

NANCY B. WHITE
General Attorney

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

RECEIVED
SEP 14 1994

September 14, 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 Response to CWA's Motion to Strike Prehearing Statement and Motion to Compel Production. 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.

AFA Jth
APP _____
CAF _____
CARM Norton
CTR _____

Sincerely,

Nancy B. White (BW)
Nancy B. White

EAG Enclosures

cc: States
All Parties of Record
A. M. Lombardo
R. G. Beatty
R. D. Lackey
Vinzen

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EPSC BUREAU OF RECORDS

DOCUMENT NUMBER-DATE
09492 SEP 14 94
FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Comprehensive review of)
revenue requirements and rate)
stabilization plan of Southern) Docket No. 920260-TL
Bell Telephone and Telegraph)
Company) Filed: September 14, 1994
_____)

SOUTHERN BELL TELEPHONE AND TELEGRAPH COMPANY'S
RESPONSE TO CWA'S MOTION TO STRIKE PREHEARING
STATEMENT AND MOTION TO COMPEL PRODUCTION

COMES NOW, BellSouth Telecommunications, Inc. d/b/a Southern Bell Telephone and Telegraph Company ("Southern Bell"), pursuant to Rule 25-22.037(2), Florida Administrative Code, and hereby responds to the Motion to Strike Southern Bell's Prehearing Statement and Motion to Compel Production filed by Locals 3121, 3122, and 3107 Communications Workers of America, AFL-CIO (the "CWA"). In support hereof, Southern Bell shows the Florida Public Service Commission (the "Commission") the following:

1. On August 26, 1994, the CWA served its Response in Opposition to Southern Bell Telephone and Telegraph Company's Motion for Protective Order, Motion to Strike Portions of CWA's Prehearing Statement and CWA's Motion to Strike Prehearing Statements and Motion to Compel Production (the "CWA Motion"). Although Southern Bell's Tallahassee office received a copy of CWA's Motion on August 29, 1994, Southern Bell's Counsel responsible for this proceeding was not made aware of the CWA's Motion until the evening of September 13, 1994. Southern Bell's failure to notify its responsible Counsel was an administrative oversight and constitutes excusable neglect for Southern Bell's filing its response to CWA's Motion on even date herewith rather than on September 12, 1994. Winn Dixie Stores, Inc. v.

DOCUMENT NUMBER-DATE

09492 SEP 14 8

FPSC-RECORDS/REPORTING

Danielson, 544 So.2d 320 (4th D.C.A., 1989); and Carter, Hawley, Nale Stores, Inc. v. Whitman, 516 So.2d 83 (3rd D.C.A., 1987).

Moreover, CWA will suffer no prejudice by allowing Southern Bell to file its pleading at this time since the Prehearing Officer has continued the hearings in this matter and has not yet ruled on any discovery matters. Finally, as shown below, Southern Bell has meritorious defenses to the CWA's Motion as the CWA's arguments are totally without merit and should be disregarded on their face.

2. With respect to CWA's Motion to Strike Southern Bell's Prehearing Statement, even a cursory review of the facts reveals that Motion to be fallacious and without any merit whatsoever. In Order No. PSC-94-0893-PCO-TL, Order Establishing Procedure, in this docket, the Commission stated:

Pursuant to Rule 25-22.038(3), Florida Administrative Code, a prehearing statement shall be required of all parties in this docket. Staff will also file a prehearing statement. The original and fifteen copies of each prehearing statement shall be prefiled with the Director of the Division of Records and Reporting by the close of business, which is 4:45 p.m., on the date due. A copy of the prehearing statement shall be served on all other parties and staff no later than the date it is filed with the Commission.

Id. at 3. This same order, at page 6, then sets the date for filing and service of prehearing statements as August 15, 1994.

3. Southern Bell has fully complied with these requirements. It filed its Prehearing Statement with the Director of the Division of Records and Reporting on August 15,

1994. (See Attachment "A", which is a copy of the cover letter, stamped as received by the Commission on August 15, 1994). On the same date, Southern Bell served all parties, including the CWA, with a copy of the same Prehearing Statement. Accordingly, Southern Bell has fully complied with the Commission's Order Establishing Procedure. The fact that the CWA may not have received Southern Bell's Prehearing Statement until August 18, 1994, is of no legal consequence whatsoever. For these reasons, CWA's Motion to Strike Southern Bell's Prehearing Statement is baseless and should be rejected out of hand.¹

4. In the CWA's Motion, it also argues that the Commission should compel Southern Bell to respond to certain discovery propounded by CWA. Again, CWA's Motion should be denied. In its Order Establishing Procedure, the Commission set forth the three issues to be litigated and resolved in this matter. Those issues are:

ISSUE 1: Under the terms of the Settlement, is the Florida Public Service Commission required to hold hearing (sic) on the rate design issues to implement the proposed rate reductions? (a, f, g).

