IN THE FLORIDA PUBLIC SERVICE COMMISSION

LOWER CASE NO./DOCKET NO. 920260-TL

LOCALS 3121, 3122 and 3107 COMMUNICATION WORKERS OF AMERICA, AFL-CIO,

Plaintiffs/Appellants

NOTICE OF APPEAL

v.

FLORIDA PUBLIC SERVICE COMMISSION

Defendant/Appellee.
_____/

NOTICE IS GIVEN that LOCALS 3121, 3122 and 3107 COMMUNICATION WORKERS OF AMERICA, AFL-CIO, Plaintiffs/Appellants, appeal to the Florida Supreme Court, the Order of this FLORIDA PUBLIC SERVICE COMMISSION rendered June 2, 1994. The nature of the order is a final order, PSC 94-0669-FOF-TL, wherein the agency refused to hold the required hearing on rate design.

Certificate of Service

I HEREBY CERTIFY that a true and correct copy of the attached Notice of Appeal was mailed to those individuals named on the attached distribution list on this 24th day of June, 1994.

Respectfully submitted,

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cwa/psc/app.not

SERVICE LIST

Docket No. 920260-TL
Docket No. 900960-TL
Docket No. 910163-TL
Docket No. 910727-TL

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Comprehensive review of the revenue requirements and rate stabilization plan of SOUTHERN BELL TELEPHONE AND TELEGRAPH COMPANY.	DOCKET NO. 920260-TL ORDER NO. PSC-94-0669-FOF-TL ISSUED: June 2, 1994

The following Commissioners participated in the disposition of this matter:

J. TERRY DEASON, Chairman
SUSAN F. CLARK
JULIA L. JOHNSON
DIANE K. KIESLING
LUIS J. LAUREDO

NOTICE OF PROPOSED AGENCY ACTION
ORDER REDUCING CERTAIN RATES

BY THE COMMISSION:

NOTICE IS HEREBY GIVEN by the Florida Public Service Commission that the action discussed herein is preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

I. 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 BellSouth Telecommunications, Inc. d/b/a Southern Bell Telephone and Telegraph Company (Southern Bell or the Company) had been operating since 1988. On January 5, 1994, a Stipulation and Agreement Between OPC and Southern Bell was submitted and, on January 12, 1994, an Implementation Agreement for Portions of the Unspecified Rate Reductions in Stipulation and Agreement Between OPC and Southern Bell was also submitted (hereinafter collectively the Settlement). By Order No. PSC-94-0172-FOF-TL, we approved the Settlement. The Settlement requires, that rate reductions be made to certain of Southern Bell's services according to the schedule set forth in the Settlement. Some of the

reductions have already been implemented. By the terms of the Settlement, certain amounts were set aside for rate reductions to be specified on the schedule established by the Settlement.

Approximately four months before the scheduled effective dates of the unspecified rate reductions, Southern Bell will file its proposals for the required revenue reductions. Interested parties may also file proposals at that time. Parties which have already 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.

In this round of reductions, the Florida Interexchange Carriers Association (FIXCA), the Ad Hoc Telecommunications Users Group (Ad Hoc), the Department of Defense (DOD), and the Florida Pay Telephone Association (FPTA) are precluded by the Settlement from making proposals which would benefit themselves. In addition to Southern Bell, two other entities filed proposals: McCaw Cellular Communications (McCaw) and certain local chapters of the Communications Workers of America (CWA).

The Settlement slated $10 million for the first round of nonspecific rate reductions. As discussed below, we now specify the services that will receive rate reductions as well as the amounts by which they will be reduced. These reductions are scheduled to be implemented July 1.

II. SPECIFICATION OF RATE REDUCTIONS

A. Southern Bell's Proposals

Southern Bell filed two proposals, an initial proposal and an alternative. The effect of either proposal would reduce rates by approximately $10 million annually. The initial proposal reduced rates as follows: eliminate charges for Billed Number Screening for Residential and Business customers ($1.9M), reduce IntraLATA 800 Service usage charges ($1.0M), reduce rates for Customized Code Restrictions ($0.9M), reduce rates for DID trunk terminations ($3.9M), reduce residential Ringmaster rates ($1.1M), and reduce business hunting rates ($1.0M).

The Company's alternative proposal is as follows: reduce mobile interconnection usage rates ($7.3M), reduce 800 Service usage rates ($1.0M), and reduce DID trunk termination rates ($1.7M). Southern Bell submitted the alternative in the event we

denied the Company's petition to stay Order No. 20475 and its requirement to flow through the $50 million in switched access charge reductions to the formula that is used to calculate the usage rates paid by mobile carriers. See Docket No. 940220-TL. In the course of our discussions during the Agenda Conference, the Company modified its alternative proposal to provide for reductions as follows: reduce mobile interconnection usage rates (approximately $7.3M), eliminate Billed Number Screening charges for Residential and Business customers ($1.9M), and reduce rates for DID trunk terminations (approximately $0.8M).

