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October 11, 1991

**ORIGINAL
FILE COPY**

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

Re: Docket No. 910163-TL - Repair Service Investigation

Dear Mr. Tribble:

Enclosed please find an original and fifteen copies of Reply of Southern Bell Telephone and Telegraph Company to Public Counsel's Opposition to Southern Bell's Motion for Reconsideration and Request for Oral Argument, 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.

- ACK _____
- AFA _____
- APP _____
- CAF _____
- CMU** _____
- CTR _____
- EAG cc: _____
- LEG LW/m _____
- LIN 6 _____
- OPC _____
- RCH _____
- SEC 1 _____
- WAS _____
- OTH _____

Enclosures

Sincerely yours,
Harris R. Anthony (copy)
Harris R. Anthony

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CERTIFICATE OF SERVICE
Docket No. 910163-TL

I HEREBY CERTIFY that a copy of the foregoing has been
furnished by United States Mail this 11th day of October, 1991,
to:

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

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

Harris R. Anthony (df)

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: October 11, 1991

**REPLY OF SOUTHERN BELL TELEPHONE AND TELEGRAPH COMPANY
TO PUBLIC COUNSEL'S OPPOSITION TO SOUTHERN BELL'S
MOTION FOR RECONSIDERATION AND FOR REQUEST FOR ORAL ARGUMENT**

COMES NOW Southern Bell Telephone and Telegraph Company ("Southern Bell" or "Company"), pursuant to Rule 25-22.037, Florida Administrative Code, and files its Reply to the Office of Public Counsel's ("Public Counsel") Opposition to Southern Bell's Motion for Reconsideration and Request for Oral Argument.

1. Public Counsel's Opposition to Southern Bell's Motion is based, in large part, on the argument that Southern Bell may not request full Commission reconsideration of the prehearing officer's order by rearguing the matters presented to the prehearing officer. This position is directly contrary to Commission Rule 25-22.038(2), which clearly provides for such a review. In support of his incorrect argument, Public Counsel erroneously refers to case authority which discusses full Commission reconsideration of an order issued by the full Commission. See, Diamond Cab Co. of Miami v. King, 146 So.2d 889 (Fla. 1962); Pingree v. Quaintence, 394 So.2d 161 (Fla. 1st DCA 1981). These cases do not provide any authority whatsoever with respect to the review of a discovery order issued by a prehearing

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officer. A motion for reconsideration of a Commission order is governed by a completely different rule. See, Commission Rule 25-22.060.

2. If Southern Bell had not requested a review of Order No. 25054, under Rule 25-22.038(2), Florida Administrative Code, it would have been deemed to have waived its objections to the conclusions therein. If Southern Bell were precluded from, in effect, appealing a prehearing officer's ruling to the full commission, the right to seek reconsideration, specifically permitted by Rule 25-22.038(2), would be obviated. Obviously, Public Counsel's argument that Southern Bell cannot ask for such review is incorrect.

3. Public Counsel also contends that Southern Bell's request for oral argument with regard to the matters for which it seeks review should be denied because it fails to comply with Rule 25-22.058, Florida Administrative Code. Once again, Public Counsel's argument is misleading and incorrect. Rule 25-22.058, Florida Administrative Code, which is the basis for Public Counsel's argument, concerns requests for oral argument with regard to Rule 25-22.057 hearings. The latter rule applies to recommended orders issued by a "presiding officer." The order for which Southern Bell seeks reconsideration, however, was issued by a "prehearing officer," which is different from a "presiding officer." Rule 25-22.038(1), Florida Administrative Code, recognizes that, although a presiding officer can be a

prehearing officer, a commissioner designated as a prehearing officer is not a presiding officer. Thus, the cross referenced requirements found in Rules 25-22.057 and 25-22.058, Florida Administrative Code, which require a separate request for oral argument do not apply to the procedural posture of this matter.

4. Furthermore, there is no reference to Rule 25-22.058 in Rule 25-22.038(2), Florida Administrative Code, yet it is this rule under which Southern Bell is proceeding in the instant matter. The Commission's rules were not written to be a trap for the unwary as Public Counsel seems to assume. If there were any intent to apply the provisions of Rule 25-22.058, Florida Administrative Code, to requests for oral argument outside the context of a Rule 25-22.057 proceeding, the rule would so state.

5. Under Rule 25-22.057, Florida Administrative Code, a party requesting oral argument with regard to a proposed order of the Commission is entitled to a determination on the request. By requiring a separate statement with regard to a request for oral argument, the rule seeks to clarify the issues for the Commission so that a ruling on the request can be made. In discovery matters though, the issues are straightforward and framed by the pleadings. Thus, there is no need for a separate statement concerning a request for oral argument. It is within the Commission's discretion to grant or to deny the request. The Commission certainly does not need any additional information to consider the request. To require compliance with Rule 25-22.058,

Florida Administrative Code, for any request for oral argument would invite a waste of time and resources.

6. Nevertheless, in an abundance of caution, if the Commission determines that, contrary to its explicit provisions, Rule 25-22.058, Florida Administrative Code, applies to any request for oral argument on any matter, Southern Bell would request permission to amend its motion to file such a request. Southern Bell believes that oral argument in this matter would be appropriate because of the importance of the matters raised by Public Counsel's discovery requests and because this Commission has not previously considered the specific issues which Public Counsel and Southern Bell have raised herein.

Respectfully submitted,

SOUTHERN BELL TELEPHONE AND
TELEGRAPH COMPANY

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