

SIDNEY J. WHITE, JR.  
General Attorney

Southern Bell Telephone  
and Telegraph Company  
Suite 400  
150 South Monroe Street  
Tallahassee, Florida 32301  
(404) 529-5094

December 30, 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

Dear Mr. Tribble:

Enclosed are an original and fifteen copies of Southern Bell Telephone and Telegraph Company's Response to Public Counsel's Motion for Ruling on the Public Record Status of the Prefiled Testimony and Exhibits of Dr. Mark N. Cooper and R. Earl Poucher which we ask that you file in the above-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 on the parties shown on the attached Certificate of Service.

Sincerely,

  
Sidney J. White, Jr.

ACK ✓  
AEA 3  
APP \_\_\_\_\_  
COP \_\_\_\_\_  
CPL \_\_\_\_\_

Enclosures

cc: All Parties of Record

12/1 W/A. M. Lombardo  
H. R. Anthony  
12/6 R. D. Lackey

OTM \_\_\_\_\_  
VAC \_\_\_\_\_  
OTM \_\_\_\_\_

DOCUMENT NUMBER-DATE  
15024 DEC 30 1992  
FPSC-RECORDS/REPORTING

**CERTIFICATE OF SERVICE**  
**Docket No. 920260-TL**

I HEREBY CERTIFY that a copy of the foregoing has been furnished  
by United States Mail this 30th day of December, 1992 to:

Robin Norton  
Division of Communications  
Florida Public Svc Commission  
101 East Gaines Street  
Tallahassee, FL 32399-0866

Angela Green  
Division of Legal Services  
Florida Public Svc Commission  
101 East Gaines Street  
Tallahassee, FL 32399-0863

Joseph A. McGlothlin  
Vicki Gordon Kaufman  
McWhirter, Grandoff & Reeves  
716 - 315 S. Calhoun Street  
Tallahassee, Florida 32301  
atty for FIXCA

Patrick K. Wiggins  
Wiggins & Villacorta, P.A.  
Post Office Drawer 1657  
Tallahassee, Florida 32302  
atty for Intermedia

Joseph Gillan  
J. P. Gillan and Associates  
Post Office Box 541038  
Orlando, Florida 32854-1038

Floyd Self, Esq.  
Messer, Vickers, Caparello,  
Madsen, Lewis & Metz, PA  
Post Office Box 1876  
Tallahassee, FL 32302  
atty for US Sprint

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

Michael J. Henry  
MCI Telecommunications Corp.  
MCI Center  
Three Ravinia Drive  
Atlanta, Georgia 30346-2102

Richard D. Melson  
Hopping Boyd Green & Sams  
Post Office Box 6526  
Tallahassee, Florida 32314  
atty for MCI

Rick Wright  
Regulatory Analyst  
Division of Audit and Finance  
Florida Public Svc Commission  
101 East Gaines Street  
Tallahassee, FL 32399-0865

Peter M. Dunbar  
Haben, Culpepper, Dunbar  
& French, P.A.  
Post Office Box 10095  
Tallahassee, FL 32301  
atty for FCTA

Chanthina R. Bryant  
Sprint  
3065 Cumberland Circle  
Atlanta, GA 30339

Michael W. Tye  
AT&T Communications of the  
Southern States, Inc.  
Suite 1410  
106 East College Avenue  
Tallahassee, Florida 32301

Dan B. Hendrickson  
Post Office Box 1201  
Tallahassee, FL 32302  
atty for FCAN

Benjamin H. Dickens, Jr.  
Blooston, Mordkofsky, Jackson,  
& Dickens  
2120 L Street, N.W.  
Washington, DC 20037

Monte Belote  
Florida Consumer Action Network  
4100 W. Kennedy Blvd. #128  
Tampa, FL 33609

Mr. Cecil O. Simpson  
General Attorney  
Mr. Peter Q. Nyce, Jr.  
General Attorney  
Regulatory Law Office  
Advocate General  
Department of the Army  
901 North Stuart Street  
Arlington VA 22203-1837

Michael B. Twomey  
Assistant Attorney General  
Department of Legal Affairs  
Room 1603, The Capitol  
Tallahassee, FL 32399-1050

Florida Pay Telephone  
Association, Inc.  
c/o Mr. Lance C. Norris  
President  
202 - 8130 Baymeadows Cir. West  
Jacksonville, FL 32256

