

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

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In the matter of :
Comprehensive Review of the :
Revenue Requirements and Rate : DOCKET NO. 920260-TL
Stabilization Plan of SOUTHERN :
BELL TELEPHONE AND TELEGRAPH :
COMPANY :

Show Cause Proceeding Against :
SOUTHERN BELL TELEPHONE AND :
TELEGRAPH COMPANY for : DOCKET NO. 900960-TL
Misbilling Customers. :

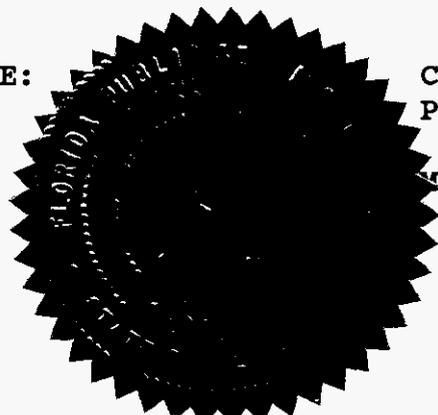
Petition on behalf of Citizens :
of the State of Florida to :
Initiate Investigation into : DOCKET NO. 910163-TL
Integrity of SOUTHERN BELL :
TELEPHONE AND TELEGRAPH :
COMPANY's Repair Service :
Activities and Reports. :

Investigation into SOUTHERN :
BELL TELEPHONE AND TELEGRAPH :
COMPANY's Compliance with : DOCKET NO. 910727-TL
Rule 25-4.110(2), F.A.C, :
Rebate. :

PROCEEDING: STATUS CONFERENCE 4E

BEFORE: COMMISSIONER SUSAN F. CLARK
Prehearing Officer

DATE: Monday, October 18, 1993



DOCUMENT NUMBER-DATE
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TIME:

Commenced at 1:00 p.m.
Concluded at 1:22 p.m.

PLACE:

FPSC Hearing Room 106
Fletcher Building
101 East Gaines Street
Tallahassee, Florida

REPORTED BY:

SYDNEY C. SILVA, CSR, RPR
Official Commission Reporter

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APPEARANCES CONTINUED:

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I N D E X

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P R O C E E D I N G S

(Hearing convened at 1:00 p.m.)

COMMISSIONER CLARK: Let's call the hearing to order.

MS. GREEN: Would you like a notice read?

COMMISSIONER CLARK: Please.

MS. GREEN: Pursuant to notice this time and place was set for status conference before Susan Clark as Prehearing Officer. These are the dockets 920260, 910727, 900960 and 910163.

COMMISSIONER CLARK: We'll take appearances.

MR. ANTHONY: Hank Anthony with the late-arriving Nancy White and even later-arriving Doug Lackey on behalf of Southern Bell.

MS. KAUFMAN: Vicki Kaufman on behalf of Florida Interexchange Carriers Association.

MR. HOFFMAN: Kenneth A. Hoffman, on behalf of the Florida Pay Telephone Association, Inc., and McCaw Cellular Communications.

MS. RICHARDSON: Sue Richardson, and Charlie Beck will be here, on behalf of the Office of Public Counsel.

MR. TYE: Michael W. Tye on behalf of AT&T Communications of the Southern States, Inc.

MS. GREEN: Angela Green, Tracy Hatch and

1 Jean Wilson on behalf of the Commission Staff.

2 COMMISSIONER CLARK: It's my understanding
3 that we're here because -- we went ahead with this
4 meeting because Southern Bell had some issues having to
5 do with supplemental testimony. Public Counsel, do you
6 have anything you need to bring up?

7 MR. BECK: Yes, we do.

8 COMMISSIONER CLARK: Let's just hold that.
9 Are there any other parties here today that need to
10 bring up anything? I want to be able to dismiss you
11 all if there's nothing that you have pending that I
12 need to take up.

13 Mr. Anthony, briefly can you tell me what
14 issues we need to take up first on behalf of Southern
15 Bell? Mr. Lackey, please?

