

CERTIFICATE OF SERVICE
Docket No. 920260-TL

I HEREBY CERTIFY that a copy of the foregoing has been
furnished by United States Mail this *9th* day of *Nov.*, 1992
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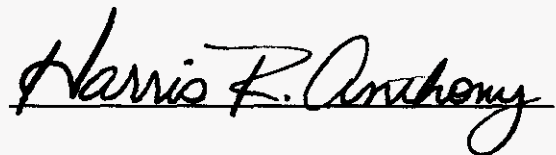
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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Comprehensive Review of) Docket No. 920260-TL
the Revenue Requirements and Rate)
Stabilization Plan of Southern) Filed: November 9, 1992
Bell Telephone and Telegraph)
Company)
_____)

**SOUTHERN BELL TELEPHONE AND TELEGRAPH COMPANY'S
OPPOSITION TO PUBLIC COUNSEL'S MOTION
FOR REVIEW OF ORDER ESTABLISHING PROCEDURE**

COMES NOW BellSouth Telecommunications, Inc., d/b/a Southern Bell Telephone and Telegraph Company ("Southern Bell" or the "Company"), pursuant to Rule 25-22.037, Florida Administrative Code, and herewith files this response in Opposition to the Office of Public Counsel's ("Public Counsel") Motion for Review of Order Establishing Procedure (the "Motion"). In support of its opposition to the Motion, Southern Bell shows the Florida Public Service Commission (the "Commission") the following:

1. In its Motion for Review of Order Establishing Procedure, Public Counsel argues that it should not be required to file its testimony as an intervenor in the above-captioned docket on or before November 2, 1992. Public Counsel bases this contention on an argument that various motions to compel have not yet been ruled on and that it would therefore be improper to require Public Counsel to file testimony as of November 2, 1992. (See, Public Counsel's Motion to Extend Dates for Filing Intervenor Testimony.) In Southern Bell's Opposition to Public Counsel's Motion to Extend Dates for Filing Intervenor Testimony, filed with the Commission on October 26, 1992, a copy of which is attached hereto, Southern Bell explains why such an extension is neither warranted nor appropriate and why that motion should be

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denied. Since Public Counsel's current Motion is based on its earlier pleading seeking an extension of time to file testimony, the current Motion for Review should likewise be denied.

2. In any event, Southern Bell would note that the Staff of the Commission, on October 27, 1992, served a memorandum on all parties in which it informed the parties that intervenor testimony would be postponed for two weeks, i.e., until November 16, 1992. To Southern Bell's knowledge, no intervenor, including Public Counsel, has yet filed testimony in this case. Thus, Public Counsel has received an extension of time as requested and its Motion should also be denied as moot.

Respectfully submitted this 9th day of November, 1992.

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October 26, 1992

Mr. Steve C. Tribble
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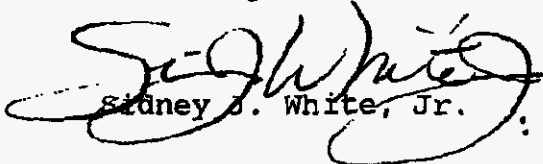
RE: Docket No. 920260-TL

Dear Mr. Tribble:

Enclosed are an original and fifteen copies of Southern Bell Telephone and Telegraph Company's Opposition to Public Counsel's Motion to Extend Dates for Filing Intervenor Testimony. Please file these documents in the 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.

Enclosures

cc: All Parties of Record
A. M. Lombardo
H. R. Anthony
R. D. Lackey

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Docket No. 920260-TL

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Comprehensive Review of)	
the Revenue Requirements and Rate)	Docket No. 920260-TL
Stabilization Plan of Southern)	
Bell Telephone and Telegraph)	Filed: October 26, 1992
Company (Formerly FPSC Docket)	
Number 880069-TL))	
)	

**SOUTHERN BELL TELEPHONE AND TELEGRAPH COMPANY'S
OPPOSITION TO PUBLIC COUNSEL'S MOTION
TO EXTEND DATES FOR FILING INTERVENOR TESTIMONY**

COMES NOW BellSouth Telecommunications, Inc., d/b/a Southern Bell Telephone and Telegraph Company ("Southern Bell" or "Company"), pursuant to Rule 25-22.037(2)(b), Florida Administrative Code, and files its Opposition to Public Counsel's Motion to Set Intervenor Testimony Filing Date At Least Thirty Days After Production of Documents and Information Subject to Pending Motions to Compel (Motion), filed on October 12, 1992. For the reasons set forth below, the Commission should deny Public Counsel's motion.

1. Basically, the thrust of Public Counsel's motion is that since certain outstanding discovery matters have not yet been ruled upon by the Commission in this and in other separate dockets, Public Counsel should be given special dispensation¹ to file testimony later than currently provided for in the Commission's prehearing case assignment and scheduling record (CASR).

¹ While it is true that Public Counsel has characterized its motion as seeking an extension in the filing date for testimony for all intervenors, the fact of the matter is that no other intervenor has expressed concerns regarding the filing dates as currently proposed. Consequently, this motion should be strictly construed solely to address Public Counsel's specious arguments for seeking delay in these proceedings.

