



JACK SHREVE
PUBLIC COUNSEL

STATE OF FLORIDA
OFFICE OF THE PUBLIC COUNSEL

c/o The Florida Legislature
111 West Madison Street
Room 812
Tallahassee, Florida 32399-1400
904-488-9330

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October 26, 1992

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

Re: Docket No. 920260-TL

Dear Mr. Tribble:

Enclosed for filing in the above-referenced docket on behalf of the Citizens of the State of Florida are the original and 15 copies of the Citizens' Motion for Review of Order Establishing Procedure.

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

Sincerely,

Charles J. Beck
Charles J. Beck
Deputy Public Counsel

Enclosure

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

Docket No. 920260-TL
Filed: October 26, 1992

MOTION FOR REVIEW OF ORDER ESTABLISHING PROCEDURE

Pursuant to Commission Rule 25-22.038(2), the Citizens of Florida ("Citizens"), by and through Jack Shreve, Public Counsel, move the full Commission to review Commission Order number PSC-92-1195-PCO-TL issued October 21, 1992.

1. Order No. PSC-92-1195-PCO-TL issued October 21, 1992 is an order by the prehearing officer establishing procedure. The Citizens request the full Commission to review that portion of the order requiring intervenors to file direct testimony and exhibits by no later than November 2, 1992.

2. On October 12, 1992 we filed a motion to set the intervenors' testimony filing date at least thirty days after production of documents and information subject to pending motions to compel. A copy of that motion is appended to this pleading as attachment 1. While the order on prehearing procedure does not directly address the October 12 motion, the

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order nonetheless effectively denies the motion by failing to address the relief requested in the motion.

3. The October 12, 1992 motion shows that there are numerous motions to compel pending in this docket that have not been ruled upon. The pending motions to compel were filed during a time period ranging from more three months ago to more than five months ago. No rulings have been made on any of these motions. In addition, the October 12 motion also speaks to two motions pending in docket number 910163-TL that relate to this docket, but have not been ruled upon, either.

4. It is manifestly unjust to require the Citizens to file testimony in this docket while the Commission has not yet ruled on numerous pending motions to compel.¹ We can not file testimony without getting the information we need from Southern Bell.

WHEREFORE, the Citizens respectively request the full Commission to review the prehearing officer's order establishing procedure and to change the due date for filing intervenor

¹ There are a number of other motions that have not been ruled upon. For example, on September 11 we filed a motion to require sworn testimony by Southern Bell sponsoring its quality of service reports. It is necessary to have a ruling on that motion in order to prepare responsive testimony of our own.

testimony to at least thirty days after the production of documents and information subject to pending motions to compel.

Respectfully submitted,

Jack Shreve
Public Counsel



Charles J. Beck
Deputy Public Counsel

Office of Public Counsel
c/o The Florida Legislature
111 West Madison Street
Room 812
Tallahassee, FL 32399-1400

(904) 488-9330

Attorneys for the Citizens of
the State of Florida

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

Comprehensive Review of the)	
Revenue Requirements and Rate)	Docket No. 920260-TL
Stabilization Plan of Southern)	Filed: October 12, 1992
Bell Telephone & Telegraph Company)	
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**MOTION TO SET INTERVENOR TESTIMONY FILING DATE
AT LEAST THIRTY DAYS AFTER PRODUCTION OF DOCUMENTS
AND INFORMATION SUBJECT TO PENDING MOTIONS TO COMPEL**

The Citizens of Florida ("Citizens"), by and through Jack Shreve, Public Counsel, request the Commission to set the date for intervenors to file testimony at least thirty days after the production of documents and information subject to pending motions to compel.

1. There is presently no order on prehearing procedure setting forth dates for filing testimony, but the case assignment and scheduling report (CASR) used for internal purposes at the Commission contemplates intervenors filing testimony on November 2, 1992. The Citizens can not meet that date because the Commission has not yet ruled on our motions to compel. Production of the documents and information sought by those motions is needed in order to file testimony.