B. McCaw Cellular Communication's Proposal

McCaw initially proposed that a portion of the $10 million be used to reduce the current Type 2B mobile interconnection usage rate to $.0098 per minute. However, during the Agenda Conference at which we considered this matter, McCaw withdrew its proposal. Accordingly, we give it no further consideration.

C. Communications Workers of America's Proposal

The Communications Workers of America, AFL-CIO, Locals Nos. 3121, 3122 and 3107 (CWA) filed a "Proposal for Implementation of $10 Million Reduction by Locals 3121, 3122, 3107 Communications Workers of America, APL-CIO." The CWA proposes that the $10 million be utilized for the public interest. Specifically, CWA proposes:

> The money would be given to a workers/citizens cooperation committee. The Office of Public Counsel would be a member of that committee. The PSC would select two (2) additional members, organized labor would select three (3) members, and the public would have three (3) members voted upon at various public hearings held throughout the service area. This nine (9) member committee would utilize the $10 million to retain experts, poll the public, educate the citizenry, hold workshops, work with the PSC Staff, Public Counsel and utilities in an effort to make sure the public's voice is heard.

In support of its request CWA argues that the current technological revolution coupled with the impetus to create an information superhighway raises numerous regulatory issues. Among the issues are universal service, recovery of investment in copper facilities,

the ongoing nature of regulation of utilities, privacy, funding the new "highway," and the effect that the highway will have on employees. As a result of these questions, CWA argues that ratepayers and telecommunications employees must be poised to debate these questions. To that end, CWA argues that the workers/citizen committee should be created and that the $10 million should be placed at its disposal to give it the resources needed to insure that the public is a "player in the game." Finally, CWA requests that the Commission hold a hearing on CWA's proposal.

On March 10, 1994, Southern Bell filed a motion to dismiss CWA's proposal. In support of its motion Southern Bell argues that the fundamental premise of CWAs' proposal is flawed for two major reasons. First, the Commission has no authority to create such a "committee," and the creation of such an entity would be an improper delegation of the Commission's authority. Second, the Company argues that the purpose and function of the committee would be redundant and a waste of limited resources since the Office of Public Counsel and the Commission itself are already charged with serving the public interest in the area of telecommunications regulation. Accordingly, Southern Bell argues that there is absolutely no need for a third entity to advance the public interest which is already thoroughly represented.

On April 12, 1994, CWA responded to Southern Bell's Motion to Dismiss. CWA argues that Southern Bell's motion is misplaced since there is no statutory authority prohibiting the Commission from protecting workers and ratepayers. CWA further argues that the proposal is subject to Commission approval and that, if Southern Bell is correct, the Commission can modify the proposal to the extent needed to comply with the law. CWA also argues that Southern Bell's motion is an attempt to discourage participation by other parties. Finally CWA asks that the Commission hear oral argument on its proposal as well as Southern Bell's motion to dismiss.

D. Conclusion

We have examined the proposals of Southern Bell and CWA. Upon consideration, we reject the initial proposal of Southern Bell and the proposal of CWA and find that Southern Bell's modified alternative proposal is the most appropriate for implementation of the $10 million rate reductions. As a result of denying the Company's request for stay in Docket No. 940220-TL, Southern Bell shall continue to flow through the switched access reductions to mobile interconnection usage rates. The impact of this flow-

through is approximately $7.3 million. In view of the flow-through requirement, it is appropriate to allow Southern Bell to utilize a portion the unspecified reductions already approved in the Settlement. The Company shall file the necessary revisions to its mobile interconnection tariff no later than June 1, 1994 to become effective July 1, 1994. The filing shall include the backup calculations and assumptions used to develop the new mobile interconnection usage rates and revenue impact.

The elimination of the Billed Number Screening charge for business and residence lines reduces the inequity created by the Settlement which eliminated this charge for pay telephone access lines. This service is provided free of charge in other BellSouth states and is used by subscribers to prevent unauthorized calls from being billed to their accounts.

We accept Southern Bell's assertion for purposes of this filing that DID trunk termination rates should be further reduced because economic competitive alternatives have emerged. The proposed rates would still recover the incremental costs of the service as calculated by the Company, and according to Southern Bell, would allow it to remain viable in the market.

