

FLORIDA PUBLIC SERVICE COMMISSION

Fletcher Building
101 East Gaines Street
Tallahassee, Florida 32399-0850

M E M O R A N D U M

January 7, 1993

TO : DIRECTOR, DIVISION OF RECORDS AND REPORTING

FROM : DIVISION OF COMMUNICATIONS [NORTON, GREER, O'PRY] *nan* *426* *JKW*
DIVISION OF LEGAL SERVICES [GREEN, HATCH, WILSON] *JKW*

RE : DOCKET NO. 920260-TL: COMPREHENSIVE REVIEW OF THE REVENUE
REQUIREMENTS AND RATE STABILIZATION PLAN OF SOUTHERN BELL
TELEPHONE AND TELEGRAPH COMPANY

AGENDA: JANUARY 19, 1993

CRITICAL DATES: HEARINGS BEGIN JANUARY 25, 1993

SPECIAL INSTRUCTIONS: I:PSC/CMU/WP/920260.RCM
Attachment I

CASE BACKGROUND

This docket was initiated pursuant to Order No. 25552 in Docket No. 911109-TL, to conduct a full revenue requirements analysis and to evaluate the Rate Stabilization Plan under which Southern Bell has been operating since 1988. Order No. 25552 required that the Company file Minimum Filing Requirements (MFRs) on May 1, 1992. This was done; however, the Company notified the Commission in its Test Year Request letter of March 25, 1992, that it would not be submitting its testimony or proposals at the time of the MFR filing. The Chairman subsequently approved a revised case schedule that required Southern Bell to submit its testimony and updated MFRs by July 15, 1992. The Company, in a letter dated April 10, 1992 waived the eight and twelve month statutory time periods, and also agreed that all decisions in this case would be made effective January 1, 1993.

In its filing, Southern Bell proposed to **decrease** revenues in 1993 by approximately \$13.3 million. In addition, it proposed permanent revenue reductions of \$47.4 million based on amounts identified by the Commission in Docket No. 880069-TL, and which are currently being credited on monthly customer bills per Order No. 25558. The total 1993 impact, based on a July 1, 1993 effective date was estimated to be a **reduction** of approximately \$60.8 million.

The Company's proposals include implementation of an Optional Expanded Local Service offering that would incorporate measured usage rates for all local and intraLATA calls within forty miles of the calling party's exchange. Southern Bell has also proposed that the Commission modify its current form of regulation from rate of return with earnings sharing to a form of price cap regulation.

Hearings have been scheduled to begin January 25, 1993. In addition, five service hearings have been held with one more scheduled in Miami on January 11.

On August 17, September 28, and October 9, 1992, issue identification workshops were held by the staff. At the conclusion of the third workshop, the parties were still unable to agree on all the issues that should be heard in this proceeding. A hearing was therefore held on October 20, 1992, to determine how the issues should be framed for this docket.

Order No. PSC-92-1195-PCO-TL was issued October 21, 1992 establishing the prehearing procedure in this docket. Order No. PSC-92-1320-PCO-TL, an additional order on prehearing procedure, was subsequently issued November 13 as a result of the Issue Hearing. That order required that evidence relating to Dockets Nos. 900960-TL, 910163-TL, and 910727-TL would not be incorporated in the main hearings to be held in this docket beginning January 25, 1993. (These three dockets constitute the Commission's investigations into the non-contact sales, repair and rebate practices, respectively, of Southern Bell.) Rather, evidence relating to those dockets would be heard during hearings already scheduled for those dockets in April, 1993. Then, following the conclusion of the hearings in those dockets, additional time would be scheduled to take testimony and other evidence regarding the impact of Dockets Nos. 900960-TL, 910163-TL, and 910727-TL on the final outcome of the issues presented by this docket. Specifically, a final determination on both the present and the proposed incentive regulation plans would be held in abeyance, pending the outcome of Dockets Nos. 900960-TL, 910163-TL, and 910727-TL. In addition, this order extended by approximately two weeks the filing dates for intervenor and staff testimony, and prehearing statements.

The Office of Public Counsel (OPC) filed separate motions requesting the Commission review portions of each of the procedural orders. Staff's recommendations stem from these motions and its own discovery in each of these cases.

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission consolidate DN 920260-TL (the rate case) and DN 900960-TL, 910163-TL, and 910727-TL (the investigation dockets) for purposes of coordinating the order in which issues are addressed?

