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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

DIRECT TESTIMONY OF

ROBERT KRUKLES, PRESIDENT OF LOCAL 3121  
OF THE COMMUNICATIONS WORKERS OF AMERICA, AFL-CIO,

Date: July 29, 1994

- ACK \_\_\_\_\_
- AFA John
- APP \_\_\_\_\_
- CAF \_\_\_\_\_
- ~~CAF~~ Norton
- CTR \_\_\_\_\_
- EAG \_\_\_\_\_
- LEG Natch
- LIT Rigby
- OPR \_\_\_\_\_
- RCH Kinson
- SEC \_\_\_\_\_
- WAS \_\_\_\_\_
- OTH \_\_\_\_\_

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EPSC-BUREAU OF RECORDS

Respectfully submitted,  
  
Mark Richard, Esq.  
Attorney for CWA Locals  
3121, 3122, 3107  
Fla. Bar No. 305979  
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Coral Gables, Florida 33134  
305-443-5125

DOCUMENT NUMBER-DATE  
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1 Q...: State your name and provide your background?

2 A...: My name is Robert Krukles. My business address is  
3 Communication Workers of America, AFL-CIO, Local 3121  
4 ("CWA"), 1840 West 49th Street, Suite 103, Hialeah,  
5 Florida, 33012. The union's telephone number is 305-821-  
6 3121.

7 I am currently the President of CWA Local 3121. I  
8 have held this position for 16 years. Local 3121  
9 represents some 2000 employees of Southern Bell. I have  
10 also been an employee of Southern Bell for over 22 years.  
11 Additionally, CWA Local 3121 as well as Locals 3122, and  
12 3107 are current customers of Southern Bell.

13 Q...: What involvement do you have in telecommunications  
14 industry issues?

15 A...: Because of my role in CWA 3121 I have had an  
16 extensive history of involvement in telecommunication  
17 issues. As President, I receive enormous amounts of  
18 written and oral information from the CWA International in  
19 Washington, D.C. as well as from Southern Bell itself on  
20 current telecommunications topics. Furthermore, our union  
21 has been actively involved in analyzing and strategizing  
22 over such issues. I am both an observer of, and  
23 participant in, this industry.

24 Q...: How did CWA Locals 3121, 3122, and 3107 become  
25 involved in this petition?

1       A...: These three local unions are the exclusive bargaining  
2 agents for all bargaining unit employees based in Dade  
3 County, Florida. In total the three CWA Locals represent  
4 some 5000 Southern Bell employees.

5             The President of CWA Local 3122, Willie Knowles (and  
6 formerly the late Jim Barrett,) as well as CWA 3107 Local  
7 President Tony Dorado, worked together with me to form a  
8 joint effort to become involved in this docket. The three  
9 Presidents, and their respective locals, have a long  
10 history of activism in the telecommunications arena.

11            Our three local unions and many of our members had  
12 watched this proceeding (and the related dockets) very  
13 closely for two reasons. First, we are always interested  
14 by definition in PSC decisions as they generally affect the  
15 revenues and financial condition of Southern Bell.  
16 Second, these dockets in part involved allegations of  
17 sales, billing and other improprieties. Many of our union  
18 members were subject to company interrogation, depositions  
19 and investigations for activities that, if true, were  
20 ordered by the company. A great level of anxiety and  
21 pressure had been put upon loyal and dedicated workers,  
22 instead of upon those who would have been the responsible  
23 authorities within the company hierarchy. Of course such  
24 charges impact our company which also heightened our  
25 interest.

1           A "global" type settlement of these allegations, as  
2 well as other rate issues, was reached in these related  
3 docketed cases. Upon review of the settlement documents  
4 and the resulting PSC order(s), it was apparent that  
5 several things were traded by the company in exchange for  
6 the cessation of the allegations of wrongdoing. The PSC  
7 and Office of Public Counsel seemed to extract certain  
8 concessions from Southern Bell as part of the overall  
9 settlement.

10           One particular area that concerned us related to the  
11 unspecified and undetermined refund amounts. The first  
12 unspecified amount of \$10 million was scheduled to take  
13 place in July of 1994. (There are future refunds which are  
14 not at issue). The parties agreed that all "interested  
15 parties" could submit proposals.