2. Motions related to discovery have been pending in this docket for as long as five months, as shown by the following chart:

TYPE OF MOTION	DOCKET	DATE FILED	DESCRIPTION
compel	920260	5-8-92	dispute over definitions; documents withheld under claim of relevancy; objections based on work product, privilege. Requests <u>in camera</u> inspection of withheld documents.
compel	920260	5-13-92	to obtain responsive documents in the possession of the parent corporation.
compel	920260	6-2-92	to obtain LMOS, MOOSA, KSRI and schedule 11 audits.
compel	920260	6-5-92	to obtain responsive documents in the possession of the parent corporation.
compel	920260	7-13-92	to obtain documents related to inside wire maintenance and obtain responsive documents in the possession of the parent corporation.

3. Moreover, the lack of rulings in a related docket concerning the investigation into the integrity of Southern Bell's repair service activities and reports also affects our ability to present testimony. For example, a motion filed over three months ago asks the Commission to compel responses to about sixty questions asked at a deposition of Southern Bell Vice President Network - South Area Jerry Sanders and Southern Bell

General Manager-Human Resources C. L. Cuthbertson, Jr. A motion filed over seven weeks ago requests the Commission to compel Southern Bell to produce a document revealing the names of craft personnel created by a panel reviewing possible disciplinary action. Rulings on these motions are particularly important now that the Tenth Statewide Grand Jury has squarely placed the question of punitive action against Southern Bell in the hands of the Commission.¹

4. In particular, rulings on matters related to the integrity of Southern Bell's repair service activities and reports are significant to this docket because this docket reviews Southern Bell's actions during its incentive plans. Actions related to the integrity of Southern Bell's repair

¹ The final report of the tenth statewide grand jury states "In closing, it must be noted that the proposed settlement agreement does not contain any "punishment", per se, of the company for its alleged failure to properly report to the Public Service Commission actual repair time for restoration of telephone service to customers whose telephones were out of service. This issue was raised in our investigation, but we have been advised that the United States Supreme Court's ruling H. J. Inc., et al v. Northwest Bell Telephone Company, 112 S. Ct. 2306 (1992), casts doubt on our ability, or the ability of the criminal courts, to directly sanction the company for such conduct, id it in fact occurred. We specifically note, however, that the Florida Public Service Commission has both the jurisdiction and the concomitant discretion to impose severe monetary penalties on the company if it finds that the company has falsified reports required by PSC rules. We therefore strongly recommend that the Public Service Commission, in conjunction with its publicly mandated responsibility, investigate this matter, exercise its penal authority, and take into consideration this possible fraudulent conduct on the part of the company in determining an appropriate rate of return." Final Report of the Tenth Statewide Grand Jury, September, 1992, at page 2.

service activities and reports, which affect quality of service, are an important part of the incentive plan.

5. Order no. 20162 issued October 13, 1988 implemented an incentive regulation plan for Southern Bell. The Commission adopted many of the incentives that had been proposed by Southern Bell in petitions it filed on January 13, 1988. However, a number of parties expressed concern that providing Southern Bell additional incentives to maximize profits might affect quality of service. The Commission addressed this by stating:

"There is a concern that the company might improve earnings over the short run by letting quality of service slip. In order to discourage and detect such actions, our staff will continue its ongoing review of service quality as required by Commission rules and will consider more expanded service audits if any significant slippage in quality is detected. The Commission will be notified if service quality significantly deteriorates during the course of this plan, or if Commission rules concerning service standards are violated. The Commission may then consider imposing a penalty on Southern Bell." Order 20162 at page 26.

6. This docket should determine Southern Bell's range for return on equity and its rate setting point. Adjusting Southern Bell's rate setting point to the lower end of its authorized range of return on equity is an appropriate response to various activities which occurred during the incentive plan. These activities includes both activities related to Southern Bell's

repair service and reports, as well as activities related to "sales" when customers were not even contacted about services being added to their bills. All of these matters concern the quality of service provided to Southern Bell's customers.

