officer and is awaiting a ruling from the full Commission, then it is free to violate that Order in the interim. Southern Bell submits that, to the contrary, the Order entered by the Prehearing Officer is binding on Public Counsel and will remain so in the absence of a reversal by the full Commission. For this reason, it is appropriate for the Prehearing Officer to strike the testimony of these witnesses because it violates the Procedural Order that is currently in effect.¹

4. Public Counsel makes the further argument that even if the Commission does not overturn the order of the Prehearing Officer, Public Counsel still has the right to file testimony relating to the matters at issue in Docket Nos. 910163-TL and 900960-TL in this docket because those issues are relevant here as well. Public Counsel asserts that this "right" exists pursuant to Rule 25-22.048(2), Florida Administrative Code. Public Counsel then makes the inexplicable statement that the order of the Prehearing Officer should not be "interpreted in a

¹ Doing so would in no way deprive Public Counsel of any procedural rights that it might have because Public Counsel is free to file whatever motion for review of this order that it wishes.

way that would violate this..." right. In reality, however, little interpretation is required to determine that the filing of the testimony in question by Public Counsel is clearly barred by the provisions of the Prehearing Procedural Order and that this Order does not violate any right of Public Counsel. This result is clear on the face of the order, which provides that "evidence relating to Docket Nos. 900960-TL, 910163-TL and 910727-TL will not be incorporated in the main hearings to be held in this docket beginning January 25, 1993." (Order, p. 1) The Order further provides that "following the conclusion of the hearings in those dockets, additional time will be scheduled to take testimony and other evidence regarding the impact of... [these dockets]...on the final outcome of the issues presented by this docket." (Id.)

5. In other words, the Order provides a procedure whereby testimony of the type filed by Mr. Cooper and Mr. Poucher can properly be admitted at the time of the hearing on the investigative dockets. The Commission will consider at the conclusion of that hearing whether that evidence is relevant to the issues in Docket No. 920260-TL.

6. Given this, Public Counsel will have a full opportunity to be heard on the investigatory issues and none of its rights will be adversely affected. For these reasons, Public Counsel's

Response and Opposition is scarcely more than frivolous, and Southern Bell's Motion to Strike should be granted.

Respectfully submitted,

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