

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

Docket No. 920260-TL  
Filed: 12/07/92

ATTORNEY GENERAL'S RESPONSE AND OPPOSITION TO SOUTHERN  
BELL'S MOTION TO STRIKE THE TESTIMONY OF MICHAEL R. MALOY,  
R. EARL POUCHER, MARK N. COOPER AND JOSEPH P. CRESSE

The Attorney General of the State of Florida, Robert A. Butterworth ("Attorney General"), by and through his undersigned counsel, hereby files his Response and Opposition to Southern Bell's Motion to Strike the Testimony of Michael R. Maloy, R. Earl Poucher, Mark N. Cooper and Joseph P. Cresse filed by BellSouth Telecommunications, Inc., d/b/a/ Southern Bell Telephone and Telegraph Company ("Southern Bell") on November 25, 1992.

1. By its motion, Southern Bell alleges that the Attorney General and Office of the Public Counsel have filed testimony in this docket to be heard in the January/February hearings which clearly violates Prehearing Officer Commissioner Clark's Additional Order on Prehearing Procedure. Southern Bell asserts that the referenced testimony "delves into subjects that have expressly been reserved for the April hearings, [that the] testimony should be stricken in its entirety and the parties in

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question admonished to file testimony only on the pertinent issues".

2. The Additional Order on Prehearing Procedure was issued on November 13, 1992, one working day before the intervenor testimony was due, and has been challenged by the Office of Public Counsel in its Motion for Review of Additional Order on Prehearing Procedure, filed November 23, 1992. In this motion, which the Attorney General supports, Public Counsel notes that "quality of service" is specifically included as Issue 31 in this case, as is Southern Bell's performance under the existing so-called incentive regulation (Issue 26b) and its request for even more flexible regulation from the Commission under the so-called "rate cap regulation" (Issues 28 and 29).

3. While the testimony of Michael R. Maloy addresses the subject matter of another Southern Bell docket, which is currently scheduled to begin being heard in April, 1993, it also squarely addresses the question of whether Southern Bell was meeting this Commission's quality of service regulations during its over four years of incentive regulation. Prohibiting any challenge of Southern Bell's assertion that it fairly met the quality of service standards during the course of the January hearings will result in a one-sided performance favoring Southern Bell's assertions.

4. Southern Bell's compliance with this Commission's quality of service standards and whether there was fraudulent reporting of Southern Bell's quality of service performance are

also critically central to the issues of whether the telecommunications company performed reliably and credibly under the incentive regulation it is now operating under and, more importantly, whether it should be granted even greater flexibility and less regulatory supervision under the new ratemaking scheme it is requesting. Again, Michael R. Maloy's testimony is clearly relevant to these issues.

5. The issue is not properly whether the Prehearing Officer's order has been violated and whether the parties should be admonished. Rather, the issue should be whether the Prehearing Officer's decisions are subject to challenge by reference to the full Commission. The answer is that the Prehearing Officer's order is susceptible to challenge and has, in fact, been challenged by Public Counsel. Until such time as the Commission hears argument on and decides Public Counsel's motion, Southern Bell's Motion to Strike is not ripe.

6. Lastly, Rule 25-22.048(2), F.A.C. provides that:  
Each party shall have the right: to present evidence relevant to the issues; to cross-examine opposing witnesses; to impeach any witness in accordance with s. 90.608, F.S., regardless of which party first called that witness to testify; and to rebut the evidence presented against it.


Furthermore, subsection (3) of the rule provides that:

Any relevant evidence shall be admitted if it is the sort of evidence which is normally admissible in civil trials in Florida or which reasonably prudent persons are accustomed to relying upon in the conduct of their affairs.

The testimony of Michael R. Maloy is relevant to the issues currently scheduled for hearing in this docket in January, 1993. Irrespective of whether his testimony is also relevant in another docket, it should not be excluded in this case where it is both relevant and crucial to the central issues.

WHEREFORE, the Attorney General opposes the motion to strike the testimony of Michael R. Maloy, R. Earl Poucher, Mark N. Cooper and Joseph P. Cresse filed by Southern Bell on November 25, 1992.

Respectfully submitted this 7th day of December, 1992.

  
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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 7th day of December, 1992.

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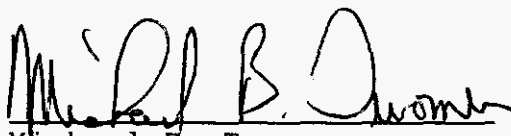
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