16 MR. LACKEY: Yes, ma'am. We have one that
17 we're particularly interested in and that has to do
18 with the NARUC audit. The CASR calls for the NARUC --

19 COMMISSIONER CLARK: No, just tell me the
20 issue. NARUC audit, anything else? Is that it?

21 MR. LACKEY: It's our responsive testimony to
22 it's the date for our filing the response to testimony,
23 the NARUC audit is the issue.

24 COMMISSIONER CLARK: Okay. Anything else?

25 MR. LACKEY: It's not the NARUC audit. We

1 want to talk about the immunity issues that are
2 apparently pending for some of the witnesses that Mr.
3 Beck has subpoenaed.

4 COMMISSIONER CLARK: Okay.

5 MR. LACKEY: We want to talk about
6 coordinating discovery here in the remaining three
7 months we have. I think we have a problem about
8 multiple depositions of witnesses and what have you,
9 and we'd like to talk about that just a little bit.
10 And I think that's -- I have another issue. You
11 apparently got the letter from Mr. Clendenin related to
12 the NARUC audit, that's a separate issue, we probably
13 need to talk about that just briefly. And I think
14 that's it. Anything else would be -- that's it.

15 COMMISSIONER CLARK: Public Counsel, what are
16 your issues that we need to bring up?

17 MR. BECK: Two issues, one about having a
18 hearing and setting the date to determine the refund,
19 if any, for 1993 and the beginning of 1994. The second
20 is to get a ruling on Dr. Cooper's testimony.

21 COMMISSIONER CLARK: Mr. Hoffman, did you
22 want to say anything?

23 MR. HOFFMAN: Commissioner Clark, the Florida
24 Pay Telephone Association does not have any issues
25 requiring discussion, nor does McCaw Cellular

1 communications so I would ask permission to be excused.

2 COMMISSIONER CLARK: You're excused. And
3 likewise anyone else who doesn't have an issue they
4 need to take up at this time nor are they interested in
5 any of the issues highlighted by either Mr. Lackey or
6 Mr. Beck, you may be excused.

7 MR. HOFFMAN: Thank you.

8 MR. TYE: Thank you, Commissioner.

9 COMMISSIONER CLARK: Staff, we don't have
10 anything we need to take up?

11 MR. HATCH: No, no, ma'am, specifically,
12 other than what's already there, we need to talk about
13 that a little bit.

14 COMMISSIONER CLARK: Okay, go ahead, Mr.
15 Lackey.

16 MR. LACKEY: Why don't we begin with the
17 scheduling issue?

18 Right now, the CASR calls for the Staff to
19 file what we have been referring to as the NARUC audit
20 on December 17 and --

21 COMMISSIONER CLARK: December 17?

22 MR. LACKEY: December 17. The Staff's
23 regular testimony is scheduled for November 22nd and
24 this, the NARUC audit, is scheduled for December 17th.
25 We have a rebuttal period for the regular testimony,

1 our testimony has to be filed on December 10th. But
2 there is no provision in the current CASR to respond to
3 the NARUC audit and we'd like you to establish a date
4 at which we can file testimony responding to the
5 Staff's NARUC audit filing.

6 COMMISSIONER CLARK: Okay. Did you have a
7 proposed date in mind?

8 MR. LACKEY: We'd like two weeks after the
9 filing, which would make it right at the end of the
10 year, the 30th or the 31st of December. I don't know
11 which day that falls on, though.

12 MR. HATCH: Basically the 17th is a Friday.
13 Two weeks from that is the 31st.

14 MR. LACKEY: So that's a problem.

15 MR. HATCH: That's a holiday.

16 MR. LACKEY: Friday the 31st is a holiday?

17 MS. GREEN: Yeah.

18 MR. HATCH: That's what it says here.

19 MR. LACKEY: So we'd like to do it on the
20 30th, I guess, since -- I don't want to start the new
21 year off on the wrong foot so we'd rather do it on the
22 30th.

