

Harris R. Anthony
General Attorney-Florida

**ORIGINAL
FILE COPY**

Southern Bell Telephone
and Telegraph Company
Legal Department
c/o Marshall Criser
Suite 400
150 South Monroe Street
Tallahassee, Florida 32301
Phone (305) 530-5555

August 13, 1991

Mr. Steve Tribble
Director, Division of Records and Reporting
Florida Public Service Commission
101 E. Gaines Street
Tallahassee, Florida 32301

Re: Docket No. 910163-TL

Dear Mr. Tribble:

Enclosed for filing in the above-referenced docket is the original and fifteen copies of Southern Bell Telephone and Telegraph Company's Response to Public Counsel's Motion for Reconsideration of Order on Prehearing Procedure. All parties of record have been served as indicated on the attached Certificate of Service.

A copy of this letter is enclosed. Please indicate on the copy that the original was filed and return the copy to me.

Sincerely yours,

Harris R. Anthony (jr)

Harris R. Anthony

ACK _____

AFA _____

APP _____

CAF _____

CMU _____

cc: All parties of record

CTR _____

Mr. A. M. Lombardo

EAC _____

Mr. R. Douglas Lackey

LEB LW/11/

LIV 6

CRS _____

RCH _____

SEC 1

WAS _____

RECEIVED & FILED

OTH _____

FPSC-BUREAU OF RECORDS

DOCUMENT NUMBER DATE

08175 AUG 13 1991

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Investigation into the)
Integrity of Southern Bell's)
Repair Service Activities and)
Reports)
_____)

Docket No. 910163-TL
Filed: August 13, 1991

**SOUTHERN BELL TELEPHONE AND TELEGRAPH COMPANY'S
RESPONSE TO PUBLIC COUNSEL'S MOTION FOR RECONSIDERATION
OF ORDER ON PREHEARING PROCEDURE**

COMES NOW Southern Bell Telephone and Telegraph Company ("Southern Bell" or "Company"), and responds to the Office of Public Counsel's ("Public Counsel") August 2, 1991 Motion for Reconsideration of Order on Prehearing Procedure.

1. In his Motion for Reconsideration, Public Counsel notes that Florida Public Service Commission ("Commission") Order No. 24866 sets a schedule for various procedural matters in the above-captioned docket. According to that schedule, Southern Bell's direct testimony would be due on October 15, 1991, with hearings being held in March of 1992. Public Counsel then asserts that, in light of the ongoing investigation by both the office of the Attorney General and the Statewide Prosecutor of the same matters as addressed in this docket, the procedural events scheduled herein should be postponed until such time as the parallel investigations are complete.

2. Southern Bell does not object to Public Counsel's Motion for Reconsideration. Indeed, on July 30, 1991, in Docket No. 900960-TL, Southern Bell filed a motion in which the Company requested that the Commission either stay that proceeding or, in the alternative, postpone that docket's schedule of dates. The basis for that request is set forth in greater detail in Southern

DOCUMENT NUMBER-DATE

08175 AUG 13 1991

FILED RECORDS/REPORTING

Bell's Motion, a copy of which is attached hereto as Attachment "A". On August 6, 1991, the Commission issued Order No. 24885 in which it granted a postponement of the schedule in Docket No. 900960-TL. Because the reasons set forth in Southern Bell's Motion as well as in Order No. 24885 apply with equal force to the matters in Docket No. 910163-TL, Southern Bell believes that a similar postponement of the current schedule in this docket would be appropriate.

WHEREFORE, Southern Bell respectfully states that it has no objection to the Commissions' granting of Public Counsel's Motion for Reconsideration of Order on Prehearing Procedure.

Respectfully submitted,

SOUTHERN BELL TELEPHONE AND
TELEGRAPH COMPANY

Harris R. Anthony (jr)
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ATTACHMENT "A"

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Investigation into
Southern Bell's Non-Contact
Sales Practices.

) Docket No. 900960-TL

) Filed: July 30, 1991

**SOUTHERN BELL TELEPHONE AND TELEGRAPH COMPANY'S
MOTION TO STAY PROCEEDINGS OR, IN THE ALTERNATIVE,
TO POSTPONE THE SCHEDULE OF DATES**

COMES NOW, Southern Bell Telephone and Telegraph Company ("Southern Bell" or "Company"), pursuant to Rule 25-22.037, Florida Administrative Code, and files its Motion to Stay Proceedings or, in the Alternative, to Postpone the Schedule of Dates in this docket. In support thereof, Southern Bell shows the following:

1. On January 28, 1991, the Florida Public Service Commission ("Commission") issued Order No. 24041, by which it initiated an investigation regarding Southern Bell's non-contact sales practices. The Office of Public Counsel ("Public Counsel") and the Commission Staff undertook discovery through various means, including interrogatories and requests for production of documents. The Staff and Public Counsel also filed a notice of nine depositions in this docket. On March 29, 1991, however, Public Counsel notified the Commission Staff by letter that, because the Florida Attorney General and the Office of Statewide Prosecutor were also investigating the same issues as are

presented in this docket, the taking of certain scheduled depositions "would hinder [the Attorney General's and Office of Statewide Prosecutor's] investigation". (This letter is appended hereto as Attachment "A") Public Counsel stated that, as a consequence, he did not intend to participate in the taking of the depositions in question. In addition, Public Counsel requested that no testimony be filed in this matter until the Attorney General completed his investigation.

