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March 18, 1993

Mr. Steve C. Tribble  
Director, Division of Records and Reporting  
Florida Public Service Commission  
101 East Gaines Street  
Tallahassee, Florida 32301

RE: Docket No. 920260-TL, 900960-TL, 910163-TL, 910727-TL

Dear Mr. Tribble:

Enclosed is an original and fifteen copies of Southern Bell Telephone and Telegraph Company's Response and Opposition to Public Counsel's Motion for Review by the Full Commission of the Prehearing Officer's Order on Oral Motion. Please file this document in the above-captioned dockets.

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,

*Nancy B. White*  
Nancy B. White

- ACK \_\_\_\_\_
- AFA 3
- APP \_\_\_\_\_
- CAF 1
- CMU \_\_\_\_\_
- CTR \_\_\_\_\_
- EAG \_\_\_\_\_
- LES 1
- LIN 6
- OPC \_\_\_\_\_
- RCH 1
- SEC 1
- WAS \_\_\_\_\_
- OTH \_\_\_\_\_

Enclosures

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

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*28*

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FP30-RECORDS/REPORTING

**CERTIFICATE OF SERVICE**

**Docket No. 920260-TL**

**Docket No. 900960-TL**

**Docket No. 910163-TL**

**Docket No. 910727-TL**

I HEREBY CERTIFY that a copy of the foregoing has been  
furnished by United States Mail this 18th day of March, 1993 to:

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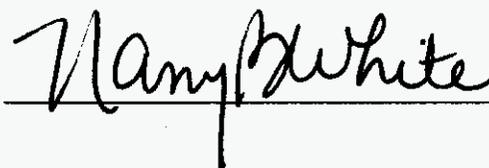
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Nancy White

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Comprehensive Review of the Revenue Requirements and Rate Stabilization Plan of Southern Bell Telephone and Telegraph Company	)	Docket No. 920260-TL
)		
In re: Show cause proceeding against Southern Bell Telephone and Telegraph Company for misbilling customers	)	Docket No. 900960-TL
)		
In re: Petition on behalf of Citizens of the State of Florida to initiate investigation into integrity of Southern Bell Telephone and Telegraph Company's repair service activities and reports	)	Docket No. 910163-TL
)		
In re: Investigation into Southern Bell Telephone and Telegraph Company's compliance with Rule 25-4.110(2), F.A.C., Rebates	)	Docket No. 910727-TL
)		Filed: March 18, 1993

SOUTHERN BELL TELEPHONE AND TELEGRAPH COMPANY'S  
RESPONSE AND OPPOSITION TO PUBLIC COUNSEL'S  
MOTION FOR REVIEW BY THE FULL COMMISSION OF THE  
PREHEARING OFFICER'S ORDER ON ORAL MOTION

COMES NOW, BellSouth Telecommunications, Inc. d/b/a Southern Bell Telephone and Telegraph Company ("Southern Bell" or "Company"), pursuant to Rule 25-22.038(2)(b), Florida Administrative Code, and files its Response and Memorandum in Opposition to the Office of Public Counsel's ("Public Counsel") Motion for Review of the Prehearing Officer's Order on Oral Motion, and states the following:

1. On September 11, 1992, Public Counsel filed a Motion to Require Sworn Testimony by Southern Bell regarding the Company's quality of service reports. Southern Bell opposed this motion on the basis that Southern Bell was presenting testimony by Joseph

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P. Lacher and A. M. Lombardo, both of whom were qualified to discuss issues concerning Southern Bell's quality of service.

2. Public Counsel's motion was argued on January 15, 1993. At that time, the Prehearing Officer required Southern Bell to designate an individual who could respond to questions regarding the Schedule 11 (quality of service) reports. See Transcript of Prehearing Conference, January 15, 1993, p. 22. On January 29, 1993, Southern Bell advised Public Counsel and the Prehearing Officer that Wayne Tubaugh was the designated witness. At that time, Southern Bell explained the basis for Mr. Tubaugh's testimony. Public Counsel subsequently deposed Mr. Tubaugh and was apparently not satisfied that Mr. Tubaugh was the witness Public Counsel desired. Public Counsel thereupon made an Oral Motion at the February 12, 1993 Prehearing Conference that Southern Bell be required to file written testimony of someone other than Mr. Tubaugh regarding the veracity of Southern Bell's Schedule 11 reports. On March 1, 1993, the Prehearing Officer entered Order No. PSC-93-03185-PCO-TL denying Public Counsel's Oral Motion. Public Counsel has taken exception to this order and filed the instant Motion for Review by the Full Commission.

3. The standard of review adopted by the Florida Public Service Commission ("Commission") requires Public Counsel to demonstrate that the Prehearing Officer committed an error of fact or law in her decision such that it requires the full Commission to reconsider her decision. Diamond Cab Co. of Miami v. King, 146 So.2d 889 (Fla. 1962). The motion may not be used

as an opportunity to reargue matters previously considered merely because Public Counsel, as the losing party, disagrees with the judgment or order. Id. at 891.

4. No error of fact or law has been demonstrated by Public Counsel to warrant a reversal on reconsideration of the Prehearing Officer's Order. In this Motion, Public Counsel is merely complaining that Southern Bell has not provided a witness acceptable to Public Counsel. In her Order, the Prehearing Officer correctly noted that the concerns raised by Public Counsel, to the extent they may have any validity at all, which Southern Bell disputes, went to the burden of proof regarding the veracity of the Company's quality of service reports. Southern Bell submits that it has carried this burden with the testimony of Mr. Tubaugh.

5. When Southern Bell named Mr. Tubaugh as the appropriate witness to testify to its quality of service reports, the Prehearing Officer specifically addressed Public Counsel's concerns about the competency of the witness by directing Southern Bell to have Mr. Tubaugh make inquiries of persons who provide the underlying data for the Schedule 11 reports in order to verify that the information so provided was correct. See Transcript of Prehearing Conference, January 15, 1993, p. 22. As stated by Mr. Tubaugh in his deposition, he contacted the employees who provide the information for the Schedule 11 reports and queried them as to the truthfulness and accuracy of that information. See Deposition of Wayne Tubaugh, February 12, 1993,

pp. 7, 9-10 and 12-13. Thus, Public Counsel's assertion that Mr. Tubaugh is incompetent to know whether the reports are truthful is simply incorrect.

6. Mr. Tubaugh can attest to the actions he took to determine the truthfulness and accuracy of the information contained in the Schedule 11 reports. He will be subject to full cross-examination on this issue by all parties, including Public Counsel. The Commission will be in a position to give Mr. Tubaugh's testimony the appropriate weight and determine whether Southern Bell has demonstrated the accuracy and truthfulness of its Schedule 11 reports. No other testimony concerning this issue should or need be required from Southern Bell.

WHEREFORE, Southern Bell requests that the Commission deny Public Counsel's Motion for Review of Order No. PSC-93-0318-PCO-TL and affirm the order of the Prehearing Officer.

Respectfully submitted this 18th day of March, 1993.

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