2. Public Counsel asserts that it "... cannot meet that [filing] date because the Commission has not yet ruled on [Public Counsel's] motions to compel" and "...the documents and information sought by those motions are needed in order to file testimony." Motion at p. 1. Such statements imply that the information sought by Public Counsel is discoverable in the first place, and secondly that the information is necessary for the preparation of Public Counsel's case in this docket. Neither of these premises has been established in this case.²

3. Southern Bell has filed responses in opposition to all of the various Motions to Compel, and supplements thereto, referenced by Public Counsel in its October 12, 1992 Motion. All arguments contained in the Company's previously filed responses are hereby adopted and incorporated by reference herein. Southern Bell will not reiterate herein all the substantive points made in its previous responses, but rather will respond generally to the inappropriateness of Public Counsel's present attempt to delay its testimony filing date based on the faulty premises described above.

4. First, it is axiomatic that parties may obtain discovery regarding matters, not privileged, that are relevant to

² To the extent documents relating to inside wire matters are deemed to be relevant in this case by the Commission, Southern Bell will comply with any Commission rulings relating to the production of such documents. However, Public Counsel has already had extensive opportunity to review documents related to the inside wire issues raised in Docket No. 900960-TL, and in fact has already sent two attorneys to Miami, Florida to review such documents. Consequently, Public Counsel cannot seriously argue that it has been deprived of inside wire related documents.

the particular subject matter of the pending action. In fact, this general discovery rule is set forth in Rule 1.280(b)(1), Florida Rules of Civil Procedure, which is expressly made applicable to discovery in Commission proceedings pursuant to Rule 25-22.034, Florida Administrative Code. However, the portions of the two motions to compel³ cited by Public Counsel which involve Public Counsel's inappropriate attempts to "discover" privileged documents which he is not legally entitled to discover clearly cannot provide a basis for an extension of time for the filing of Public Counsel's testimony. It is irrational to suggest that the Commission grant an extension of time for Public Counsel to await the receipt of documents which cannot be compelled to be produced. Consequently, to the extent Public Counsel's motion is based on the faulty premise that he needs Southern Bell's privileged documents to prepare and file testimony, the motion should be summarily denied.

5. Second, Public Counsel argues that the resolution of discovery issues in "a related docket... also affects our ability to present testimony." Motion at p. 2, paragraph 3. However, the discovery issues referenced by Public Counsel relate to the Commission's repair investigation in Docket No. 910163-TL, and these issues are not issues that have been identified as issues in this particular docket. In fact, the Commission specifically

³These motions were filed by Public Counsel on May 8, 1992 and June 2, 1992, and Southern Bell's responses in opposition to these motions were filed on May 15, 1992 and June 15, 1992, respectively.

initiated Docket No. 910163-TL to address the discrete factual issues relating to Southern Bell's repair service activities in that docket. Discovery is currently proceeding normally in that docket,⁴ hearings related to that case are currently set for April 12-16, 1993, and all relevant issues will be addressed in the course of such separate hearings. The Commission's express actions in creating separate and distinct proceedings for other matters pertaining to Southern Bell's business operations in Florida indicate that the Commission wishes to address these matters separately. Also, from a practical standpoint there is simply not enough time to address all of the issues raised in all of these dockets in Docket No. 920260-TL. In fact, the Prehearing Officer also recognized this practical limitation when she recently ruled from the bench at the issue identification hearing held on October 20, 1992 that issues related to the repair investigation should primarily be addressed in that docket. Commissioner Clark further ruled that the issues in Docket No. 920260-TL that are contingent on the resolution of the issues in Docket No. 910163-TL may be held in abeyance pending final disposition of the repair service investigation. Based on this recent action by the Prehearing Officer, Public Counsel is certainly ensured an adequate opportunity to present its positions regarding all outstanding issues not only in the

⁴The Commission has combined this docket with another related docket, Docket No. 910727 (rebate investigation) and will now be considering all pertinent issues relating to both of these cases on a consolidated basis.

primary docket pertaining to such matters, but also in the context of related rate case issues.

6. Third, Public Counsel's motion should be denied because it does not describe with particularity why documents which it seeks are necessary in order for Public Counsel to file testimony. Southern Bell has already shown that some of the documents requested are not legally discoverable. Therefore, such documents could not possibly be used in the preparation of such testimony. Most of the other documents sought by Public Counsel are irrelevant to this particular proceeding⁵.

Therefore, these documents also would not be "necessary" for the filing of Public Counsel's testimony. In essence, as previously stated, Public Counsel is seeking special treatment and delay in its filing of testimony which is neither warranted nor appropriate in this case. Public Counsel has simply not shown how its ability to file testimony is in fact hampered by the existence of these pending discovery matters.

7. Finally, Southern Bell has produced hundreds of thousands of pages of documents for Public Counsel so far in this case. If Public Counsel cannot at this point in time determine what its position in this case is based on such massive discovery, the incremental result of the resolution of the few remaining discovery issues will not yield such profound knowledge. The Commission should require Public Counsel to

⁵ See: Footnote 4, infra.

adhere to the current filing schedule for intervenor testimony in this docket.

CONCLUSION

Based on the foregoing arguments, Southern Bell respectfully urges the Commission to deny Public Counsel's Motion to Extend Dates for Filing its Testimony in this docket.

Respectfully submitted this 26th day of October, 1992.

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