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FILE COPY

July 12, 1995

Mrs. Blanca S. Bayó
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 Mrs. Bayó:

Enclosed is an original and fifteen copies of Southern Bell Telephone and Telegraph Company's Motion to Dismiss the Proposal for Implementation of \$25 Million Reduction by Locals 3121, 3122, 3107 Communications Workers of America, AFL-CIO, 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,
J. Phillip Carver
J. Phillip Carver (AB)

- ACK
- AFA 2
- AFP _____
- CAF _____
- CEO Norton
- CSL _____
- ESG _____
- LES 1
- LHA 5
- QAT _____
- RTA Vinson
- SEA _____
- WTS _____
- QUT _____

Enclosures

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

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DOCUMENT NUMBER-DATE
06625 JUL 12 95
FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Comprehensive review of)
revenue requirements and rate)
stabilization plan of Southern)
Bell Telephone and Telegraph)
Company)

DOCKET NO. 920260-TL

Filed: July 12, 1995

**SOUTHERN BELL TELEPHONE AND TELEGRAPH COMPANY'S
MOTION TO DISMISS THE PROPOSAL FOR IMPLEMENTATION OF
\$25 MILLION REDUCTION BY LOCALS 3121, 3122, 3107
COMMUNICATIONS WORKERS OF AMERICA, AFL-CIO**

BELLSOUTH TELECOMMUNICATIONS, INC., d/b/a Southern Bell Telephone and Telegraph Company ("Southern Bell" or "Company") hereby respectfully moves the Florida Public Service Commission ("Commission") to Dismiss the Proposal For Implementation of \$25 Million Reduction by Locals 3121, 3122 and 3107 of the Communications Workers of America, AFL-CIO ("CWA") ("Proposal") for the reasons set forth below.

1. By Order No. PSC-94-0172-FOF-TL, dated February 11, 1994, the Commission approved the Stipulation and Agreement between the Office of Public Counsel ("Public Counsel") and Southern Bell, as well as the Implementation Agreement for Portions of the Unspecified Rate Reductions and Stipulation and Agreement Between the Office of Public Counsel and Southern Bell, dated January 12, 1994 (collectively, the "Settlement").

2. The Settlement, while effectively settling the issues in the above-styled docket, left certain sums of money available for disposition in 1994, 1995, and 1996. The Settlement also provided that, "[t]o the extent not limited herein, the PARTIES [to the

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settlement] or any other interested persons shall submit, not less than 120 days prior to the scheduled effective date of each reduction, their proposals as to how such reductions should be implemented." (Settlement, pp. 11-12) The CWA was not a party to the Settlement Agreement.

3. On February 23, 1995, CWA served its Proposal For Implementation of \$25 Million Reduction. In its proposal, the CWA requested that the reductions be given to specific organizations and/or groups of ratepayers.¹ CWA's proposal stated no basis to establish that it had any particular capacity or standing to represent any of these diverse groups of institutions and individuals. Instead, the only language in the Proposal that could be viewed as an attempt to establish standing is contained in paragraph 5, which states the following:

5. The three (3) CWA locals are duly organized labor organizations which represent some 4,000 Southern Bell employees (almost all of whom are Southern Bell customers). As the exclusive bargaining agent for the employees (ratepayers) [sic], the CWA locals clearly fall within the definition of 'any other interested persons.' Further, the three (3) CWA locals are all telephone customers of Southern Bell.

(Proposal, at p. 2) CWA also requested specifically that it be granted a hearing on its Proposal and that it be allowed to "participate in the rate design hearings regarding the 1995 \$25

¹ The CWA proposed reductions in equal, \$5 million amounts to (1) lifeline subscribers, (2) basic residential subscribers, (3) "any" non-profit organization with tax-exempt status, (4) unidentified public schools and colleges and (5) "any qualified disabled ratepayer." (Proposal, pp. 2-3)

Million non-specifically allocated reduction mandated by paragraph 4 of the Implementation Agreement." (Proposal, par. 7, p. 2)

4. On June 30, 1995, the CWA responded to interrogatories that had been propounded by the Public Service Commission Staff ("Staff") on June 12, 1995. This set of interrogatories contained the following question:

How are CWA and/or the three locals qualified to represent the interests of residential telephone ratepayers in Florida?

CWA's response:

About 5,000 of our current members (and thousands of retirees) are residential customers in Florida. We are interested in residential access to fair and effective service. Finally, as the workers in the industry ... we care!

On the basis of the foregoing facts, it is clear that CWA has failed to establish a "substantial interest" in these proceedings sufficient to allow it to request a hearing or to participate in a hearing that is otherwise scheduled.

5. The procedure for formal hearings conducted by a Florida agency is set forth in Section 120.57, Florida Statutes. Proceedings pursuant to this section are conducted to determine matters that effect the "substantial interests" of the parties to the proceeding. Likewise, the Rules of this Commission require that parties participating in formal hearings have a substantial interest that will be affected by the outcome of the proceeding. (See, e.g., Rules 25-22.029 and 25-22.036(b)(5), F.A.C.)