ISSUE 2: Under applicable law, does the Commission have the authority to adopt the CWA proposal? (b, c, e).

¹ The CWA apparently continues to operate under the misconception that Southern Bell's Renewal of its Motion to Dismiss, filed August 10, 1994, was predicated on CWA's failure to file timely its prefiled testimony. This was not the case. Southern Bell did not raise the argument of timeliness vel non as one of the bases for that Motion. Id. at 3.

ISSUE 3: Whether the rate reductions described in Order PSC-94-0669-FOF-TL are in the best interest of the payor (sic)? (d).

5. Thus, these proceedings are limited to issues surrounding the disposition of \$10 million scheduled for July 1, 1994 pursuant to the terms of Commission Order No. 94-0172-FOF-TL, which approved the Settlement in this docket. That Order is now a final order since it has never been subject to any protest or appeal. Any discovery in the case at bar must therefore relate to the disposition of the \$10 million and not the underlying settlement.²

6. The CWA first seeks authority to depose Mr. Joseph P. Lacher, Southern Bell's State President - Florida. As more fully described in Southern Bell's Motion for Protective Order, filed August 17, 1994 (a copy of which is attached hereto for the Commission's reference as Attachment "B"), Mr. Lacher's knowledge relates to issues surrounding the underlying Settlement, not rate design issues. Given Mr. Lacher's position, his lack of knowledge relating to the issues now being litigated, and the fact that others who do have knowledge related to the relevant issues are available to be deposed, CWA's Motion to Compel Mr. Lacher's deposition should be denied for what it is: simple harassment.

² The only exception to this is the issue of whether or not the Settlement requires a hearing on rate design issues. This is a legal question for which discovery is both unnecessary and inappropriate.

7. CWA's arguments with regard to Harris R. Anthony's testimony should likewise be rejected. At page 3 of CWA's Motion it states, "Certainly, Southern Bell is not attempting to preclude the public or CWA from access to settlement discussions and negotiations related to this docket that took place with third parties." Any such discussions or negotiations are totally irrelevant to the issues in the current proceeding. They had to do with the underlying Settlement, not the rate design for the \$10 million. For the reasons more fully set forth in Southern Bell's Motion for Protective Order, CWA's Motion is again fatally flawed and should be rejected.

8. Finally, CWA seeks to compel the production of certain documents. A review of that aspect of CWA's Motion, though, fully discloses why this effort must also fail.

Further, CWA's Request for Documents goes to the heart of the matters being litigated in this dispute, i.e., the legality of the agreement, the negotiation and settlement discussions related to the Stipulation and the Settlement agreements, determination of who would receive the unspecified refunds under the \$10 million settlement and how these funds would be disbursed.

CWA's Motion at 3. From this language, it is clear that CWA is once again seeking discovery related to the underlying Settlement, discovery that is not relevant to this case nor reasonably calculated to lead to relevant information. Only discovery addressing the disposition of the \$10 million meets the standard for discovery and Southern Bell has not objected to such

discovery on the basis of relevance. Therefore, CWA's Motion should again be denied.

WHEREFORE, Southern Bell respectfully requests that the Commission deny the CWA's Motion in all respects.

Respectfully submitted this 14th day of September, 1994.

SOUTHERN BELL TELEPHONE
AND TELEGRAPH COMPANY

Robert G. Beatty (pw)

ROBERT G. BEATTY
J. PHILLIP CARVER
c/o Marshall M. Criser, III
400 - 150 South Monroe Street
Tallahassee, Florida 32301
(305) 347-5555

Nancy B. White (pw)

NANCY B. WHITE
4300 - 675 W. Peachtree Street
Atlanta, Georgia 30375
(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 14th day of September, 1994
to:

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

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

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

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

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

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

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

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

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

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

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 (pw)

Attachment "A"

Legal Department

NANCY B. WHITE
General Attorney

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

August 15, 1994

AUG 15 1994
PSC-RECORDS/REPORTING

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 Prehearing Statement. 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.

Sincerely,

RECEIVED & FILED
DIVISION OF RECORDS

Nancy B. White
Nancy B. White (07)

Enclosures

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

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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)	
<hr/>		

SOUTHERN BELL TELEPHONE AND TELEGRAPH COMPANY'S
MOTION FOR PROTECTIVE ORDER

COMES NOW, BellSouth Telecommunications, Inc., d/b/a Southern Bell Telephone and Telegraph Company ("Southern Bell") and, pursuant to Rule 25-22.037 of the Rules of the Florida Public Service Commission ("Commission") and Rule 1.280(c) of the Florida Rules of Civil Procedure, moves the Prehearing Officer to issue a Protective Order preventing the deposition of Mr. Joseph P. Lacher by the Communication Workers of America ("CWA"), or, in the alternative, limiting the scope of the deposition of Mr. Joseph P. Lacher for the reasons set forth below.