Bill L. Bryant, Jr., Esq.  
Foley & Lardner  
Suite 450  
215 South Monroe Street  
Tallahassee, FL 32302-0508

Douglas S. Metcalf (Ad Hoc)  
Communications Consultants, Inc.  
1600 E. Amelia Street  
Orlando, FL 32803

Thomas F. Woods, Esq.  
Gatlin, Woods, Carlson, and  
Cowdery  
1709-D Mahan Drive  
Tallahassee, FL 32308  
atty for the Florida Hotel and  
Motel Association

C. Everett Boyd, Jr.  
Ervin, Varn, Jacobs, Odom &  
Ervin  
305 South Gadsen Street  
Tallahassee, FL 32302

Laura L. Wilson, Esq.  
Messer, Vickers, Caparello,  
Madsen, Lewis & Metz, PA  
Post Office Box 1876  
Tallahassee, FL 32302  
atty for FPTA

A handwritten signature in cursive script, appearing to read "J. J. White". The signature is written in black ink and is positioned at the bottom right of the page.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Comprehensive Review )  
of the Revenue Requirements and ) Docket No. 920260-TL  
Rate Stabilization Plan of )  
Southern Bell Telephone and ) Filed: December 30, 1992  
Telegraph Company )  
\_\_\_\_\_ )

SOUTHERN BELL TELEPHONE AND TELEGRAPH COMPANY'S  
RESPONSE TO PUBLIC COUNSEL'S MOTION FOR RULING  
ON THE PUBLIC RECORD STATUS OF THE PREFILED TESTIMONY AND EXHIBITS  
OF DR. MARK N. COOPER AND R. EARL POUCHER

COMES NOW, BellSouth Telecommunications, Inc. d/b/a Southern Bell Telephone and Telegraph Company ("Southern Bell" or "Company"), and files pursuant to Rule 25-22.037(2)(b), Florida Administrative Code, its Response to Public Counsel's Motion for Ruling on the Public Record Status of the Prefiled Testimony and Exhibits of Dr. Mark N. Cooper and R. Earl Poucher.

1. On November 16, 1992, Public Counsel prefiled testimony and exhibits it proposed to submit in this proceeding. All of the testimony and exhibits were filed under confidential cover.

2. On November 25, 1992, Southern Bell filed a motion requesting in part that the testimony of proposed Public Counsel Witnesses Cooper and Poucher be stricken on the basis that such testimony was improperly prefiled in this docket in contravention of Order No. PSC-92-1320-PCO-TL, issued November 13, 1992. The Commission has not yet ruled on this motion.

3. On December 11, 1992, Mr. Charles J. Beck called one of the undersigned attorneys, Sidney J. White, Jr., to inquire about the status of Southern Bell's review of Public Counsel's proposed testimony and exhibits in this case.

4. On December 14, 1992, Southern Bell responded in writing to Mr. Beck regarding the status of the testimony and exhibit review. (See: attached letter from Mr. Sidney J. White, Jr.) In that

letter, Southern Bell's position regarding the objections to Mr. Cooper's and Mr. Poucher's proposed testimony was again communicated to Mr. Beck. Also, Southern Bell communicated its position that it was under no current obligation to address the proprietary information issues until the Commission rules on the Company's pending Motion to Strike.

5. On December 18, 1992, Public Counsel filed its Motion for Ruling on the Public Record Status of the Prefiled Testimony and Exhibits of Dr. Mark N. Cooper and R. Earl Poucher.

6. Since there has not yet been a final determination on Southern Bell's motion regarding whether Messrs. Cooper's or Poucher's testimony and exhibits should be stricken, and therefore prohibited in this proceeding, Public Counsel's current motion is premature and should be summarily denied.

7. Public Counsel has not cited to any Commission rule that requires the Commission to rule on its premature motion at this time because no such rule exists. Rule 25-22.006(5)(c), Florida Administrative Code, states in pertinent part:

If the information is to be used in a proceeding before the Commission, then the utility must file a specific request for protective order...<sup>1</sup> (emphasis added)

The rule provides that a determination that the information is to be used is a condition precedent to the corresponding requirement for the utility to file for a protective order. However, at this juncture, the issue of whether or not the subject information (e.g.

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<sup>1</sup> Rule 25-22.006(5)(c), Florida Administrative Code, contains no express time limit for filing motions for protective orders necessitated by the rule. However, clearly, no motion should be required prior to a determination on the principle issue of whether information may be used in the proceeding, as is the case here.

these witnesses' testimony and exhibits) may be used in this proceeding has not been decided.