7. In addition, this information should be reviewed by the Commission before the Commission considers Southern Bell's proposal for further deregulation in this docket. The Commission can not make an informed decision about further deregulating Southern Bell without first reviewing improper activities which occurred during the time period when the incentive plan was in effect.

8. The Citizens need at least thirty days after the documents and information are produced before filing testimony. The information must be analyzed. In the case of identifying persons, depositions of many those persons will likely be required. A follow-up deposition of Southern Bell Vice President Network - South Area Jerry Sanders and Southern Bell General Manager-Human Resources C. L. Cuthbertson, Jr., will be required to obtain answers to the scores of questions they refused to answer in the earlier deposition.

WHEREFORE, the Citizens respectfully request the Commission to set the date for intervenors to file testimony at least thirty days after the production of documents and information subject to pending motions to compel.

Respectfully submitted,

Jack Shreve
Public Counsel

Charles J. Beck
Deputy Public Counsel

Office of Public Counsel
c/o The Florida Legislature
111 West Madison Street
Room 812
Tallahassee, FL 32399-1400

(904) 488-9330

Attorneys for the Citizens of
the State of Florida

**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 26th day of October, 1992.

Marshall Criser, III
BellSouth Telecommunications,
Inc. (Southern Bell Telephone
& Telegraph Company)
150 S. Monroe St., Suite 400
Tallahassee, FL 32301

Harris B. Anthony
BellSouth Telecommunications,
Inc. (Southern Bell Telephone
& Telegraph Company)
150 W. Flagler St., Suite 1910
Miami, FL 33130

Robin Norton
Division of Communications
Fla. Public Service Commission
101 East Gaines Street
Tallahassee, FL 32301

Doug Lackey
BellSouth Telecommunications,
Inc. (Southern Bell Telephone
& Telegraph Company)
4300 Southern Bell Center
Atlanta, GA 30375

Mike Twomey
Department of Legal Affairs
Attorney General
The Capitol Bldg., 16th Floor
Tallahassee, FL 32399-1050

Angela Green
Division of Legal Services
Fla. Public Service Commission
101 East Gaines Street
Tallahassee, FL 32301

Edward Paschall
Florida AARP Capital City Task
Force
1923 Atapha Nene
Tallahassee, FL 32301

The American Association of
Retired Persons
c/o Bill L. Bryant, Jr.
Foley & Lardner
215 S. Monroe St., Suite 450
P.O. Box 508
Tallahassee, FL 32302-0508

Richard D. Melson
Hopping, Boyd, Green & Sams
23 South Calhoun Street
P.O. Box 6526
Tallahassee, FL 32314

Michael J. Henry
MCI Telecommunications Corp.
MCI Center
Three Ravinia Drive
Atlanta, GA 30346

Joseph A. McGolthlin
Vicki Gordon Kaufman
McWhirter, Grandoff & Reeves
522 E. Park Ave., Suite 200
Tallahassee, FL 32301

Rick Wright
AFAD
Fla. Public Service Commission
101 East Gaines Street
Tallahassee, FL 32301

Peter M. Dunbar
Haben, Culpepper, Dunbar
& French, P.A.
306 N. Monroe St.
P.O. Box 10095
Tallahassee, FL 32301

Patrick K. Wiggins
Wiggins & Villacorta, P.A.
P.O. Drawer 1657
Tallahassee, FL 32302

Dan B. Hendrickson
P.O. Box 1201
Tallahassee, FL 32302

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

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

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

Floyd R. Self
Messer, Vickers, Caparello,
French, Madsen & Lewis, P.A.
P.O. Box 1876
215 S. Monroe St., Suite 701
Tallahassee, FL 32302-1876


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

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

Florida Hotel and Motel Assn.
c/o Thomas F. Woods
Gatlin, Woods, Carlson
& Cowdery
1709-D Mahan Drive
Tallahassee, FL 32308

Douglas S. Metcalf
Communications Consultants, Inc.
1600 E. Amelia St.
Orlando, FL 32803-5505

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


Charles J. Beck
Deputy Public Counsel