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ORIGINAL  
FILE COPY

August 17, 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 Motion to Strike Portions of the Prehearing Statement Filed by the Communication Workers of America. Please file these documents in the captioned docket.

ACK        A copy of this letter is enclosed. Please mark it to  
AFA John indicate that the original was filed and return the copy to me.  
APP        Copies have been served on the parties shown on the attached  
Certificate of Service.

CAF         
CMT Orsten

Sincerely,

*Nancy B. White*  
Nancy B. White (2)

CTR         
EAG         
LEG Hatch  
LIT 6 Enclosures

OPR cc: All Parties of Record  
RCH Vinson A. M. Lombardo  
SEC 1 R. G. Beatty  
WAS        R. D. Lackey  
OTH       

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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In re: Comprehensive Review of	)	
the Revenue Requirements and Rate	)	Docket No. 920260-TL
Stabilization Plan of Southern	)	
Bell Telephone and Telegraph	)	Filed: August 17, 1994
Company	)	
	)	

SOUTHERN BELL TELEPHONE AND TELEGRAPH COMPANY'S  
MOTION TO STRIKE PORTIONS OF THE PREHEARING STATEMENT  
FILED BY THE COMMUNICATION WORKERS OF AMERICA

COMES NOW, BellSouth Telecommunications, Inc., d/b/a Southern Bell Telephone and Telegraph Company ("Southern Bell"), and moves the Prehearing Officer, pursuant to Rule 25-22.037 of the Rules of the Florida Public Service Commission ("Commission"), to strike portions of the Prehearing Statement filed by the Communication Workers of America ("CWA") for the reasons set forth below.

1. First, Southern Bell moves to strike a portion of the section in the CWA's Prehearing Statement concerning witnesses. The CWA has listed the names of five witnesses in addition to that of Mr. Robert Kruckles, the only witness listed by the CWA who has prefiled direct testimony. The order establishing procedure in this case, Order No. PSC-94-0893-PCO-TL, issued on July 21, 1994, specifically states that "each party shall prefile, in writing, all testimony that it intends to sponsor." Failure of a party to timely prefile testimony may bar admission of such testimony. For this reason alone, the listing of all witnesses, other than Mr. Kruckles, should be deleted from the CWA's Prehearing Statement and these witnesses should be prohibited from testifying.

2. At the very least, Messrs. Knowles and Dorado should be prohibited from testifying. Both of these persons are

BOA Vice President  
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of CWA local unions that are parties to this docket. There can be no question that these gentlemen are within the control of the CWA and that their testimony could have been prefiled by the CWA. There is absolutely no excuse for the CWA's failure to prefile their testimony and thus they should not be permitted to testify. They should not be allowed to testify for the additional reason that their testimony would appear to be merely cumulative of Mr. Kruckles'.

3. Further, Mr. Harris Anthony, formerly Southern Bell's General Counsel - Florida, now General Attorney in Atlanta for Southern Bell, is also listed as a witness for the CWA. Mr. Anthony's name should be deleted from the CWA's prehearing statement on the basis that his testimony could involve only matters protected by the attorney-client privilege, or the attorney work product, or both, or matters that are a matter of public record. With regard to the first, communications between attorneys and their clients are shielded from discovery under Rule 1.280(b)(i) of the Florida Rules of Civil Procedure. This rule is codified at Section 90-502, Florida Statutes. The attorney-client privilege applies to corporations. Southern Bell Telephone & Telegraph Co. v. Deason, 632 So.2d 1377 (Fla. 1994). The elements of the attorney-client privilege require that: (1) the communication must be made in contemplation of legal services; (2) by an employee who does so at the direction of a corporate superior; (3) the superior made the request to secure legal services; (4) the communication related to the legal services and the subject matter of the communication were within

scope of employee's duties; and (5) the communication is disseminated on a need to know basis. Id., at 1383. In the instant matter, the scope of examination of Mr. Anthony would necessarily relate to advice given by him to Southern Bell regarding the disposition of the \$10 million. This is clearly impermissible.

4. In the alternative, the testimony sought must necessarily constitute the work product of Mr. Anthony as an attorney for Southern Bell. This too must be shielded from discovery under Rule 1.280(b)(1), Florida Rules of Civil Procedure. In Southern Bell v. Deason, supra, the Supreme Court of Florida held that opinion attorney work product included the attorney's conclusions, opinions, theories, and mental impressions. Opinion work product is absolutely protected from disclosure. Fact work product is information gathered in anticipation of litigation and is subject to discovery only upon a showing of need and undue hardship. Id., at 1384. Mr. Anthony has performed legal work by representing Southern Bell before the Public Service Commission in this matter. His knowledge in this area constitutes opinion work product which is absolutely immune from discovery or fact work product for which the CWA has alternative means of discovery. In any event, any information known by Mr. Anthony which is not subject to the attorney-client privilege or the attorney work product doctrine, or both, is contained in the pleadings filed before this Commission concerning the allocation of the \$10 million in revenue reductions scheduled for 1994 and, thus, is public record. There

is thus no basis or need for the CWA to call Mr. Anthony as a witness and his name should be stricken from the CWA's witness list.

5. The listing of Mr. Joseph P. Lacher, President of Florida for Southern Bell, should also be stricken from the CWA's Prehearing Statement for the reasons stated in the Motion for Protective Order filed by Southern Bell contemporaneously with the instant Motion.

6. Second, Southern Bell moves to strike a portion of the exhibits listed in that section of the CWA's Prehearing Statement. The listed exhibits include documents produced in discovery in Docket No. 920260-TL (b,5), as well as all pleadings filed in Docket No. 920260-TL (b,8). Setting aside the fact that this would constitute literally millions of pages of documents, the listings are inappropriate because the vast majority of these documents have no relevance whatsoever to the subject of this particular proceeding. That subject is the appropriateness vel non of the Commission's order distributing the \$10 million in unallocated revenue reductions for 1994, resulting from the Stipulation and Implementation Agreement (the "Settlement") in Docket No. 920260-TL and approved by the Commission in Order No. 94-0172-707-TL, dated February 11, 1994. Thus, the listing by the CWA of these documents as exhibits should be stricken as irrelevant to the issues in this proceeding.

7. Third, Southern Bell moves to strike portions of the section in the CWA's Prehearing Statement relating the questions of fact at issue. The CWA has listed two issues (d, 2-3) as to

whether the Settlement should be set aside. The Order approving the Settlement is a final judgment, upon which all appeal time has long since run. Therefore, any questions concerning whether the Settlement should be set aside are irrelevant to the proceeding at hand.

8. In addition, six of the so-called questions of fact listed by the CWA (d, 1,4-8) are already covered by the issue list contained in the Procedural Order. Therefore, these proposed questions of fact are superfluous, redundant, and should be deleted from the Prehearing Statement. The CWA can not now be heard to complain about the list agreed upon at the appropriate time.

9. Fourth, Southern Bell moves to strike the portion of the section of the CWA's Prehearing Statement on the questions of law. Once again, all of these questions are already covered by the issue list contained in the procedural order. Again, it must be noted that, while the CWA had notice of the Issue Identification Workshop in this proceeding, they failed to attend same and can not now be heard to complain about the list agreed upon at that time.

Wherefore, Southern Bell moves the Prehearing Officer to grant Southern Bell's Motion to Strike Portions of the CWA's Prehearing Statement for the reasons set forth herein.

Respectfully submitted this 17th day of August, 1994.

SOUTHERN BELL TELEPHONE  
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**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 17th day of August, 1994 to:

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