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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

Comprehensive Review of the )  
Revenue Requirements and Rate )  
Stabilization Plan of Southern )  
Bell Telephone & Telegraph Company )

Docket No. 920260-TL  
Filed: 12/18/92

ATTORNEY GENERAL'S PREHEARING STATEMENT

The Attorney General of the State of Florida, Robert A. Butterworth ("Attorney General"), by and through his undersigned counsel, hereby files his Prehearing Statement in the above-styled docket.

BASIC POSITION

ATTORNEY GENERAL:

This Commission is a statutory agency whose only powers are those explicitly stated in the statutes or which are necessarily implicit therein. Its primary statutory responsibilities with respect to monopoly telecommunications service companies are to ensure: (1) all rates and charges shall be fair, just, reasonable, and sufficient, and (2) that the services be rendered and performed in a prompt, expeditious, and efficient manner. The former requires the Commission to set rates that will allow a regulated utility to recover its reasonable, prudent and necessary expenses and also give it an opportunity to earn a fair and reasonable return on its property used and useful in

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providing the regulated service. The Commission's corollary statutory duty to customers is to see that the rates they are forced to pay include only the utility's reasonable, prudent and necessary expenses and only the opportunity to earn a fair and reasonable rate of return on its investment. The second statutory responsibility demands that the monopoly service received in exchange for the Commission-approved rates be performed promptly, expeditiously and efficiently.

The current so-called "incentive" rate scheme, approved by the Commission for Southern Bell in 1988, rests on the belief that Southern Bell would be encouraged to operate more efficiently and provide more services if it was given profits in excess of the "fair and reasonable" return that it was statutorily entitled to and was already earning. A fundamental flaw with the incentive rate scheme was that the Commission was already statutorily charged with ensuring Southern Bell's telecommunications facilities be safe and kept in good condition and repair and that its service be modern, adequate, sufficient, and efficient.<sup>1</sup> It is the Attorney General's position that the Commission had the pre-existing duty and responsibility for seeing that Southern Bell, and all other monopoly telecommunications companies, deliver modern and efficient services in exchange for "normal" or "regular" profits. More importantly, it is the Attorney General's position that the Commission lacked the statutory authority in 1988 to authorize

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<sup>1</sup> Section 364.03, F.S. (1987)

earnings in excess of what was "fair and reasonable", irrespective of what Southern Bell promised in return.

It is the Attorney General's position that, notwithstanding the 1990 revisions to Chapter 364, F.S., the Commission still lacks the statutory authority to award Southern Bell the opportunity to earn equity returns greater than those that would be considered fair and reasonable for a similar regulated entity. Even were the provisions of Section 364.036, F.S. applicable to Southern Bell's requested rate relief, which they are not, nothing in that section of the law countenances, either explicitly or implicitly, the earning of excessive profits. Notwithstanding the exemptions obtainable in Section 364.036(3)(b), F.S., Section 364.03(1), F.S. still demands that all rates and charges shall be fair, just, reasonable, and sufficient. Furthermore, Section 364.036(2)(e), F.S., specifically states that the Commission cannot implement an alternative method of regulation without first finding that the alternative method, among other things:

- (e) Assures that the rates for monopoly services are just, reasonable, and not unduly discriminatory, and do not yield excessive compensation.

Accordingly, it is the Attorney General's position that the Commission lacks the statutory authority to approve any regulatory method that would allow Southern Bell to earn equity returns greater than what would otherwise be considered reasonable for a comparable company, both as to the mid-point of the

authorized return, as well as the approved ceiling or maximum of that range. Thus, any "excess profit sharing" scheme that would allow Southern Bell to earn equity returns in excess of one percentage point above what the Commission finds to be a reasonable mid-point return on equity, irrespective of any so-called "sharing" of these profits with its customers, is not permitted by the statutes and is unlawful.

It is the Attorney General's position that the alternative regulatory methods potentially available pursuant to Section 364.036, F.S. are presently unavailable to Southern Bell for several reasons. First, the Commission has not yet found, nor does it have sufficient evidence available to it in this docket to find, as it must, that the alternative method of regulation proposed by Southern Bell:

(2)(f) Includes adequate safeguards to assure that the rates for monopoly services do not subsidize competitive services.

This finding is a mandatory prerequisite established by the Florida Legislature which must be fulfilled before the Commission can approve any radical departures from traditional ratemaking under the guise of "alternative methods". The required finding has not been made and cannot be made on the evidence prefiled in this docket. Secondly, and more importantly, there is no showing, as required by Section 364.036(2)(c), F.S. that the Commission has found, or can find, from the record to be

established in this case, that the alternative method of regulation and excessive profits Southern Bell seeks:

(c) Provides identifiable benefits to consumers that are not otherwise available under existing regulatory procedures.