8. If Southern Bell's Motion to Strike Messrs. Cooper's and Poucher's testimony and exhibits is granted, which the Company urges it should be, then Rule 25-22.006(5)(c) would not be triggered in this case. In the event it is determined that any of the subject testimony and exhibits is to be received in this proceeding, Southern Bell would then be required to comply with the rule at that time.

9. Consequently, until the Commission rules on the Company's Motion to Strike, it is premature to specifically address the proprietary information issues relating to Messrs. Cooper's and Poucher's testimony and exhibits.

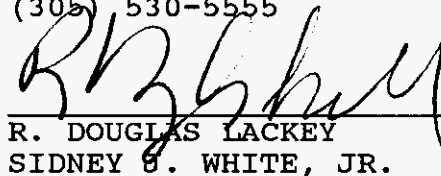
WHEREFORE, Southern Bell respectfully requests that the Prehearing Officer deny Public Counsel's motion to the extent it requests a premature and perhaps even an unnecessary ruling from the Commission.

Respectfully submitted this 30th day of December, 1992.

SOUTHERN BELL TELEPHONE  
AND TELEGRAPH COMPANY



HARRIS R. ANTHONY (22)  
c/o Marshall M. Criser, III  
400 - 150 South Monroe Street  
Tallahassee, Florida 32301  
(305) 530-5555



R. DOUGLAS LACKEY  
SIDNEY S. WHITE, JR.  
4300 - 675 West Peachtree Street  
Atlanta, Georgia 30375  
(404) 529-5094

DEC 28 '92 10:20 COPY GALS INC

P.B

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**SIDNEY J. WHITE, JR.**  
General Attorney

Southern Bell Telephone  
and Telegraph Company  
400 - 150 South Monroe Street  
Tallahassee, Florida 32301  
(404) 529-5094

December 14, 1992

Mr. Charles J. Beck  
Deputy Public Counsel  
Room 812  
111 West Madison Street  
Tallahassee, Florida 32399-1400

**RE: Docket No. 920260-TL - Confidential Information Contained in Testimony**

Dear Charlie:

You called me on December 11, 1992 to inquire about the status of Southern Bell's review of Public Counsel's proposed testimony and exhibits in this case which you filed under confidential cover on November 16, 1992. In this regard, we have completed our review of the testimony and exhibits of witnesses Kahn, Allen and Brosch and have not found that any of these witnesses' testimony or exhibits contain proprietary confidential business information. Consequently, by this letter I am advising you that the above-referenced testimony and exhibits may now be served on the other parties in this docket without special proprietary protections.

Regarding the testimony and exhibits of witnesses Poucher and Cooper, as you know, on November 25, 1992 Southern Bell filed a Motion to Strike these witnesses' testimony and exhibits as inappropriately filed in this docket. I know you are familiar with this motion, so I will not recite its grounds herein. The Commission has not yet ruled on this motion. Also, since there has not yet been a final determination on whether Mr. Poucher's or Mr. Cooper's testimony and exhibits will be allowed in this proceeding, Southern Bell is under no current obligation to file for a permanent protective order relating to such testimony and exhibits. In the event it is determined that any of the subject testimony and exhibits is to be received in this proceeding, Southern Bell will comply with Rule 25-22.006(5)(c), Florida Administrative Code, at that time.

Further, if Southern Bell's Motion to Strike is granted, Public Counsel would then have to decide whether to try to submit any or all of this testimony in other pending Commission

Mr. Charles J. Beck  
December 14, 1992  
Page Two

dockets. If Public Counsel chooses to resubmit such testimony, then Southern Bell will, of course, comply with the pertinent rules in the context of that proceeding as appropriate.

Consequently, it is Southern Bell's position that until the Commission rules on the Company's pending Motion to Strike, it is premature to specifically address the proprietary information issues relating to Mr. Poucher's and Mr. Cooper's testimony and exhibits.

Finally, inasmuch as documents and other information have been previously produced for Public Counsel in this case subject to various Motions for Temporary Protective Orders, it is incumbent upon Public Counsel to honor these pending motions until the issue of whether the subject testimony and exhibits may be used in this proceeding is resolved. Southern Bell expects Public Counsel to abide by the provisions of Rule 25-22.006, Florida Administrative Code, pending resolution of these matters.

Sincerely,



Sidney J. White, Jr.