23 MR. HATCH: Yeah. They're doing the holiday
24 on the Friday rather than the Monday.

25 COMMISSIONER CLARK: Mr. Beck, any objection

1 to that?

2 MR. BECK: No. The rebuttal I guess is to
3 all parties, not just Southern Bell, is it?

4 COMMISSIONER CLARK: I'm sorry. Are you
5 suggesting that you would want to file something
6 responsive to the NARUC audit?

7 MR. BECK: We might, yes. We'd like that
8 opportunity, at least.

9 COMMISSIONER CLARK: Mr. Lackey?

10 MR. LACKEY: Pardon?

11 COMMISSIONER CLARK: Mr. Beck has suggested
12 they may want to file --

13 MR. LACKEY: Oh, sure, yeah, let's just
14 pile on.

15 COMMISSIONER CLARK: Right. Supplemental
16 testimony relating to the NARUC audit from Southern
17 Bell and any other party wishing to provide a response
18 is due December 30th.

19 MS. GREEN: Just as a point of clarification,
20 that would be strictly in the nature of rebuttal to the
21 NARUC audit?

22 COMMISSIONER CLARK: Absolutely.

23 Immunity issues?

24 MR. LACKEY: I understand that there is --
25 Mr. Beck either has or is in the process of subpoenaing

1 some 30 people who have taken the Fifth in the various
2 depositions that have been given. I understand that
3 there is a process afoot to try to get transactional
4 immunity for these people so that they can testify in
5 the proceeding, and we fully support that, I guess.
6 But if we're going to get that immunity, we need to
7 know about it sufficiently in advance so that we can
8 depose these people and find out what they're going to
9 say before we learn about it on the stand.

10 Now, we're three months in advance; I
11 understand the Staff is working on this; I just want to
12 know if we could, you know, get some kind of idea when
13 all this might come together. But we have a discovery
14 cutoff on January 10th; obviously, and without some
15 kind of exception, we won't be allowed to take
16 depositions after the 10th of January. And I'm just
17 trying to figure out whether this will be resolved
18 before this so we can take these depositions --
19 assuming immunity is granted -- before the 10th, or at
20 least alert you so that if we ask you for a waiver
21 after the 10th so that we can conduct additional
22 discovery that we won't have surprised you with this.

23 COMMISSIONER CLARK: Okay. Do you have any
24 further information, Mr. Beck?

25 MR. BECK: Other than that the statute allows

1 the Commission to approach the state attorneys --

2 COMMISSIONER CLARK: The statute does?

3 MR. BECK: Yes.

4 COMMISSIONER CLARK: Okay.

5 MR. BECK: We have Staff -- I believe a
6 letter -- I'm trying to remember, there's a letter
7 from the statewide prosecutor to, I believe, the
8 Commission.

9 MR. HATCH: There was a letter in response to
10 one that we had written to Melanie Hines, seeking to do
11 it the shortcut way and get the statewide grand jury
12 since they still have jurisdiction over the
13 investigation, to do it that way. And she said
14 basically she was disinclined to do that and referred
15 us to every state attorney and every chief judge in
16 every circuit where we found these people. So, I'm in
17 the process of putting that back into the pipeline.

18 I anticipate taking it either to the next
19 Internal Affairs or walking it through the suite a
20 letter to each state attorney on behalf of the
21 Commission, seeking their support in granting immunity.
22 And then once we get a resolution on that, then
23 petitioning the chief judge in each one of those
24 circuits. That will be done fairly quickly.

25 COMMISSIONER CLARK: How many circuits are

1 there?

2 MR. HATCH: I don't know, I haven't counted.
3 I don't think there are that many total. You're
4 talking about mostly -- well, I don't know. You've got
5 Miami and a bunch. I'd have to go back and look.

