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November 23, 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 Additional Order on Prehearing 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

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ADD \_\_\_\_\_  
CPE \_\_\_\_\_  
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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

Comprehensive Review of the )  
Revenue Requirements and Rate ) Docket No. 920260-TL  
Stabilization Plan of Southern ) Filed: November 23, 1992  
Bell Telephone & Telegraph Company )  

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**MOTION FOR REVIEW OF ADDITIONAL ORDER ON PREHEARING 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-92-1320-PCO-TL issued November 13, 1992.

1. Order No. PSC-92-1320-PCO-TL issued November 13, 1992 is an additional order on prehearing procedure. We request the full Commission to review that order.

**The procedural order should not set dates for filing testimony  
without ruling on pending motions**

2. This is now the third motion seeking action on pending motions to compel before filing testimony, yet the prehearing officer continues to ignore these motions. Instead, the prehearing officer ordered intervenors to file testimony on

November 17, 1992, without even addressing the fact that there are numerous pending motions to compel.

3. We initially addressed this matter in a "motion to set intervenor testimony filing date at least thirty days after production of documents and information subject to pending motions to compel" filed on October 12, 1992. Both the order establishing procedure issued October 21, 1992, and the additional order on prehearing procedure issued November 13, 1992 ignore that motion.

4. The matter of the ignored motions to compel was then addressed in a motion for review of order establishing procedure filed on October 26, 1992. That motion seeks review by the whole Commission.

5. We have been severely prejudiced in our ability to prepare this case because of the failure of the Commission to make timely rulings on motions to compel. Time after time, Southern Bell refuses to provide information, the Citizens then move to compel, and the Commission does not rule on the motion for months. Southern Bell succeeds in hampering and delaying the preparation of our case because of this failure to rule. Now, the Commission has required us to file testimony without even addressing the requests to obtain the information that Southern Bell refuses to provide.

6. Motions related to discovery have been pending in this docket for as long as six 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.

7. Dates for filing testimony should not be set until a period well after these motions are determined with finality by the Commission.<sup>1</sup>

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<sup>1</sup> Sadly, the status of motions in docket 910163-TL (the docket investigating Southern Bell's repair activities) is much like this one. The Citizens filed motions to compel filed on April 8, 1992, May 21, 1992, July 2, 1992, July 20, 1992, July 23, 1992, August 21, 1992, and October 8, 1992. None of these have been ruled on. Time has been irrevocably lost by these delays, and many of these motions address fundamental discovery necessary to proceed further in a meaningful way in that docket.

**An Issue related to the imputation of revenues and expenses from inside wire maintenance when setting regulated rates should be heard in this docket**

8. The additional order on prehearing procedure inexplicably does not contain an issue concerning the imputation of revenues and expenses from inside wire maintenance for the purpose of setting regulated rates. In the recent rate cases of United Telephone Company of Florida and General Telephone Company of Florida, as well as in the pending rate case of Central Telephone Company of Florida, there have been such issues, and we raised one in this case. The additional order on prehearing procedure does not explain why that issue has not been included in this docket. This issue should be included.

**This hearing in this docket should include quality of service issues, including Southern Bell's sales activities and repair activities, a review of Southern Bell's performance under its existing "incentive plan," and its proposal for further "incentive" regulation**

9. Quality of service is specifically included as issue 31 in this case.<sup>2</sup> In addition, the Commission intends to look at both

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<sup>2</sup> In addition to the motions to compel that go unaddressed, the Citizens also have a pending motion to require sworn testimony by Southern Bell sponsoring its quality of service reports. That motion was filed on September 11, 1992.

the positive and negative results of the existing "incentive" regulation plan in this docket (issue 26b) and Southern Bell's request for even further relaxation of regulation from this Commission (issues 28 and 29).

10. Quality of service is a particularly important issue because of the "incentive" regulation given by the Commission to Southern Bell. 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 adversely 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.

11. This docket, docket 900960-TL, and docket 920260-TL contain quality of service issues. It would make sense to hear all

quality of service issues at the same time, particularly in light the Commission's expressed linkage between quality of service and "incentive" regulation. Otherwise, we will be in a position of dealing with only one side of an issue at a time without all parties present when evidence is introduced.

12. For example, with respect to Southern Bell's incentive plan, if these matters are not heard together we will be in the incongruous position of listening to Southern Bell describe what it claims to be an exceptional quality of service provided during the incentive plan, while we will be precluded from responding to this in the same proceeding by providing other evidence of a completely unsatisfactory quality of service in the way Southern Bell treated its customers. We would be precluded from showing that Southern Bell provided false quality of service reports to the Commission during the incentive plan. Similarly, Southern Bell will try to persuade the Commission about the positive effects of "incentive" regulation, while we are precluded from providing substantial evidence about the negative effects if we can not present evidence related to the two other proceedings.<sup>3</sup> Thus, while issue 26b in this docket asks the parties to address both the positive and negative results of the current "incentive" regulation plan, the order prevents us from responding if the responsive evidence relates to docket 900960-TL or docket 910163-TL. Such a one-sided

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<sup>3</sup> See Additional Order on Prehearing Procedure at page 1.

presentation of evidence during the January and February hearings should not be approved by the Commission.

13. The additional order on prehearing procedure also seems to ignore the fact that the parties in this docket are not the same as in dockets 900960-TL (dealing with Southern Bell's sales practices) or docket 910163-TL (dealing with Southern Bell's repair activities). Evidence from those cases has a direct bearing on the issues in this case dealing with quality of service (issue 31), the positive and negative results of the existing "incentive" regulation plan in this docket (issue 26b), and Southern Bell's request for even further relaxed regulation from this Commission (issues 28 and 29). Will the Commission make decisions affecting the substantial interests of the parties in this docket based on the record in this docket alone, or does the Commission intend to consider evidence from other dockets where all parties in this docket will not be participating? The additional order on prehearing procedure sheds little light on this, although it seems that the Commission intends to consider evidence from the other dockets in this proceeding. It would be inappropriate to determine the substantial interests of the parties in this docket based on evidence from other dockets in which all parties are not participating.

14. The Citizens request the Commission to conduct a "plain vanilla" rate case during the rate case hearings set for the end of



January and beginning of February, 1993. All quality of service items and items related to "incentive" plans should be deferred until combined hearings to be held in April, 1993. Eight days are already set aside for hearings in April. At that time the Commission would review Southern Bell's quality of service, its actions during the incentive plan, its proposal for alternative regulation, the issues in docket 910163-TL, and the issues in docket 900960-TL.

15. Alternatively, the Commission should allow all issues raised by the Citizens at the issues workshops in this docket to be included in this docket and heard during the hearings in January and February.<sup>4</sup>

**The Commission should include an issue about mismanagement at  
Southern Bell**

16. The Citizens raised an issue about imposing a mismanagement penalty on Southern Bell for its activities during the existing incentive plan related to repair and network sales. Although a similar issue has been included in dockets 900960-TL and 910163-TL, the mismanagement issue should be included in this case. The Commission will be setting Southern Bell's rates in this case. A mismanagement penalty that would lower the rate setting point

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<sup>4</sup> Attachment 1, for example, contains some of the issues raised by the Citizens.

should be included in this docket so that it can be taken into account when setting Southern Bell's rates. The Florida Supreme Court upheld the Commission's application of such a penalty in the most recent Gulf Power rate case.

WHEREFORE, the Citizens respectfully request the full Commission to review the prehearing officer's additional order on prehearing procedure.

Respectfully submitted,

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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 23rd day of November, 1992.

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