RECOMMENDATION: Yes, the Commission should consolidate these dockets. The record for the dockets will be treated as one, and the Commission will make the decisions on all issues in July, 1993.

STAFF ANALYSIS: The logical order in which to hear and decide these cases would have been to hear the investigation dockets first, then the rate case. This was not possible primarily because the hearings for the investigation dockets could not be scheduled until after the Attorney General's investigation was complete. As a result, the earliest we could schedule those hearings was April, 1993. By then, the hearings for the Southern Bell rate case were already set to begin in January, 1993.

In an effort to set a logical order to the proceedings given these constraints, the procedural order (PSC-92-1320-PCO-TL) required that issues concerning Incentive Regulation would not be decided until after the Commission had made its decisions in the Investigation dockets. Based on discovery, motions filed by OPC, and discussions among the staff involved in these four dockets, staff now recommends that the Commission take a further step and consolidate these proceedings. The practical effect of this decision would be that there would be no restrictions on evidence and cross examination, and the Commission would vote on all the issues after all hearings are completed. In effect, it would be considered as one proceeding with the hearings held over two time periods. The schedule would be handled as follows:

1) Hold the January/February hearings to hear revenue requirement and rate design/pricing policy and related issues. If there is time, as much of the quality of service and incentive regulation issues as possible could also be heard.

2) File testimony on the investigation issues in February, 1993 as scheduled.

3) Continue the hearings beginning April 12, with testimony and cross examination on the investigation issues and the remaining issues in the rate case, i.e., those involving quality of service and incentive regulation.

4) Staff would file its recommendations in July on the rate case and investigation issues.

5) The Commission would render its decisions on all issues in July, 1993.

The basis for this recommendation is staff's belief that to attempt to separate and isolate the issues between rate case and investigation matters would not be efficient and perhaps, not possible. For example, the result of the quality of service issues, as well as the investigation dockets which address Southern Bell's management practices, could affect the Commission's decision on return on equity and the incentive regulation proposals in the rate case. We believe that an undue amount of time would have to be spent in the rate case hearing, arguing and determining what evidence would be admissible in the rate case proceeding.

Moreover, given the unavoidable length of time between the January/February hearings and April hearings, some evidence and testimony would have to be reiterated at the later date. Based on the proceedings as currently scheduled, Southern Bell has already filed Motions to Strike the testimony of several witnesses concerning the quality of service issue in the rate case (Issue 31). In addition, staff assigned to the rate case has found in the course of discovery, that some of its analysis is stymied by the claims of confidentiality and privilege on the part of Southern Bell in connection with the investigation dockets. As it is, parties are filing identical motions in both the rate case and investigation dockets, all of which must be dealt with separately at this time. By consolidating the dockets, the issues can be addressed fully, and decisions made in an orderly fashion.

ISSUE 2: Should the Commission grant the requests in Public Counsel's (OPC) Motions for Review of procedural Orders Nos. PSC-92-1195-PCO-TL and PSC-92-1320-PCO-TL in this docket?

STAFF RECOMMENDATION: If the Commission adopts staff's recommendation in Issue 1, then both OPC's motions should be denied on the basis of the rulings in Order No. PSC-92-1320-PCO-TL and the consolidation of the dockets. Order No. PSC-92-1320-PCO-TL should be clarified to explain the basis for excluding an issue on imputation of revenues and expenses of Inside Wire Maintenance.

If the Commission denies staff's recommendation in Issue 1, it should deem Public Counsel's request for review of Order No. PSC-92-1195-PCO-TL moot, based on the rulings in Order No. PSC-92-1320-PCO-TL. Public Counsel's request for review of the subsequent Order No. PSC-92-1320-PCO-TL should be deemed moot in part, denied in part and granted in part as follows:

- 1) Where OPC's second motion reiterates its requests in its first motion, the requests should be deemed moot.
- 2) OPC's Motion to include an issue on the imputation of revenues and expenses of Inside Wire Maintenance should be denied.
- 3) OPC's requests to conduct a "plain, vanilla rate case" in the January/February hearings, and to move all issues involving quality of service and incentive regulation to the April hearings, should be granted.
- 4) OPC's proposal to include an issue on general mismanagement in this case should be denied.