16           The three CWA local union Presidents discussed this  
17 issue with other union leaders as well as with many of  
18 their members. The interest level was extremely high. All  
19 CWA members are Southern Bell customers and most of them  
20 are employees. It seemed that we were logical "interested  
21 parties." We decided to would file a proposal.

22           Q..: How did the CWA proposal come about?

23           A..: The CWA proposal is generally described in the  
24 original proposal and clarified in other pleadings. CWA  
25 seeks to have the PSC utilize the money (in any fashion the

1 Commission deems appropriate and legal) to capture the  
2 enormous citizen and employee interest in the current  
3 revolutionary changes occurring in the telecommunications  
4 industry. This historic turning point in our industry is  
5 coming about in part because of the nation's focus upon the  
6 "information highway." The creation of new technology and  
7 new applications has the potential of simply turning the  
8 telecommunications industry "upside down."

9 Every day CWA employees/members discuss the imagined  
10 positive and negative consequences of the "highway." As  
11 workers eat lunch or prepare for another day of work, the  
12 "highway" is a main topic of heated debate. From the fear  
13 of layoff to the issue of who can afford such future  
14 services, our members have become fixated upon the  
15 "highway" and where it might lead. Southern Bell  
16 customers have also expressed great concern over the  
17 "highway." In our contacts with customers, consumer  
18 groups, media members and educators, we have noticed an  
19 uneasy questioning about the "highway." First, these  
20 customers inquire into the exact nature of the components  
21 that make up the loosely defined "information highway."  
22 Second, they begin to ask key general questions. Finally,  
23 they often admit they do not possess enough knowledge to  
24 even begin to ask the right questions or whether they will  
25 ever have sufficient understanding to take advantage of

1 this "information highway." The three union Presidents  
2 realized that they were witness to one of the highest  
3 levels of interest ever seen in both the employee and  
4 customer populations. As prudent leaders, we felt  
5 responsible to try to direct this involvement in a positive  
6 and meaningful fashion. We knew as well that the issues  
7 raised by the "highway" were indeed real and carried  
8 consequences of enormous magnitude.

9 Q..: What are the specifics of the CWA proposal?

10 A..: We were never able to detail our proposal before the  
11 PSC. We wanted to work out the legal and practical issues,  
12 if any, at a workshop. Yet, we were given only a two  
13 days's notice, which coincided with the funeral caused by  
14 the unexpected death of CWA Local 3122's then president,  
15 Jim Barrett. It was as if the PSC staff at first did  
16 whatever could be done to avoid us and sweep our  
17 participation out of the process. Our request to re-set  
18 the workshop was summarily rejected. We were not  
19 surprised. The PSC, as well as several others bothered by  
20 our involvement, preferred to leave the fate of the issues  
21 in the hands of those that "know best." This paternalistic  
22 approach is offensive at best. Citizen involvement appears  
23 to be merely a rhetorical P.R. chant. It sounds great in  
24 a democracy, but "heaven help us" if anyone takes it  
25 seriously. Needless to say we have not been satisfied with

1       our treatment.

2       Q..:     Could you give us some details about the CWA  
3       proposal?

4       A..:     We are specifically proposing the establishment of a  
5       structure that utilizes the \$10 million to allow consumer  
6       and worker involvement in the process of evaluating and  
7       strategizing over the "super highway." The structure could  
8       be set up by the PSC, CWA, Southern Bell, and/or the Office  
9       of Public Counsel. The monies would be under the control  
10      of any legal combinations of the above. Perhaps the  
11      committee could, if properly created, legally have some  
12      control.

13             This structure could hold town meetings, draft  
14      position papers, confer with experts, sponsor lectures, or  
15      conduct workshops. In general, these monies would be  
16      utilized to tap into the great excitement the "highway" has  
17      generated. This would be seed money to support consumer,  
18      employee and employer involvement in the debate over the  
19      information revolution.

20             This debate is wide ranging and vigorous. It  
21      contemplates myriad regulations, financial, social, health,  
22      and safety matters. The very important concern over  
23      universal coverage is perhaps at the core of the dialogue.  
24      Will every citizen have access to the "highway?" Will the  
25      poor and disenfranchised be participants or merely outside

1 victims of this revolution? Will non-profit organizations  
2 such as universities, charities and even state agencies be  
3 able to afford some basic service under the "new" system?

