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November 25, 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 Motion to Strike the Testimony of Michael R. Maloy, R. Earl Poucher, Mark N. Cooper and Joseph P. Cresse, 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
APP _____
CAF _____

Sincerely yours,

Harris R. Anthony
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CISU Enclosures

CTR cc: All Parties of Record
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LH 6

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J. J.
OFFICE OF RECORDS

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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 *24th* day of *November*, 1992
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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Comprehensive Review of)
the Revenue Requirements and Rate)
Stabilization Plan of Southern)
Bell Telephone and Telegraph)
Company)
_____)

Docket No. 920260-TL
Filed: November 25, 1992

**SOUTHERN BELL TELEPHONE AND TELEGRAPH COMPANY'S
MOTION TO STRIKE THE TESTIMONY OF MICHAEL R. MALOY,
R. EARL POUCHER, MARK N. COOPER AND JOSEPH P. CRESSE**

COMES NOW BellSouth Telecommunications, Inc., d/b/a Southern Bell Telephone and Telegraph Company ("Southern Bell" or the "Company"), pursuant to Rule 25-22.037, Florida Administrative Code, and herewith files its Motion to Strike the Testimony of Michael R. Maloy, R. Earl Poucher, Mark N. Cooper and Joseph P. Cresse and states in support thereof:

1. On October 20, 1992, a hearing was held before the Prehearing Officer, Commissioner Susan Clark, in the above-captioned docket. The purpose of this hearing was to determine how the issues in Southern Bell's rate case would be framed for the evidentiary hearings to be held in January and February of 1993. During the October 20, 1992 hearing, a question was raised as to whether or not the introduction of evidence relating to the Florida Public Service Commission's (the "Commission") investigatory dockets, i.e., Docket Nos. 900960-TL, 910163-TL, and 910727-TL, would be permitted during the January/February rate case hearings. Southern Bell argued that, given the extensive testimony that would be presented regarding traditional rate case issues during those hearings, insufficient time would be left to take evidence on the investigatory matters and that those issues could be heard in the two weeks of hearings already

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scheduled in April of 1993 for such matters. Other parties, notably the Office of Public Counsel and the Attorney General's office, argued that such testimony should be permitted during the January/February hearings.

2. On October 20, 1992, the Prehearing Officer ruled from the bench that testimony regarding investigatory docket issues may not be introduced during the January and February hearings. Rather, such evidence is to be presented during the April hearings, after which certain rate case issues that might be affected by the April hearings will be decided. (October 20, 1992 hearing, Tr. pp. 16-21) Thus, Commissioner Clark specifically instructed the parties not to seek to introduce testimony or other evidence regarding the subject matters of the investigatory dockets in the January/February hearing process.

3. This decision was confirmed in Order No. PSC-92-1320-PCO-TL, issued by the Commission on November 13, 1992. In that Order, the Prehearing Officer specifically stated:

The Prehearing Officer has determined that evidence relating to Dockets Nos. 900960-TL, 910163-TL, and 910727-TL will not be incorporated in the main hearings to be held in this docket beginning January 25, 1993. Rather, evidence relating to those dockets will be heard during hearings for those dockets in April, 1993. Then, following the conclusion of the hearings in those dockets, additional time will be scheduled to take testimony and other evidence regarding the impact of Docket Nos. 900960-TL, 910163-TL and 910727-TL on the final outcome of the issues presented by this docket. To that end, an additional order will be forthcoming with a schedule for testimony and other key events, including the supplemental hearing dates. Final determination of both the

present and the proposed incentive plans will be held in abeyance, pending the outcome of Docket Nos. 900960-TL, 910163-TL and 910727-TL.

4. Despite the clear and unequivocal dictates of the Prehearing Officer, expressed both from the bench during the October 20, 1992 hearing and as formalized in Order No. PSC-92-1320-PCO-TL, the Attorney General's Office and the Office of Public Counsel have filed testimony on the very subjects that the Prehearing Officer has ordered not to be filed in connection with the January/February hearings.¹ Because this testimony clearly violates the Prehearing Officer's Order and delves into subjects that have expressly been reserved for the April hearings, this testimony should be stricken in its entirety and the parties in question admonished to file testimony only on the pertinent issues.

5. The Attorney General's Office has filed the testimony of Michael R. Maloy. The purpose of this testimony is "to assist the Commission in investigating and understanding the allegations concerning Southern Bell's falsification of maintenance records." Maloy testimony at 11. Moreover, Mr. Maloy states that his

¹ The prefiled testimony of both these parties confirms Southern Bell's argument that the introduction of testimony regarding the investigatory dockets would result in Southern Bell's having to file extensive rebuttal testimony. This, in turn, would lead to a trial of the investigatory dockets in the rate case hearings scheduled for January and February without adequate time to address these controversial issues. The Attorney General and Public Counsel should not be permitted to subvert the Commission's process by their blatant disregard of the Prehearing Officer's Order.

testimony "will disclose how Southern Bell's service technicians fraudulently ordered optional telephone services for customers, who were subsequently billed for these services without obtaining their consent...." Id. at 12. Thus, on its face, Mr. Maloy's testimony contains allegations that go to the heart of the investigatory dockets.² The filing of Mr. Maloy's testimony was a clear and intentional disregard of the Prehearing Officer's October 20 ruling as well as Order No. PSC-92-1320-PCO-TL. Since the Prehearing Officer was absolutely clear in her decision that all testimony relating to the investigatory dockets is to wait until the April hearings, the filing of this testimony appears to have been for the purpose of prejudicing the Commission by the introduction of allegations, the rebuttal of which will not occur until April.