STAFF ANALYSIS:

OPC Motion for Review of Order Establishing Procedure (filed October 26, 1992)

In that Motion, OPC requested the full Commission review the portion of Order No. PSC-92-1195-PCO-TL (issued October 21, 1992) that required intervenors to file testimony on November 2, 1992. OPC cited various motions to compel Southern Bell to provide responses to its discovery requests that had not been ruled upon by the Commission. These motions to compel relate to documents concerning non-contact sales, repair and rebate activities. Until the Commission had ruled and the discovery responses had been provided, OPC argued that it could not file its testimony in the rate case. In addition, OPC argued that the Commission could not rule on Incentive Regulation without reviewing the improper activities during the pendency of the plan.

Staff's recommendation to deem this Motion moot is based on the Additional Order on Prehearing Procedure issued November 13, 1992 (PSC-92-1320-PCO-TL). As summarized in the Case Background, that order ruled that all matters involving the issues in the Investigation dockets would be addressed in the April hearings and not in the January/February hearings; that testimony on the impact of the Investigation dockets on the Company's Incentive Regulation proposals and rulings on the Incentive Regulation issues would be made following the Commission's decisions in the Investigation dockets. Intervenor testimony was subsequently filed November 16, 1992 per the terms of that order. Rulings on the Motions to Compel are being addressed separately from this recommendation. As a result of the Prehearing Officer's ruling, the discovery which is the subject of the Motions to Compel would not be required for the January/February hearings. Intervenor testimony was subsequently filed November 16, 1992.

Motion for Review of Additional Order Establishing Procedure
(filed November 23, 1992)

In this motion, OPC reiterated its requests for rulings on its Motions to Compel. In addition, it has requested full Commission review of several other points in the order as follows:

1) An Issue related to the imputation of revenues and expenses from Inside Wire Maintenance when setting regulated rates should be heard in this docket.

OPC argues that such an issue was included in the recent United and GTE rate cases, that OPC raised the same issue in this case, that the order "inexplicably" does not contain such an issue, and that it should be included.

This matter was argued during the issue hearing. The Prehearing officer took the issue of Inside Wire under advisement. Upon issuance of Order No. PSC-92-1320-PCO-TL, the Prehearing Officer did not include the issue in the final issues list. Staff recommends that the Order be clarified that this issue is not appropriate for this proceeding based on the Commission's rulings in United and GTE that the appropriate procedure is generic rulemaking on Inside Wire (Orders Nos. PSC-92-0708-FOF-TL and PSC-92-1277-FOF-TL). Since Inside Wire Installation and Maintenance is currently unregulated, rule revisions to reregulate it would be required prior to addressing any policy changes in treatment of revenues and expenses.

2) 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 should be heard at the same time.

On this point, OPC argues that the hearing procedure as set forth in Order No. PSC-92-1320-PCO-TL would allow Southern Bell to present its side of the Quality of Service and Incentive Regulation issues in the January/February hearings, and would preclude introduction of opposing evidence at that time if the evidence related to matters in the Investigation dockets. OPC also argues that the parties are not the same in the rate case and the Investigation dockets.

In order to resolve this inequity, OPC proposes that the Commission conduct a "plain vanilla" rate case during the hearing dates of January 25 through February 10. All quality of service items and incentive plan items should be deferred until combined hearings to be held in April. Alternatively, OPC proposes that all issues be heard in their entirety in the January/February hearings.

Southern Bell, in its response, states that "the problem with Public Counsel's argument is the implied contention that the isolated issues that are a part of [the Investigation dockets] are the primary and overriding matters to be considered by this Commission in judging Southern Bell's quality of service throughout the last four years." (p. 3) Southern Bell argues that the current procedure "will effectively deal with Public Counsel's concerns without resorting to the inappropriate procedure that it advocates." Finally, Southern Bell notes that parties in the rate case with a substantial interest in the investigation dockets' issues may intervene in those dockets.

If the Commission approves staff's recommendation to consolidate the dockets, then OPC's request should be denied in that a portion of the issues may be able to be heard in the January/February hearings.