With respect to the identification of benefits to consumers that would not otherwise be available under existing regulatory procedures, it is the Attorney General's position that any benefits so identified must be either new substantive monopoly telecommunications services not offered by the other twelve Florida local exchange telecommunications, which are governed by traditional ratemaking, or operating efficiencies that sufficiently exceed those of the other local exchange companies. It is the Attorney General's position that making such a showing would be difficult because the other local exchange companies are also under a statutory obligation to provide modern services in an efficient manner and, presumably, are doing so without the incentive of excessive profits or alternative regulation. In short, it is the Attorney General's position that no telecommunications company may be granted alternative methods of regulation until the Commission first makes affirmative factual findings on each of the statutory prerequisites found in Section 364.036(2), F.S. It is also the Attorney General's position that those affirmative factual findings cannot be made on the basis of the record to be established in this docket.

It is the Attorney General's position that the alternative method of regulation sought by Southern Bell in this docket would result in less regulatory oversight by the Commission, when recent history has demonstrated that greater regulatory oversight of this particular company is demanded. Specifically, Southern Bell has been involved in a situation where it failed to pay coin-operated telephone commissions to vendors when it knew that such commissions were owing. More recently, Southern Bell has settled a case with the Office of the Statewide Prosecutor in which the investigation by the Tenth Statewide Grand Jury centered on allegations of (1) the intentional overbilling of customers through the fraudulent "sale" of optional telephone services by company employees whose primary responsibility was telephone installation and repair; (2) the intentional failure to repay customer overbillings which were discovered by the company; (3) the intentional failure to pay compensatory rebates for non-working telephones; and (4) the intentional failure of the company to properly report trouble and repair information to this Commission. Both of these events occurred prior to and during the term of the incentive regulation that Southern Bell is still operating under. Neither event was either discovered or rectified by this Commission. Cessation of the latter event, involving report trouble and repair information fraud, was not obtained by this Commission despite the facts being reported to the Commission by a so-called "whistleblower". It is the Attorney General's position that granting Southern Bell the

reduced regulatory flexibility it seeks in this docket would be irresponsible. Given the lack of statutory authority to award the excessive returns on equity sought, the inability or failure to meet the statutory prerequisites for granting alternative methods of regulation of any kind, and Southern Bell's recent history involving allegations of misconduct, it is the Attorney General's position that Southern Bell must be returned to full rate base regulation under the provisions of Chapter 364, F.S. and be regulated in the same manner as every other local exchange company in this state and, indeed, the same type of regulation every other monopoly utility provider receives from this Commission.

It is the Attorney General's position that the allegations of sales fraud, customer misbilling and fraudulent repair reports must be fully investigated by this Commission and appropriate penalties imposed, including a reduction on the authorized return on equity, if the allegations are proven true.

**ATTORNEY GENERAL:**

Except for those issues otherwise specifically responded to below, the Attorney General's position is "No position at this time" for all other issues.

## COST OF CAPITAL

### **Issue 9:**

**ATTORNEY GENERAL:** The appropriate cost of equity capital for Southern Bell is 11.2% with a range of reasonableness 1 percentage point above and below. This mid-point should be reduced by the level of penalty the Commission finds warranted by poor quality of service and misconduct.

### **Issue 9a.**

**ATTORNEY GENERAL:** Southern Bell's quality of service during the term of the so-called incentive regulation should be fully examined, including the ramifications of repair records fraud, if any. If poor quality of service is found to have existed, the Commission should impose a commensurate rate of return penalty sufficient to penalize the poor service and misconduct, if any, and deter its recurrence.

## CURRENT RATE STABILIZATION PLAN

### **Issue 26a:**


**ATTORNEY GENERAL:** The Commission should determine whether Southern Bell has operated more efficiently and introduced more meaningful services than other Florida local exchange companies, all of which are operating under traditional rate regulation.

### **Issue 30:**

**ATTORNEY GENERAL:** It is the Attorney General's position that Southern Bell's proposed form of regulation is an alternative method of regulation that the Commission cannot legally approve for the reasons given in the Attorney General's basic position.



Respectfully submitted this 18th day of December, 1992.

  
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**CERTIFICATE OF SERVICE  
DOCKET NO. 920260-TL**

I HEREBY CERTIFY that a copy of the foregoing has been furnished by U.S. Mail or hand-delivery to the following parties on this 18th day of December, 1992.

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