The Company shall file tariffs to reflect the reductions we have approved herein to be effective July 1, 1994.

With respect to CWA's proposal, this Commission is a creature of statute. As such, it is axiomatic that the Commission has only that authority which is expressly delegated to it by statute or that which is reasonably implied from its statutory authority. Nothing in either Chapters 350 or 364, Florida Statutes, expressly authorizes or suggests that the we may create a "workers/citizens cooperation committee" or that we may delegate to any such entity the performance of any function otherwise within our authority. To attempt any such creation or delegation is beyond our authority and would be impermissible. Cf Barry v. Garcia, 573 So.2d 932 (Fla. 3rd DCA 1991) and D.M. Johnson v. Board of Architecture and Interior Design, Department of Business and Professional Regulation, 19 Fla. L. Weekly D454 (Fla. 2d DCA February 25, 1994).

The determination as to how the first round of rate reductions stemming from the Settlement and the Implementation Agreement will be implemented is solely the responsibility of the Commission. Without any statutory authority, the Commission cannot delegate this decision to any other entity. Even if the Commission could create some sort of committee, the Commission lacks the authority

to place the first $10 million increment at the committee's disposal regardless of how laudable the purpose of the committee may be. For these reasons, we must reject the CWA's proposal.

We note that CWA has asked for a hearing on its proposal. The request is premature. Since our decision in this matter is issued as a Notice of Proposed Agency Action, CWA will have a subsequent point of entry in which to appropriately request a hearing if it disagrees with our decisions herein. We further note that since parties were allowed to address the Commission on the issues discussed herein at our Agenda Conference, CWAs Motion for Oral Argument is moot.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the Modified Alternative Proposal submitted by BellSouth Telecommunications, Inc. d/b/a Southern Bell Telephone and Telegraph Company is hereby approved as set forth in the body of this Order. It is further

ORDERED that the withdrawal of the proposal submitted by McCaw Cellular Communications is acknowledged. It is further

ORDERED that the proposal submitted by the Communications Workers of America, AFL-CIO, Locals Nos. 3121, 3122 and 3107 is rejected as set forth in the body of this Order. It is further

ORDERED that CWAs request for hearing on its proposal is premature for the reasons set forth in the body of this Order. It is further

ORDERED that CWAs request for Oral Argument is moot as set forth in the body of this Order.

ORDERED that Southern Bell shall file tariffs reflecting our decisions set forth in the body of this Order to be effective July 1, 1994. It is further

ORDERED that this Order shall become final and effective unless an appropriate petition is timely filed in accordance with the requirements set forth below in the Notice of Further Proceedings or Judicial Review. It is further

ORDERED that this docket shall remain open.

By ORDER of the Florida Public Service Commission, this 2nd day of June, 1994.

BLANCA S. BAYÓ, Director
Division of Records and Reporting

(S E A L)

TH

Commissioner Julia L. Johnson dissents.

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

The action proposed herein is preliminary in nature and will not become effective or final, except as provided by Rule 25-22.029, Florida Administrative Code. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, as provided by Rule 25-22.029(4), Florida Administrative Code, in the form provided by Rule 25-22.036(7)(a) and (f), Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting at his office at 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on June 23, 1994.

In the absence of such a petition, this order shall become effective on the day subsequent to the above date as provided by Rule 25-22.029(6), Florida Administrative Code.

Any objection or protest filed in this docket before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.

If this order becomes final and effective on the date described above, any party adversely affected may request judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or by the First District Court of Appeal in the case of a water or wastewater utility by filing a notice of appeal with the Director, Division of Records and Reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days of the effective date of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.

State of Florida

DIVISION OF RECORDS &
REPORTING
BLANCA S. BAYO
DIRECTOR
(904) 488-8371

Public Service Commission

June 28, 1994

Sid J. White, Clerk
Supreme Court of Florida
Supreme Court Building
Tallahassee, Florida 32301

Re: Docket No. 920260-TL - Comprehensive Review of the Revenue Requirements and Rate Stabilization Plan of SOUTHERN BELL TELEPHONE AND TELEGRAPH COMPANY.

Dear Mr. White:

Enclosed is a certified copy of a Notice of Appeal, filed in our office on June 27, 1994, on behalf of LOCALS 3121, 3122 and 3107 COMMUNICATION WORKERS OF AMERICA, AFL-CIO. A copy of Order No. PSC-94-0669-FOF-TL, the order on appeal, is also attached.

The index of record will be served on the parties to this proceeding on or before August 16, 1994.

Sincerely,

Kay Flynn, Chief
Bureau of Records

Enclosure
cc: David Smith
Mark Richard
Parties of Record