If the Commission does not approve consolidation of the dockets, then OPC's request should be approved, and all issues involving quality of service and incentive regulation should be heard in their entirety during the April hearings. Staff agrees with OPC that it would not be appropriate for Southern Bell to present its case, without opportunity for rebuttal by the parties if their rebuttal involves matters at issue in the Investigation dockets. Given the limited time to hear all these matters, staff believes it would be very time consuming and complex to attempt to limit rebuttal and cross examination in the first hearing, and then to conduct rebuttal and cross examination on those issues in the second hearing. We have come to this conclusion after reading the testimony and discovery responses. Adoption of OPC's proposal would result in moving the following issues, as summarized below, to the April hearings:

- 9a. Should there be a penalty imposed for poor quality of service? If so, what should be the penalty?
- 26a. What criteria should the Commission use to evaluate Southern Bell's performance under, and its proposal for, an incentive regulation, price cap or price regulation plan?
- 26b. Has the current incentive regulation plan under which Southern Bell has been operating achieved the goals as set forth in DN 880069-TL? What are the positive and negative results, if any?
27. Southern Bell (SBT) proposes to change its current form of regulation. The proposed plan includes numerous components. On the basis of these components, what are the pros and cons of this plan?
28. Does SBT's proposed Price Regulation Plan meet the requirements of S. 364.036(2)(a)-(g) F.S.?
29. Should the Commission approve an incentive regulation plan for SBT? If so, what is the appropriate plan? If not, what is the appropriate form of regulation for SBT? How does the appropriate form of regulation meet the requirements of Chap. 364.036(a)-(g) F.S.?
31. Is Southern Bell's quality of service adequate?
- 31a. Do Rules 25-4.070 & 25-4.110 require Southern Bell to provide a rebate for an out-of-service condition when the company fails to notify, within 24 hours of the trouble report, that the trouble is located in the Customer Premises Equipment (CPE)?

We are concerned that there will not be enough time in the period scheduled in the April hearings to hear all these issues as well as the twenty eight issues in the investigation dockets. That concern was part of the reason for our recommendation to consolidate the cases, i.e., thus possibly being able to use some of the hearing days scheduled in January and February for some of these issues. Ideally, we would add to the number of days in the April hearings. Unfortunately, that does not seem possible.

3) The Commission should include an issue about mismanagement at Southern Bell.

OPC argues that although such an issue is included in the Investigation dockets, it should also be included in the rate case on the assumption that the Commission will be setting rates in this docket. Thus, the Commission could consider lowering the rate

setting point as a mismanagement penalty. Southern Bell opposes this position, arguing that no one has alleged any mismanagement apart from matters related to the Investigation dockets.

If the Commission approves staff's recommendation in Issue 1, then this request should be denied as unnecessary, since all issues will be decided at the same time.

If the Commission does not approve staff's recommendation in Issue 1, then it should do either of the following:

a) If the Commission decides not to set rates in the Special Agenda in the rate case currently scheduled for March 26, 1993, but to wait until after the rulings in the investigation dockets, then OPC's request is superfluous. This issue is currently scheduled to be addressed in the April hearings.

b) If the Commission does plan to set rates in the rate case at the March special agenda, then it should add an issue in the rate case to set money subject to refund pending its final rulings in the investigation dockets. Moreover, it should be noted that Southern Bell has agreed that all decisions made in this case would be effective as of January 1, 1993. In any event, it would not be appropriate to include an issue on general mismanagement in the rate case if the Commission lets Order No. PSC-92-1320-PCO-TL stand, since no other matters relating to the Investigation dockets would be heard in the rate case.

ISSUE 3: Should this docket remain open?

RECOMMENDATION: Yes, this docket should remain open.

STAFF ANALYSIS: This docket should remain open pending hearings and a final determination of the issues in this and related cases.

920260.RCM

**SUGGESTED ORGANIZATION OF ISSUES
FOR HEARINGS**

Following is a list of issue topics and the approximate number of witnesses addressing issues within each topic as currently scheduled in the rate case. Some of the witnesses address more than one topic, so the total is greater than the actual number of witnesses currently scheduled to testify. However, this information gives a rough idea of the relative length of time required for each topic at hearing. The list also includes the number of issues in the investigation dockets.

JANUARY/FEBRUARY HEARINGS (JAN. 25-29, FEB. 1, 3-5, 8-10)

<u>Topic</u>	<u>No. of Witnesses in DN 920260</u>	<u>No. of Issues</u>
Overview	1	0
Cost of Capital	4	5
Revenue Requirements	7	50
Affiliated Transactions	1	8
Attrition	3	1
Cross-Subsidy Issues	1	5
Rate Design/Pricing Policy	12	35
(?) Quality of Service	2	3

APRIL HEARINGS (APR. 12-16, 19, 21-23)

Investigation Issues	3 *	28
Incentive Regulation/ Competition	15	5

* Testimony is scheduled to be filed in the Investigation dockets in February.