6. Southern Bell does not contest the right of the Attorney General or any other party to present proper evidence regarding the issues to be considered in the investigatory docket. Indeed, the Prehearing Officer's ruling provides an appropriate process by which such testimony can be considered in the rate case docket, thereby prejudicing no party. However, there can be no question that the filing of such testimony in anticipation of the January/February rate case hearings is improper and inappropriate, as it is clearly contrary to the

² Mr. Maloy's testimony is objectionable for a number of reasons, not the least of which is that it is replete with hearsay. Southern Bell will address these issues, however, in their proper context, i.e., the April hearings and does not hereby waive these objections.

ruling of the Prehearing Officer. For all these reasons, the testimony of Michael R. Maloy should be stricken in its entirety with leave to refile it at the appropriate time, i.e., in anticipation of the April hearings.

7. In similar fashion, the Office of Public Counsel has filed the testimony of R. Earl Poucher. The stated purpose of Mr. Poucher's testimony is to make recommendations to the Commission regarding the form of regulation to be applied to Southern Bell, what Southern Bell's allowed earnings level should be, and the manner in which the Commission should treat inside wire maintenance. However, all of Mr. Poucher's recommendations are based upon allegations that Southern Bell engaged in inappropriate conduct regarding trouble reporting and sales. Poucher Testimony at 2-3. These questions go to the very heart of the investigatory dockets and thus are the very subjects that Prehearing Officer Clark specifically ruled were to await the April hearings. Public Counsel has nonetheless intentionally chosen to disregard the instructions of the Prehearing Officer and has filed such testimony as a part of the January/February rate case hearings. For this reason, Mr. Poucher's testimony should be stricken in its entirety with instructions that, if it is to be filed at all, such filing should take place as part of the proceedings in the investigatory dockets.

8. Public Counsel should be instructed, moreover, that any re-filing of Mr. Poucher's testimony must exclude his recommendations regarding inside wire maintenance. This portion

of Mr. Poucher's testimony, which is contained in pages 39, line 9 through page 46, line 5 of his currently filed testimony, relates solely to the issue of whether or not Southern Bell's inside wire maintenance revenues and expenses should be imputed to Southern Bell's regulated operations. The list of issues for Docket No. 920260-TL appended to Order No. PSC-92-1320-PCO-TL, does not contain any issues concerning inside wire maintenance. Thus, there is no issue in the rate case proceeding to which Mr. Poucher's inside wire maintenance testimony can be directed and this portion of his testimony should therefore be stricken in its entirety without leave to refile in the April proceedings.

9. Another set of testimony filed on behalf of the Office of Public Counsel was that of Mark N. Cooper. According to that testimony, its purpose is to discuss Southern Bell's marketing practices for the sale of optional services and to argue that Southern Bell's marketing practices "unfairly exploit" the purported advantages enjoyed by the Company to the detriment of the public. Cooper Testimony, pp. 2-3. Thus, Mr. Cooper's testimony fits the description of the sales related testimony that the Office of Public Counsel discussed at the October 20, 1992 hearing. At that hearing, the Office of Public Counsel stated that it would provide testimony concerning "evidence about the hard sell of optional service of Southern Bell." October 20, 1992 hearing, Tr. at 22. Public Counsel further described such testimony as involving misleading and abusive sales techniques. Id. at 25. In response to this, the Prehearing Officer ruled

that such issues could properly be considered in the final decision regarding Southern Bell's proposed incentive plan, but that they should not be incorporated into the main rate case hearings in January and February. Rather, the Prehearing Officer ruled that such issues were to be presented in the April hearings. Id. at 26. Despite this clear direction to the Office of Public Counsel that such testimony was not to be introduced or filed in connection with the January/February hearings, Public Counsel has nonetheless filed Mr. Cooper's testimony. This blatant disregard of the Prehearing Officer's decision should not be permitted and this testimony should be stricken in its entirety as well.

10. In addition to Mr. Cooper's general testimony concerning Southern Bell's alleged marketing practices, he also has a section entitled "Fraud and Abuse in the Field." Cooper testimony pp. 55 through 59. This testimony relates to allegations of improper sales by non-contact personnel and thus is properly the subject matter of Docket No. 900960-TL, which is to be heard by the Commission in April. Accordingly, this portion of Mr. Cooper's testimony flies in the face of the Prehearing Officer's order that such testimony is not to be introduced until the April hearings and should also be stricken from the current proceedings.

11. Finally, as noted above, the list of issues appended to Order No. PSC-92-1320-PCO-TL specifically deletes any reference to inside wire maintenance. The question of whether or not

inside wire maintenance revenues and expenses should be brought above the line or otherwise imputed to Southern Bell's regulated activities thus is not an issue in Docket No. 920260-TL. This is in keeping with the Commission's previous decision in United Telephone Company's rate case, Docket No. 910980-TL, Order Nos. PSC-92-0708-FOF-TL and PSC-92-1277-FOF-TL. For this reason, that portion of the testimony of Joseph P. Cresse which addresses the question of inside wire maintenance should be stricken from his testimony. This testimony, which is found at page 2, line 16 through page 11, line 16 of Mr. Cresse's prefiled testimony, has no relationship whatsoever to any issue in the rate case proceeding and is thus totally irrelevant and should be stricken.

WHEREFORE, for the reasons set forth above, Southern Bell respectfully requests that the testimony described above.

Respectfully submitted this 25th day of November, 1992.

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