6. The type of substantial interest that will allow a party to obtain a hearing (or to intervene and participate in an

otherwise scheduled hearing) was defined expressly in Agrico Chemical Company v. Department of Environmental Regulation, 406 So.2d 478, 482 (Fla. 2nd DCA 1981) as follows:

We believe that before one can be considered to have a substantial interest in the outcome of the proceeding he must show (1) that he will suffer injury in fact which is of sufficient immediacy to entitle him to a Section 120.57 hearing, and (2) that his substantial injury is of a type or nature which the proceeding is designed to protect. The first aspect of the test deals with the degree of injury. The second deals with the nature of the injury.

7. Further, the person or persons who seek to intervene in the hearing must have an immediate interest. In other words, their interest must be greater than that held by the public at large. In Florida Society Ophthalmology v. State Board of Optometry, 532 So.2d 1279 (Fla. 1st DCA 1988), the court considered a situation in which certain organizations representing physicians ("Petitioners") sought to intervene in hearings in which the State Board of Optometry considered whether to certify certain optometrists to practice. The court applied the Agrico test quoted above and found that the Petitioners failed to establish that they had a specific and immediate interest in the proceeding. In doing so, the court noted that the appellant's objections to the certification at issue in the proceeding were not sufficient to establish that "their substantial interests will be injuriously affected in any manner that differs from the interests of the public generally in seeing that all applicants are certified in

accordance with the statutory requirements." (Florida Society of Ophthalmology, at 1285)

8. The court further opined as follows:

Appellants have failed to satisfy both elements of ... [the Agrico] test. While appellants may well suffer some degree of loss due to economic competition from optometrists certified to perform services that appellants alone were previously permitted to perform, we fail to see how this potential injury satisfies the "immediacy" requirement. More importantly, the allegations in the petition ... are legally insufficient because the alleged economic injury does not fall within the zone of interest intended to be protected by the applicable statute. Since appellants have shown no zone of interest personal to them that would be invaded by the certification process, they have no standing to contest the board's decision on the applications generally.

(Florida Society of Ophthalmology, at 1285-86)

9. The Agrico test was recently applied by this Commission as well. In Re: Petition of Florida Power and Light Company for Resolution of a Territorial Dispute with Fort Pierce Utilities Authority, Order No. PSC-94-0909-PCO-EU, July 25, 1994, 94 FPSC 7:340. In that case, Florida Power and Light Company and Ft. Pierce Utilities Authority ("Ft. Pierce") filed a joint motion to approve an agreement to resolve a territorial dispute. Harbor Branch Oceanographic Institute ("Harbor Branch"), which was a customer of Ft. Pierce, attempted to intervene. Harbor Branch was ultimately allowed limited participation pursuant to a statute that gives all customers the right to introduce limited matters in

proceedings of this type.² At the same time, the Prehearing Officer specifically applied Agrico to find that Harbor Branch's allegation that it was a dissatisfied customer of one of the parties was simply not enough to establish the type of substantial interest that is necessary to intervene. Accordingly, intervention was denied.

10. In the instant case, Agrico should be applied to deny CWA's attempt to file a petition in this proceeding, to file testimony, and to participate in the hearing. CWA has filed a proposal that, on its face, appears to have nothing to do with union interests. Instead, CWA's proposal is to make a number of piecemeal reductions that would go to a variety of groups, none of whom to have any direct connection to the CWA.

11. Although CWA's right to participate, vel non, should be determined based upon the allegations of its petition, its response to the interrogatory of Staff quoted above is, nevertheless, instructive as to CWA's position. In response to Staff's inquiry as to CWA's qualification to act on behalf of residential telephone ratepayers, CWA offered nothing more substantive than a general concern, which we all share.

12. Although, it is good to know that CWA is concerned, the fact remains that they have no more commonality of interest with the general body of residential ratepayers than would any group of

² Section 336.04(4), Florida Statutes, provides, in part, that "any customer shall be given an opportunity to present oral or written communication in Commission proceedings to approve territorial agreements or resolve territorial disputes."

10,000 persons randomly drawn from the general public. CWA has failed totally to establish that it has an immediate interest that is at stake in this proceeding. To the contrary, the Proposal is clearly not an attempt to protect or advance the interests of the CWA. Accordingly, there is nothing raised by the Petition, or otherwise at issue in this proceeding, that is sufficiently related to the CWA to place it within a zone of interest in the proceeding that would justify its involvement.

13. Finally, even if CWA had the standing to intervene as some type of general representative of ratepayers in Florida, any participation by CWA in this capacity is completely unnecessary. The subscribers to telephone service in Florida are properly represented by the Office of Public Counsel, which has been actively involved in this docket since its inception. Thus, CWA's participation in this capacity -- even if it had standing -- is, at best, gratuitous.

14. For the reasons stated above, CWA has failed to demonstrate that it (or a significant number of its members) have a substantial interest in the \$25 million rate reduction. No direct injury has been alleged by the CWA in its Proposal, and the Proposal does not seek to advance any CWA interest. The only interest alleged is that the CWA is the representative of several thousand Southern Bell employees, most of whom are also Southern Bell customers. Thus, CWA's interest is no greater than that of telephone subscribers throughout the state in general. This is

simply insufficient to constitute standing to participate in these proceedings.

WHEREFORE, Southern Bell requests that the Commission issue an order Dismissing CWA's Proposal, striking its prefiled testimony and denying its request to participate in the currently scheduled hearing on the \$25 million rate reduction.

Respectfully submitted,

Southern Bell Telephone and
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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 12TH day of *JULY*, 1995
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