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November 12, 1992

Mr. Steve C. Tribble
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 Mr. Tribble:

Enclosed please find an original and fifteen copies of Southern Bell Telephone and Telegraph Company's Response and Memorandum in Opposition to Florida Cable Television Association's Motion to Dismiss, 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 3 Sincerely yours,
APP _____ *Harris R. Anthony*
CAF _____ Harris R. Anthony *aj*
CML 1

Enclosures

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

OTR _____
EAG _____
LER 1 w/m
LIR 6
CPS _____
RCH _____
SEC 1
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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 November, 1992
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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Comprehensive Review of) Docket No. 920260-TL
the Revenue Requirements and Rate)
Stabilization Plan of Southern) Filed: November 12, 1992
Bell Telephone & Telegraph Company)
_____)

**SOUTHERN BELL TELEPHONE AND TELEGRAPH COMPANY'S
RESPONSE AND MEMORANDUM IN OPPOSITION TO FLORIDA
CABLE TELEVISION ASSOCIATION'S MOTION TO DISMISS**

COMES NOW BellSouth Telecommunications, Inc., d/b/a Southern Bell Telephone and Telegraph Company ("Southern Bell" or "Company"), pursuant to Rule 25-22.037(2)(b) and files its Response and Memorandum in Opposition to Florida Cable Television Association's ("FCTA") Motion to Dismiss Southern Bell Telephone and Telegraph Company's Petition for Ordering [sic] Adopting Plan for Alternative Method of Regulation, (the "Motion") and states in support thereof the following:

1. The Motion of FCTA to dismiss Southern Bell's Petition for an Order Adopting a Plan for an Alternative Method of Regulation (the "Petition") should be summarily denied because it both lacks substantive merit and is procedurally improper. Southern Bell will first address the substantive infirmities of the Motion.

2. Chapter 364, Florida Statutes, (specifically Sections 364.338 and 364.3381) clearly provides that it is the Commission, either on its own motion or upon petition by a local exchange company or interested person, that is to determine whether a

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given service is effectively competitive and, if so, the terms under which such service should be offered. Moreover, by their own terms, Sections 364.338 and 364.3381, Florida Statutes, are not applicable until a finding by the Commission that a service is effectively competitive.

3. Section 364.338(2) states that if the Commission, a local exchange company, or any interested party believes that a service is effectively competitive, then any one of them may initiate a formal proceeding to consider this matter. The specific issues to be considered by the Commission in making a determination as to whether or not a service is effectively competitive are set forth in Section 364.338 2(a) through (g), Florida Statutes. If the Commission applies these criteria and finds that a service is effectively competitive, then, and only then, may the Commission elect to tailor a specific form of regulation to the requirements of the service and to the nature of the competitive market. Section 364.338(3)(a), Florida Statutes.

4. Likewise, if a service has been subjected to this process and is deemed to be effectively competitive, only then do the requirements of Section 364.3381, Florida Statutes, come into play. This section deals with the issue of cross-subsidization in terms of monopoly and competitive services. However, for purposes of Chapter 364, a "competitive service" is one that has

been found to be effectively competitive under Section 364.338, Florida Statutes.

5. This conclusion is made clear by Section 364.02(3), Florida Statutes, which defines "monopoly service" as "a telecommunications service for which there is no effective competition, either in fact or by operation of law" In other words, until a service is found to be effectively competitive by the Commission, that service is deemed to be a monopoly service for purposes of Chapter 364, Florida Statutes, and neither Section 364.338 nor Section 364.3381 is applicable.

6. Given these provisions of Chapter 364, the simple answer to the Motion of FCTA is that the Commission has not found any service offered by Southern Bell to be "effectively competitive." There is, accordingly, no basis or need for the Commission to consider the issue of whether safeguards are necessary to prevent cross-subsidy under Section 364.3381.

7. The fundamental flaw in FCTA's Motion is its apparent confusion between services that may be somewhat competitive and those that the Commission has found to be effectively competitive. There can be no question that many of Southern Bell's services are becoming increasingly competitive as a result of the entry of new providers. Indeed, as the quotes used by FCTA at page 2 of its Motion demonstrate, such competition is one of the primary reasons that Southern Bell has sought authority to operate under the proposed Price Regulation Plan. Not one of

Southern Bell's services, however, has been found by the Commission to be effectively competitive and it is such a finding that is a mandatory prerequisite under Chapter 364 to the application of any statutory safeguards. Thus, FCTA's argument that Southern Bell's Petition should be dismissed because the Commission has not yet prescribed an allocation methodology pursuant to Section 364.3381(2), Florida Statutes, simply misses the mark. This statute is inapplicable in the absence of the Commission's having found that any of Southern Bell's services are effectively competitive.