2. On April 9, 1991, Public Counsel sent a letter directed to the Commission's Chairman in which he strongly urged that the Commission Staff cancel the scheduled depositions because those depositions could interfere with the Attorney General and Statewide Prosecutor's related investigation. (This letter is appended hereto as Attachment "B") The Commission Staff subsequently canceled the noticed depositions. Public Counsel and the Staff have nonetheless continued to make use of other discovery methods, such as requests for production of documents and interrogatories in this docket.

3. On May 7, 1991, the Commission issued its Case Assignment and Scheduling Record ("CASR") which sets forth a procedural schedule for this docket. The CASR requires, inter alia, that direct testimony be filed on August 13, 1991, and that the hearings be held on December 9-11, 1991. Southern Bell

believes that, in light of the current posture of this matter, the proceedings in this docket should be stayed until completion of the investigation by the Attorney General and Office of Statewide Prosecutor or, in the alternative, the schedule as set forth in the Commission's CASR should be postponed.

4. As Public Counsel stated in his letters of March 29, 1991, and April 9, 1991, the subject matter of this docket is also the subject of an ongoing investigation by the Florida Attorney General and the Office of Statewide Prosecutor. Although Southern Bell believes that it has engaged in no conduct of a criminal nature, the investigation currently being conducted by these two agencies might lead in such a direction.

5. In light of this potential, Southern Bell believes that it would not be appropriate to continue with the current schedule for Docket No. 900960. For example, if Southern Bell were required to file testimony on the dates as now proposed, it would be required to describe events that are the subject of a potentially criminal investigation. Similarly, if Southern Bell were required to present a witness for cross-examination at a hearing, it could compromise the Company's defense of the Attorney General and Statewide Prosecutor's review of these matters. To require such would be inappropriate.

6. A body acting in a judicial capacity may stay proceedings for a variety of reasons. One of these reasons is to permit an ongoing investigation to be completed unhindered by the distraction associated with litigation. Klein v. Royale Group, Ltd., 524 So.2d 1061 (Fla. 3d D.C.A. 1988) (The trial court properly exercised its discretion when it stayed a proceeding where the defendant was being investigated by the U.S. Justice Department) Kerben v. Intercontinental Bank, 573 So.2d 976 (Fla. 5th D.C.A. 1991) (Where there is a civil proceeding and a criminal investigation occurring at the same time and regarding the same matter, the courts "will often find it appropriate to stay the lawsuit...." *Id.* at p. 678) See also Armstrong Co. v. Romarach, 165 So.2d 817 (Fla. 3rd D.C.A. 1974), quashed, 172 So.2d 444, conformed to, 172 So.2d 866 (Fla. 1974); 1 Fla.Jur.2d Actions §36; Lawyers Professional Liability Insurance Company v. Shand, Morahan & Company, Inc., 394 So.2d 238 (Fla. 1st D.C.A. 1981) (The Department of Insurance should have suspended its own proceedings pending the outcome of a lawsuit which involved the same issues and parties in federal court); and E.T. Legg and Company v. Franza, 383 So.2d 962 (Fla. 4th D.C.A. 1980) (In order "to avoid a multiplicity of proceedings," the defendant in an administrative proceeding brought by the Department of Transportation ("DOT") requested a stay of the proceedings until

a circuit court in a separate proceeding ruled on the constitutionality of the DOT rule at issue. The DOT was ordered by the appellate court to grant a stay of the administrative proceedings until the constitutional issue was resolved by the circuit court.) Southern Bell believes that the Commission should apply these principles and stay the current proceeding in order to permit Southern Bell to avoid a duplication of proceedings regarding the same issues.

7. For the reasons set forth above, Southern Bell respectfully requests that the Commission stay all proceedings in this matter until the Attorney General and Statewide Prosecutor complete their investigation of the matters that gave rise to the initiation of this docket. In the alternative, Southern Bell requests that the Commission postpone the schedule of dates set forth in the CASR for at least three months or such other time period as the Commission may deem appropriate. This alternative would allow the Commission to continue its review of Southern Bell's non-contact sales practices without requiring the Company to compromise its position vis-a-vis the other ongoing investigations.

8. Should the Commission decide to postpone the scheduled dates in this docket, Southern Bell reserves the right to renew its request for a stay of these proceedings or for a further

postponement, depending upon the status of the investigation being conducted by the Attorney General and Statewide Prosecutor.

WHEREFORE, Southern Bell requests that the Commission grant its Motion for Stay of Proceedings or, in the Alternative, for a Postponement of all scheduled dates.

Respectfully submitted,

ATTORNEYS FOR SOUTHERN BELL
TELEPHONE AND TELEGRAPH
COMPANY

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CERTIFICATE OF SERVICE

DOCKET NO. 910163-TL

I HEREBY CERTIFY that a correct copy of foregoing was furnished by U. S. Mail to the following parties this 13th day of August, 1991.

Charles J. Beck, Esq.
Assistant Public Counsel
Office of Public Counsel
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Harris R. Anthony Jr