6 MR. BECK: Spread out a bit. It's not every
7 circuit or anything, but they're spread out quite a
8 bit.

9 COMMISSIONER CLARK: Not every circuit in the
10 state.

11 MR. HATCH: No.

12 MR. BECK: Not every circuit.

13 COMMISSIONER CLARK: Okay.

14 MS. RICHARDSON: It's wherever Southern Bell
15 is located that these people work and live.

16 COMMISSIONER CLARK: Tracy, when do you
17 anticipate getting that on Internal Affairs?

18 MR. HATCH: As soon as I possibly can, but
19 I'm going to try and get it out of here certainly by
20 the end of the month.

21 COMMISSIONER CLARK: The end of October.
22 Okay. Let's work on getting that done.

23 MR. BECK: Commissioner Clark, depending --
24 we'd certainly have no objection to late discovery, I
25 mean, that's just one of those things. Just like the

1 supreme court ruling, we're working under a bit of
2 uncertainty as to what's going to happen.

3 COMMISSIONER CLARK: All right. Well, what
4 we'll do is we'll do our part to get it resolved, and
5 as quickly as we can, and with the understanding there
6 may have to be late discovery when that immunity is
7 resolved.

8 MR. LACKEY: That's fine. And everything is
9 progressing just fine, I just didn't want to surprise
10 anybody with it later.

11 COMMISSIONER CLARK: I appreciate it.

12 MR. LACKEY: We're running out of status
13 conferences.

14 COMMISSIONER CLARK: That's okay. It'll give
15 me time to look into the issue. Okay. Coordinating
16 discovery?

17 MR. LACKEY: We've got a lot of discovery
18 left between now and December 10. And we took some
19 depositions last week, and it's clear to me that the
20 people who were deposed last week are probably going to
21 have to be deposed again. And I just want to ask your
22 guidance or assistance in asking the parties, including
23 us, I suppose, to coordinate discovery so we don't have
24 multiple depositions of the same witness.

25 COMMISSIONER CLARK: Explain to me how that

1 is happening. Is it other parties to this proceeding
2 are wanting to schedule separate depositions of the
3 same people?

4 MR. LACKEY: Well, what we ran into last week
5 was Mr. Beck wanted to depose some people, including
6 Mr. Reid, and the Staff had questions to ask of Mr.
7 Reid. But obviously -- and this is probably a poor
8 example because they were asking Mr. Reid about his
9 accounting adjustments and I suppose they're going to
10 want to ask him about his testimony in more detail.
11 But he's got to be deposed again.

12 He's going to file rebuttal testimony on
13 December 10, so they're probably going to want to
14 depose him until after he files rebuttal testimony.
15 And all I'm trying to do is, basically for the sake of
16 economy, to get the number of depositions down to a
17 manageable limit. Because we're going to be taking
18 depositions as well, and I'd just like to have the
19 Staff and Public Counsel and the other parties at least
20 talk to each other and see if they can reach some
21 mutually agreeable time to take these deposition so we
22 don't get hit with multiple requests.

23 COMMISSIONER CLARK: Let me ask a question:
24 Is it generally Staff and Public Counsel where the
25 coordination needs to be? Do you generally find that

1 the other parties in the case are also conducting
2 duplicative depositions?

3 MR. LACKEY: Depends on the subject matter.

4 On cost of capital, it's Staff, Public Counsel, and, at
5 least last time, it was the cable folks as well. So
6 it depends. They have their own issues.

7 COMMISSIONER CLARK: All right. Let me ask a
8 question: Did the cable folks separately notice the
9 depositions?

10 MR. LACKEY: No, not last time. All I'm
11 trying to do is avoid that possibility. I'm
12 anticipating a problem.

13 We're all going to be squeezed the last three
14 months. I mean, a five-week trial, this thing is going
15 to be a bear to get ready for. And I'm trying to
16 anticipate the problem so I don't have to move to quash
17 a notice or something else and take everybody's time.