4 The fate of the copper wire infrastructure hangs in  
5 the balance. An entire society has created a national  
6 resource to link our world. That very system is to  
7 America, what the circulatory system is to the body. It  
8 brings life to our nation. Without this life line we cease  
9 to exist. Will this super highway be abandoned, paved-over  
10 or intermingled? How will the PSC treat such  
11 possibilities? One could easily envision the regulatory  
12 quagmire arising out of the PSC's inquiry into such  
13 matters.

14 The fate of thousands of workers as well is now in a  
15 constant state of flux. Thousands and thousands of pink  
16 slips, stress created divorces and waste of talent awaits  
17 a dedicated and loyal pool of workers. These workers  
18 already face the steady migration of jobs out of Florida.  
19 This results in obvious negative economic consequences on  
20 the state and tax base. National and state administrative  
21 and legislative decisionmakers hold the power to virtually  
22 change the face of the telecommunications industry forever.

23 In the long run it is the position of the CWA locals  
24 that the \$10 million will best be spent on educating the  
25 consumers and workers on these issues. The citizenry can



1 become active participants in a debate that will change  
2 their lives well into the next century.

3 The plan adopted by the Commission will not tackle  
4 these issues. CWA believes that the consumer and workers  
5 will reap a greater benefit from the union proposal than  
6 from the Commission approved plan. These monies must be  
7 seen as an investment in the future instead of a few  
8 pennies for the present.

9 Q.: Even if the CWA proposal is rejected, what is the  
10 local unions' position on the Commission proposed agency  
11 action?

12 A.: Assuming that the PSC denies any conceivable version  
13 of a CWA plan, the three unions are still opposed to the  
14 proposed agency action. The plan recommended for  
15 implementation is not in the best interests of the  
16 consumers. It is our position that the refund monies  
17 should be used in a manner that directly affects  
18 residential and small business customers. It appears that  
19 the proposed plan is skewed in favor of allowing Southern  
20 Bell to pass the savings on to a small number of customers.

21 The CWA locals would rather have the refund dollars  
22 be spread amongst the largest number of rate-payers. Any  
23 basic reduction that affects all residential customers and  
24 business entities would be preferable.

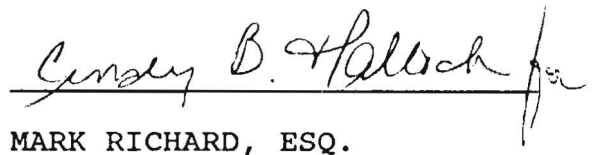
25 Those customers most affected by the alleged improper

1 actions were residential and small business users. They  
2 witnessed a "global" settlement take place among the PSC,  
3 Office of Public Counsel and Southern Bell. That  
4 settlement forever extinguished any regulatory remedies  
5 they had to exercise. That settlement should therefore  
6 benefit the customer base most affected by the alleged  
7 improper action. Also, that customer base most in need of  
8 financial relief - - residents and small business - -  
9 should receive the largest share of refund dollars. The  
10 proposed plan has the opposite effect. This is  
11 unacceptable and should be rejected.

12 Certificate of Service

13 I HEREBY CERTIFY that a true and correct copy of the  
14 foregoing Direct Testimony of Robert Krukles, President of  
15 Local 3121 of the Communications Workers of America, AFL-  
16 CIO was mailed to those individuals named on the attached  
17 distribution list on this 1st day of August, 1994.

18  
19  
20

  
MARK RICHARD, ESQ.

21 cwa/psc/krukles.tes

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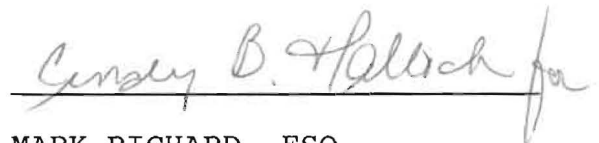
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MARK RICHARD, ESQ.

920260-TP

IN THE SUPREME COURT OF THE STATE OF FLORIDA

CASE NO. 83,914

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

Plaintiffs/Appellants

v.

FLORIDA PUBLIC SERVICE  
COMMISSION,

Defendant/Appellee.