8. For the same reasons, FCTA's argument that Southern Bell's Petition should be dismissed because Southern Bell has "failed to identify all the services in this docket which it considers to be competitive" (Motion at p.3) must also fail. The problem with this argument is that there is absolutely no requirement, either statutory or otherwise, that would burden Southern Bell with the duty to identify each and every service currently offered by any competitor. Again, Chapter 364 is explicit that the Commission is to make the determination as to whether or not any given service is effectively competitive. Section 364.338(2), Florida Statutes.

9. In any event, the ultimate basis for FCTA's Motion is its argument that the Commission cannot approve Southern Bell's Petition because of the requirement enunciated in Section 364.036(2)(f), which states that any plan for alternative

regulation must include "adequate safeguards to assure that the rates for monopoly services do not subsidize competitive services." Whether any of Southern Bell's services face competition or are "effectively competitive" is irrelevant to this issue, however, since the Commission has already instituted adequate cross-subsidy safeguards that meet the requirement of Section 364.036(2)(f), Florida Statutes.

10. The Commission requires that all new services offered by Southern Bell be priced above their incremental cost. See, e.g., Order No. PSC-92-0500-FOF-TL, Docket No. 920434-TL, Request by BellSouth Telecommunications, Inc. d/b/a Southern Bell Telephone and Telegraph Company to introduce 0+900 dialing capability to the 900 access service. The Commission has also imposed the same requirement on preexisting services that have been restructured. See, e.g., Order No. 23400 in Docket No. 890505-TL Proposed tariff filing by Southern Bell Telephone and Telegraph Company to restructure and reprice private line and special access services and to waive nonrecurring charges for high capacity services.

11. As the Commission has expressly determined, any service that is priced above its incremental cost is, by definition, not being cross-subsidized by any other service. In Docket No.

860984-TP Investigation into NTS Cost Recovery, the Commission
stated:

We also reject ATT-C's argument that toll service subsidizes local rates. Public Counsel's witness Kahn conducted a stand-alone cost analysis of both local and toll services. Dr. Kahn testified that the results of his analysis showed that the existing rate structure is subsidy-free, and that revenues from local and toll services are above their respective incremental costs and below their respective stand-alone costs. Accordingly, both services benefit from the provision of the other, as neither is provider of nor the recipient of cross-subsidies. U.S. Sprint's witness Cornell stated she "...happen(s) to agree with witness Kahn that anything between incremental and stand-alone is neither subsidizing nor subsidized". We agree.

(emphasis added) 87 FPSC 12:438, 447-448.

12. The result of this finding, combined with the requirement that services be priced above incremental cost, is that the Commission has instituted "adequate safeguards to assure that the rates for monopoly services do not subsidize competitive services." Southern Bell's competitive services are priced above incremental cost and thus are not subsidized by any other service, including any monopoly service. Thus, Southern Bell's proposal for alternative regulation meets the statutory test enunciated in Section 364.036(2)(f), Florida Statutes, and for this reason alone, FCTA's Motion should be denied.

13. Finally, FCTA's Motion should be rejected because of a blatant procedural infirmity. Specifically, the Motion is styled

as a Motion to Dismiss the Petition of Southern Bell. Rule 25-22.037(2)(a), Florida Administrative Code, however, provides expressly that a motion to dismiss must be filed by a party to a proceeding "within the time provided for filing an answer," i.e., within 20 days. (Rule 25-22.037(1), Florida Administrative Code)

14. In this docket, Southern Bell's Petition was filed on July 15, 1992. At that time, FCTA had already intervened in the docket. Thus, the deadline for filing a motion to dismiss by FCTA was August 4, 1992. This reason, standing alone, is also sufficient to mandate the denial of this motion.

WHEREFORE, Southern Bell respectfully requests the entry of an order denying FCTA's Motion to Dismiss for the reasons set forth above.

Respectfully submitted,

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