



Motion to Postpone Hearings. In support thereof, the Attorney General states as follows:

1. By his motion, filed February 15, 1993, Public Counsel asks the full commission to reverse Prehearing Officer Susan Clark's Order No. PSC-93-0177-PCO-TL, issued February 8, 1993, and to set the time for filing testimony a reasonable amount of time after Public Counsel receives all outstanding discovery and has had sufficient time to follow-up on that discovery.

2. Public Counsel's motion was occasioned by the issuance of Commissioner Clark's order, requiring the filing of direct testimony by Public Counsel and intervenors on February 15, 1993, notwithstanding the fact that substantial and critical discovery responses essential to Public Counsel and other parties' case preparation were outstanding from Southern Bell.

3. Discovery from Southern Bell either not yet supplied or not available long enough to be fully utilized includes:

A. Southern Bell responses to Public Counsel requiring Southern Bell to identify those persons known to Southern Bell to have knowledge about the falsification of repair records. Following the Florida Supreme Court's denial of Southern Bell's petition for review on February 4, 1993, Southern Bell has reportedly supplied these responses to Public Counsel but is seeking confidential protection for

the responses from the Commission. Notwithstanding Public Counsel's recent receipt of these responses, there has been inadequate time to review them, let alone conduct follow-up discovery.

B. The Southern Bell audit specifically performed by Southern Bell to determine whether it falsified quality of service/repair record reports submitted to this commission. This audit, which apparently goes to the very heart of the extent of Southern Bell's record falsification (acknowledged in President Joe Lacher's testimony filed February 15, 1993), would presumably answer the questions of the extent and duration of the record falsification, what level of Southern Bell management was aware of the falsification and how early, and, critically important for determining the actual quality of service provided for several years, the materiality of the falsification in Southern Bell's being able to achieve the 95% return to service rate required by Commission rule. Notwithstanding the Commission ordering Southern Bell to produce this audit, Southern Bell has the right to appeal this order based on its claim that the audit is privileged. To forestall the delay occasioned by any Southern Bell appeal of its order, the Commission should order Southern Bell to reproduce the audit independently of the audit ordered by its attorneys. Doing so would result

in the production of the same information and reduce the additional delay in going to hearing in this case.

C. The National Association of Regulatory Utility Commissioners (NARUC) audit undertaken to determine the affect of Southern Bell's many subsidiary and affiliated companies and transactions on the revenue requirement in this proceeding. As is well known to this Commission, Southern Bell's intransigence in assisting this Commission's auditors has resulted in the failure of this Commission to complete the audit, let alone to complete it in time to be incorporated in this case as intended by Commission staff. The Attorney General fully agrees with the position of the Commission staff that the Commission not only has "the authority to access affiliate records but a responsibility to do so. Otherwise, the Commission cannot meet its statutory responsibility to ensure no cross subsidy exists between regulated and non regulated operations." As pointed out by Commission staff, the Commission has a statutory obligation to ensure no unregulated expenses coming from Southern Bell's many affiliated operations are included in the regulated rates approved by this Commission. This is clearly an issue related to the revenue portion of the case and, in an abundance of caution, the Commission should not go to hearing knowing it does not have the information it must have to fulfill its statutory obligations.

4. On February 17, 1993, Public Counsel filed his Motion to Postpone Hearings, asking that the Chairman and Prehearing Officer postpone the hearings in this proceeding presently set for March and April, 1993. Public Counsel asked that the hearings not be rescheduled until such time as he has received all outstanding discovery from Southern Bell, had an opportunity to analyze and follow-up on that discovery, and filed testimony based upon his analysis of the discovery.

5. The present proceeding is one of the most critical rate cases to be heard by this Commission in recent history. It involves the review of an extended period of so-called "incentive regulation", granted to Southern Bell. Aside from the fact that the Commission's jurisdiction to have granted incentive regulation is questionable, this regulatory "experiment" promised many benefits, including greater operating efficiency and higher quality of service, in exchange for the supra-normal profits allowed. Whether Southern Bell's claimed increased efficiency and enhanced quality of service were factual or merely the result of dishonest pencil pushing should be revealed by the discovery resisted, and not yet supplied, by Southern Bell.


6. This proceeding is of momentous importance because Southern Bell, which stands accused of, and admits some, "reprehensible" behavior in connection with its non-contact sales and repair record reporting, is not merely asking for a

continuation of the incentive regulation, but for even greater profits and increased regulatory flexibility from this Commission. It is the Attorney General's position that the special treatment Southern Bell has received since 1988 should cease immediately and that it should be returned to the traditional rate-of-return regulation every other jurisdictional utility regulated by this Commission has always received. Furthermore, it is the Attorney General's view that the Commission can neither properly evaluate Southern Bell's prior conduct nor accurately gauge its future performance without the benefit of the discovery Southern Bell has withheld to date.

7. The Attorney General supports Public Counsel's Motion to Postpone Hearings because he believes that obtaining and analyzing the still-outstanding discovery is essential to conducting this case properly and because he is convinced conducting it properly is more important than getting it behind us.

WHEREFORE, the Attorney General of the State of Florida requests that this Commission postpone the hearings presently scheduled in these dockets for March and April, 1993 and not reschedule them until Southern Bell is compelled to provide the outstanding discovery, reasonable time has been had to examine and analyze the discovery and responsive discovery undertaken, and responsive testimony filed.

Respectfully submitted this 4th day of March, 1993.

  
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**CERTIFICATE OF SERVICE**  
**DOCKET NOS. 920260-TL, 910163-TL, 900960-TL, 910727-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 4th day of March, 1993.

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