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APPELLANTS' RESPONSE TO APPELLEE'S MOTION TO DISMISS

Appellants, Communication Workers of America, AFL-CIO, Locals 3121, 3122 and 3107 pursuant to Rule 9.300 of the Florida Rules of Appellate Procedure, files their response to the Florida Public Service Commission's Motion to Dismiss Appellants' appeal:

BACKGROUND

A settlement agreement was entered into below between Southern Bell and the Office of Public Counsel in docket number 920260-TL. Part of the settlement included a \$10 million undefined rate reduction set-aside. The settlement provided that any "interested party" could submit a proposal on how the \$10 million should be spent. The settlement further provided that the Public Service Commission ("PSC") would hold a hearing on submitted proposals.

The appellants, three Communication Workers of America ("CWA") local unions, timely filed a proposal. The PSC refused to hold an evidentiary hearing, over objection, on the CWA proposal. Instead, the PSC rejected the CWA plan during a non-evidentiary agenda

conference. The PSC concluded that it did not have the legal authority to adopt the CWA proposal even if it agreed with the concept. Instead, the PSC adopted a Southern Bell proposal that reduced rates, by \$10 million, using a more traditional method.

The PSC issued an order rejecting the CWA proposal on a legal basis and outlining its proposed agency action. The CWA opposed the proposed plan and a hearing is set for September 1, 1994.

#### ARGUMENT

The issues raised on appeal cannot be addressed at the upcoming Administrative Hearing and as such are ripe for review.

These are the three appellate issues arising out of CWA's participation in the docket below. They are:

1. Did the PSC have to hold an evidentiary hearing before it decided on any plan of spending the \$10 million set-aside?
2. Does the PSC have the legal authority to adopt the CWA proposal if it so desires?
3. Is the proposed agency action for disposition of the \$10 million a proper plan?

Issue three (3) is obviously the subject of the September hearing. Indeed, the issue at the hearing will be the appropriateness of the PSC proposed plan. Specifically, CWA will argue that the proposed rate cuts would be better made in other traditional areas (e.g. residential versus business). This part of the PSC order below is not the subject of the instant appeal. It would be premature to appeal this issue.

However, issues one (1) and two (2) described above are not capable of being addressed at the upcoming administrative hearing on the proposed agency action. Let us examine why this is so.

First, the Court need analyze the PSC ruling that it had no legal authority or jurisdiction to adopt the CWA proposal. This is a legal issue. The September hearing to adjudicate factual issues cannot change this ruling. The PSC has determined its own legal power. Now the Court must address this matter. Waiting for the hearing will be useless. (In fact, ironically, it seems that the administrative hearing should be stayed until the Court rules on this key legal dispute. This would best serve the goal of judicial economy.)

Second, it was critical to the CWA that the PSC hold the evidentiary hearing before making its ruling on which proposal it would adopt as to the \$10 million set-aside. An after-the-fact hearing on proposed agency action is quite a different procedural approach. The after-the-fact upcoming hearing is ultimately a proceeding on the appropriateness of the adopted \$10 million package. It will revisit the issue of whether the proposed action should be approved. It is not a de novo proceeding for the PSC to equally weigh all proposals submitted by the parties.

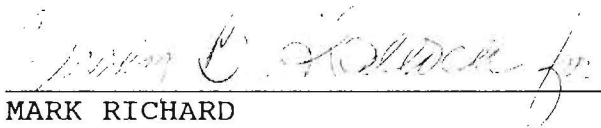
These procedural questions are ripe for appellate review at this time. The upcoming hearing cannot address or remedy this dispute. It would be futile for CWA to wait until the September hearing is concluded before having these questions reviewed by the Court.

It is a long standing axiom that a party may obtain judicial review if the final agency action would not provide an adequate remedy.

Fla. Stat. § 120.68(1) (1994) states that "...[a] preliminary, procedural, or intermediate agency action or ruling, including any order of a hearing officer, is immediately reviewable if review of the final agency decision would not provide an adequate remedy. (emphasis added)." Preliminary action is reviewable where that action has immediate and adverse consequences for which final action would provide an inadequate remedy. See Fiat Motors of North America, Inc. v. Calvin, 356 So.2d 908 (Fla. 1st DCA 1978), cert. den. 360 So.2d 1247. This is exactly the status of the instant appeal.

WHEREFORE, Appellants, Communications Workers of America, AFL-CIO, Locals 3121, 3122 and 3107, request that this Court deny the Florida Public Service Commission's Motion to Dismiss Appellants' appeal.

I HEREBY CERTIFY that a true and correct copy of the foregoing was mailed this 5<sup>th</sup> day of August, 1994 to those named on the attached distribution list.



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