1. In connection with the hearing set in the above captioned matter, the CWA has scheduled the deposition of Mr. Joseph P. Lacher, President of Florida - Southern Bell, for August 24, 1994, in Coral Gables, Florida. Mr. Lacher is Southern Bell's chief operating officer for its operations in Florida. As such, his time is subject to many demands both from within and outside the Company. A review of the background of this case, the CWA's Prehearing Statement and the prefiled testimony indicates that Mr. Lacher's deposition has been scheduled merely for purposes of harassment, and that the CWA intends to explore issues that are totally irrelevant to the subject of this docket.

2. The sole factual issue that exists with regard to this matter is the appropriate disbursement of \$10 million in unspecified rate reductions scheduled for 1994, resulting from the Stipulation and Implementation Agreement ("Settlement") entered into by the parties in Docket No. 920260-TL. By Order No. PSC-94-1072-FOF-TL, dated February 11, 1994, the Commission approved the Settlement. This order is a final judgment, upon which all appeal time has run. Thus, any questions concerning the appropriateness of or circumstances surrounding the Settlement are irrelevant to this proceeding. Yet these are the very issues about which Mr. Lacher's knowledge centers. He was not involved in determining the specific rate designs either proposed by Southern Bell or ultimately approved by this Commission. Given Mr. Lacher's position, the demands on his time and his obviously limited knowledge of the facts related to this docket, it would be onerous, burdensome and totally inappropriate to subject him to deposition by the CWA. Courts in Florida have granted protective orders prohibiting the taking of depositions under similar circumstances. Champagne v. Southern Bell Telephone & Telegraph Co., Case No. 90-6603-CIV-Ungaro-Benages (S.D. Fla. 1993) (a copy is attached hereto).

3. In the alternative, the deposition of Mr. Lacher should be limited solely to his knowledge of, if any, of the factual issues related to the \$10 million disbursement. While there are two additional issues listed in this case, they are primarily legal in nature and thus would not be appropriate questions for Mr. Lacher. In any event, the CWA should not be allowed to use

this deposition to go on a fishing expedition into matters which are totally irrelevant to this proceeding. As stated in Rule 1.280 of the Florida Rules of Civil Procedure, discovery is limited to matters which are relevant to the subject matter of the pending action.

Wherefore, Southern Bell requests that the Prehearing Officer issue an Order granting Southern Bell's Motion for Protective Order for the reasons described herein and order that Mr. Lacher's deposition not be taken at all, or, in the alternative, limit the scope of Mr. Lacher's deposition to the subject of the unallocated \$10 million revenue reductions scheduled for and implemented in 1994.

Respectfully submitted this 17th day of August, 1994.

SOUTHERN BELL TELEPHONE
AND TELEGRAPH COMPANY

Robert G. Beatty (15)
ROBERT G. BEATTY
J. PHILLIP CARVER
c/o Marshall M. Criser
150 South Monroe Street, #400
Tallahassee, FL 32301
(305) 347-5555

Nancy B. White (16)
R. DOUGLAS LACKEY
NANCY B. WHITE
675 W. Peachtree St., N.E., #4300
Atlanta, GA 30375
(404) 529-3862
(404) 529-5387

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 90-6603-CIV-UNGARO-BENAGHER

LEONARD CHAMPAGNE,

Plaintiff,

vs.

SOUTHERN BELL TELEPHONE
AND TELEGRAPH COMPANY,

Defendant.


ORDER

THIS CAUSE came before the Court on Frank Skinner's Emergency Motion for Protective Order filed on May 3, 1993. Upon review of this motion, plaintiff's response thereto, the Court file and applicable law, it is hereby

ORDERED AND ADJUDGED that this motion is GRANTED at this time and until plaintiff has deposed other employees of defendant, Southern Bell Telephone and Telegraph Company, with more knowledge of the facts relevant to this case. Thereafter, and if the testimony of other employees is unsatisfactory or would indicate that Frank Skinner has information relevant to issues in this case, plaintiff can once again re-notice the deposition of this former

5
officer of Southern Bell. See Salter v. The Union Co., 593 F.2d
649 (5th Cir. 1979); Community Federal Savings & Loan Assn's v.
PHILAR, 96 F.R.D. 619 (D.D.C. 1983).

DONE AND ORDERED in Chambers at Miami, Florida, this
13th day of May, 1993.



Ted E. Sandstra
United States Magistrate Judge

Copies furnished to:
All counsel of record

CERTIFICATE OF SERVICE

Docket No. 920260-TL

Docket No. 900960-TL

Docket No. 910163-TL

Docket No. 910727-TL

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Mark Richard
Attorney for CWA
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Gerald B. Curington
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631 S. Orlando Ave., Suite 250
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Winter Park, FL 32790-1148

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Florida Public Svc. Commission
101 East Gaines Street
Tallahassee, FL 32399-0863

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