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ORIGINAL
FILE COPY

January 18, 1991

Steve Tribble, Director
Division of Records and Reporting
Florida Public Service Commission
101 East Gaines Street
Tallahassee, FL 32399-0850

Re: Docket No. 891194-TI

Dear Mr. Tribble:

Enclosed for filing in the above-captioned proceeding on behalf of the Citizens of the State of Florida are the original and 12 copies of Citizens' Motion to Strike to be filed in this docket.

Please indicate the time and date of receipt on the enclosed duplicate of this letter and return it to our office.

- ACK _____
- AFA _____
- APP _____
- CAF _____
- CMD _____ Enclosure
- CTR _____
- EAG _____
- LEG JW/m
- LIM to
- OPC _____
- RCR _____
- SEC 1
- WAS _____
- OTH _____

Sincerely,

Darlene Driscoll

Darlene Driscoll

RECEIVED & FILED

TB
FPSC-BUREAU OF RECORDS

DOCUMENT NUMBER-DATE

00641 JAN 18 1991

FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Proposed tariff filings by)
SOUTHERN BELL TELEPHONE AND TELEGRAPH) Docket No. 891194-TI
COMPANY clarifying when a nonpublished) Filed: January 18, 1991
number can be disclosed and introducing)
Caller ID to TouchStar Service)
_____)

MOTION TO STRIKE

The Citizens of Florida ("Citizens"), by and through Jack Shreve, Public Counsel, move the Commission to strike page 43, line 14, through page 44, line 2 of the brief filed by GTE Florida, Incorporated, on January 11, 1991.

1. On December 11, 1990 the Director of Records and Reporting at the Florida Public Service Commission sent a copy of a letter and attached testimony to all parties of record. The memorandum from the Director of Records and Reporting stated that "this is to inform you that the attached communication was received by the members of this Commission on November 6, 1990. This letter is being made a part of the record in this proceeding and you may file a response to it, with this office, within 10 days of receipt of this notice."

2. The attachment itself had a stamped notation indicating that it had been received on November 6, 1990 in the office of

Commissioner Wilson. It consisted of a letter dated November 5, 1990 from Melvin L. Tucker, Chief of Police in Tallahassee, to Chairman Michael Wilson, and it transmitted "testimony" of Chief Tucker in the format usually reserved for prefiled testimony: twenty-five numbered lines per page, a question and answer format, and an exhibit providing the qualifications of the witness.

3. On December 19, 1990 the Public Counsel sent a letter to the Director of Records and Reporting noting that his memorandum did not state why copies of the communication were distributed after the evidentiary hearings held on November 28 and 29, 1990, nor why the memorandum was distributed more than 15 days after the communication was received by the Commission. The letter went on to ask the Director of Records and Reporting to advise the Public Counsel whether this and one other communication represented all known ex parte communications to or from members of the Commission about matters at issue in this docket.

4. On December 21, 1990 the Director of Records and Reporting responded to the Public Counsel's letter. That response claimed that, as indicated in the earlier correspondence, the Commissioner to whom the communication was directed never saw the communication in question. Moreover, the December 21, 1990 letter did not respond to the Public Counsel's question about ex parte communications from members of the Commission. It stated only that

letters sent to the Commission could be viewed in the Division of Records and Reporting.

5. Page 43, line 14, through 44, line 2 of the brief filed by GTE Florida, Inc., cites the "Tucker direct testimony at 1-3" to support an argument made in its brief. The "Tucker direct testimony," however, was never placed in evidence in this proceeding.

6. Section 350.042, Florida Statutes (1990) states that if a Commissioner knowingly receives an ex parte communication relative to a proceeding, the Commissioner must place on the record of the proceeding copies of all written communications received, all written responses to communications, and a memorandum stating the substance of all oral communications received and all oral responses made, within 15 days of the date of such communications. Written notice must be provided to all parties, and any party who desires to respond to an ex parte communication may do so within 10 days after receiving notice that the ex parte communication has been placed in the record.

7. These provisions of the new ex parte statute do not raise ex parte communications to the level of competent, substantial evidence upon which the Commission may base its decision. Accordingly, the reference to the "Tucker direct testimony" in the

brief filed by GTE Florida, Incorporated, is improper, and arguments presented based on that reference should be stricken.

WHEREFORE, the Citizens respectfully request the Commission to strike page 43, line 14, through page 44, line 2 of the brief filed by GTE Florida, Incorporated.

Respectfully submitted,


Jack Shreve
Public Counsel


Charles J. Beck
Assistant Public Counsel

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Attorneys for the Citizens
of the State of Florida

CERTIFICATE OF SERVICE
Docket No. 891194-TI

I HEREBY CERTIFY that a copy of the foregoing has been furnished by U.S. Mail or hand-delivery to the following parties this 18th day of January, 1991.

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