



BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Comprehensive review of )  
revenue requirements and rate )  
stabilization plan of Southern )  
Bell. )  
\_\_\_\_\_ )

Docket No. 920260-TL

Filed: August 17, 1995

**SOUTHERN BELL TELEPHONE AND TELEGRAPH COMPANY'S  
MOTION FOR LEAVE TO FILE SUPPLEMENTAL BRIEF**

BellSouth Telecommunications, Inc., d/b/a Southern Bell Telephone and Telegraph Company, ("Southern Bell" or "Company"), hereby moves, pursuant to Rule 25-22.037, Florida Administrative Code, for an Order granting Southern Bell leave to file a Supplemental Brief, and as grounds in support thereof, states the following:

1. The hearing on the above-styled matter took place on July 31, 1995. Shortly before the conclusion of the hearing, the Public Service Commission Staff ("Staff") identified for the first time four new legal issues and proposed that the parties address these issues in their post-hearing briefs. The Commission approved this proposal. (Tr. 435-438) These legal issues were subsequently memorialized in a memorandum to the parties dated April 3, 1995. Legal Issue No. 4 reads as follows:

Legal Issue No. 4: Does Southern Bell's ECS proposal violate any other provision of the revised Chapter 364, Florida Statutes, excluding those previously identified in the positions on the issues listed in the prehearing order?

2. Although the four legal issues identified certainly bear consideration by the Commission, the inclusion of Issue 4 among those to be briefed does create a practical problem for

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Southern Bell. Legal Issue No. 4 calls for parties to advance only those legal arguments that Southern Bell's plan violates the revised Chapter 364 that have not been previously raised.

Unfortunately, the inclusion of this issue at this point leaves Southern Bell in a patently untenable position, i.e., each intervenor now has the opportunity to, in effect, take one "free shot". Under the current procedure, however, Southern Bell does not have the ability to respond to whatever legal arguments may be raised.

3. Further, it is virtually impossible for Southern Bell to anticipate what arguments might be raised in order to respond to them preemptively. In fact, Southern Bell believes there is no legal basis for an argument that its plan violates the revised Chapter 364.<sup>1</sup> Accordingly, any effort by Southern Bell to anticipate arguments to the contrary would entail simply guessing as to what creative position some intervenor might take.

4. It would be manifestly unfair to place Southern Bell in the position of being unable to respond to any legal issue that may be raised for the first time in the post-hearing briefs. Generally speaking, when a party raises a new issue in a pending docket, the mechanism for raising the issue is a motion. Under Rule 25-22.037(2)(b) other parties are given seven (7) days to file a written memorandum in opposition to any such motion.

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<sup>1</sup> Moreover, as stated in Southern Bell's Brief, the saving clause of the revised Chapter 364 (§364.385) provides that the former Chapter 364 applies, thus rendering Legal Issue 4 moot.

Southern Bell submits that, in fairness, it should be given a comparable opportunity to respond to any legal issues that may be raised for the first time in the briefs of other intervenors.

5. Granting Southern Bell leave to file a response in the form of a supplemental brief within seven (7) days will give it adequate time to have a fair opportunity to respond to any new matters that may be raised. At the same time, the granting of this brief period of time in order to respond will not prejudice any party to these proceedings, nor will it delay the proceedings in any way.

WHEREFORE, Southern Bell respectfully requests the entry of an order granting it leave to file a supplemental brief in response to any legal issue raised for the first time in post-hearing briefs.

Respectfully submitted this 17th day of August, 1995.

SOUTHERN BELL TELEPHONE AND  
TELEGRAPH COMPANY

*Robert G. Beatty (pm)*

ROBERT G. BEATTY  
J. PHILLIP CARVER  
c/o Nancy H. Sims  
150 So. Monroe St., Ste. 400  
Tallahassee, Florida 32301  
(305) 347-5555

*R. Douglas Lackey (pm)*

R. DOUGLAS LACKEY  
NANCY H. WHITE  
c/o Nancy H. Sims  
150 So. Monroe St., Ste. 400  
Tallahassee, Florida 32301  
(404) 529-3862

**CERTIFICATE OF SERVICE**

Docket No. 920260-TL

I HEREBY CERTIFY that a copy of the foregoing has been furnished by United States Mail this 17th day of August, 1995 to:

Robin Norton  
Division of Communications  
Florida Public Service  
Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850

Tracy Hatch  
Division of Legal Services  
Florida Public Svc. Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850

Joseph A. McGlothlin  
Vicki Gordon Kaufman  
McWhirter, Grandoff & Reeves  
117 South Gadsden Street  
Tallahassee, FL 32301  
atty for FIXCA

Kenneth A. Hoffman  
Messer, Vickers, Caparello,  
Madsen, Lewis & Metz, PA  
Post Office Box 1876  
Tallahassee, FL 32302  
atty for FPTA

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

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

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

Michael J. Henry  
MCI Telecommunications Corp.  
780 Johnson Ferry Road  
Suite 700  
Atlanta, Georgia 30342

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  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850

Laura L. Wilson, Esq.  
Florida Cable  
Telecommunications Assn., Inc.  
310 North Monroe Street  
Tallahassee, FL 32301  
atty for FCTA

Chanthina R. Bryant  
Sprint Communications Co.  
Limited Partnership  
3100 Cumberland Circle  
Atlanta, GA 30339

Benjamin H. Dickens, Jr.  
Blooston, Mordkofsky,  
Jackson & Dickens  
2120 L Street, N.W.  
Washington, DC 20037  
Atty for Fla Ad Hoc

C. Everett Boyd, Jr.  
Ervin, Varn, Jacobs, Odom  
& Ervin  
305 South Gadsen Street  
Post Office Drawer 1170  
Tallahassee, Florida 32302  
atty for Sprint

Angela Green  
Florida Public  
Telecommunications Assn., Inc.  
125 South Gadsden Street  
Suite 200  
Tallahassee, FL 32301

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

Joseph Gillan  
J.P. Gillan & Associates  
P.O. Box 541038  
Orlando, FL 32854-1038

Mark Richard  
Attorney for CWA  
Locals 3121, 3122, and 3107  
304 Palermo Avenue  
Coral Gables, FL 33134

Gerald B. Curington  
Department of Legal Affairs  
2020 Capital Circle, SE  
Alexander Building, 2nd Floor  
Tallahassee, FL 32301

Mr. Douglas S. Metcalf  
Communications Consultants,  
Inc.  
631 S. Orlando Ave., Suite 450  
P. O. Box 1148  
Winter Park, FL 32790-1148

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

Mr. Michael Fannon  
Cellular One  
2735 Capital Circle, NE  
Tallahassee, FL 32308

Floyd R. Self, Esq.  
Messer, Vickers, Caparello,  
Madsen, Lewis, Goldman & Metz  
Post Office Box 1876  
Tallahassee, FL 32302-1876  
Attys for McCaw Cellular

Stan Greer  
Division of Communications  
Florida Public Svc. Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850

J. Phillip Carver (P.O.)