18 COMMISSIONER CLARK: Mr. Beck, do you have
19 any comment? You'll just do the best you can?

20 MR. BECK: Yes.

21 COMMISSIONER CLARK: I would ask all the
22 parties to the extent they can to coordinate
23 depositions. I think it would be helpful for the
24 parties who anticipate -- I'd like Staff to maybe call
25 a meeting and contact any party who anticipates needing

1 to conduct a deposition and maybe see if you can't set
2 out a mutually satisfactory calendar to conduct these
3 depositions. But I would add that this is something I
4 want you to do voluntarily. And if it can't be done,
5 it can't be done. I understand that we may have to
6 have duplicative depositions; but I think we ought to
7 at least try to plan. But trying to plan with as many
8 calendars as we have may be difficult.

9 Will you --

10 MR. HATCH: Yes, ma'am, we'll poll the
11 parties. Probably what we'll do is send out a memo to
12 all the parties seeking responses by a certain date as
13 to who and when they would like to depose people and
14 schedule a --

15 COMMISSIONER CLARK: That might be a good
16 idea just to estimate the time when you anticipate
17 being ready to depose somebody. Okay.

18 MR. LACKEY: Right. And I appreciate that.

19 I mean, for instance, we're going to get the
20 Staff's testimony on November 22nd, we have to file a
21 rebuttal on December 10th and Thanksgiving falls in the
22 middle. You know, if we get notice for four or five
23 depositions the first week in there, it gets a little
24 tight, that's all. Just a little planning.

25 COMMISSIONER CLARK: The last thing you had

1 was Mr. Clendenin's letter.

2 MR. LACKEY: Yes, ma'am. You served copies
3 of that letter on all the parties so I assume they
4 understand what I'm talking about. But in that letter,
5 Mr. Clendenin suggested that the regulatory AVP for
6 BellSouth/BellSouth Enterprises would be happy to or
7 would try to handle any problems we had. And I advised
8 him that I did not believe he could communicate with
9 you directly because it would be an ex parte
10 communication.

11 COMMISSIONER CLARK: Okay. Is that why I
12 never heard from him? (Laughter)

13 MR. LACKEY: Thank you. I'm sure a copy of
14 that transcript will make nice reading at my
15 termination proceeding. So that the record is clear, I
16 approached your counsel on numerous occasions about
17 this. Help me here.

18 MR. HATCH: That is correct.

19 COMMISSIONER CLARK: And I approached it from
20 my end by having my aide find out if -- my concern was
21 whether the audit was going smoothly and I had my aide
22 check with the auditors and there was nothing further
23 for me to do. And I did not take offense or was
24 concerned that I had not heard from him.

25 MR. LACKEY: Well, since it was an ex parte,

1 we communicated with your attorneys as soon as we saw
2 the letter.

3 COMMISSIONER CLARK: And I'm sure somewhere
4 along the line that was communicated to my aide and
5 everything is fine.

6 MR. LACKEY: Everything is fine. That's what
7 I wanted to hear, thank you.

8 COMMISSIONER CLARK: Make sure you get that
9 on the record.

10 THE REPORTER: Yes, ma'am, I have it.

11 MR. LACKEY: Make sure you get that on the
12 record, please. And if you want Mr. New, by gosh,
13 you'll send for him.

14 COMMISSIONER CLARK: Yes. I had specifically
15 checked ahead of time to see if I needed him here and I
16 did not and that's why we did not bring it up with you.

17 MR. LACKEY: Thank you.

18 COMMISSIONER CLARK: And I assume that
19 concludes the issues you wanted to bring up.

20 Mr. Beck?

21 MR. BECK: Commissioner, it occurred to me
22 that we have money subject to refund retroactive to
23 January 1, 1993. We'll be looking in the rate case for
24 setting rates effective, I guess, July 1, 1994. I'm
25 not aware of any mechanism to have a hearing and to

1 determine Southern Bell's actual earnings in 1993 and
2 the first half of 1994 with the Commission adjustments
3 that get approved in the case.

4 COMMISSIONER CLARK: That's right, there's an
5 agreement that it will go back to January of 1993.

6 MR. BECK: With the adjustments the
7 Commission takes.

8 COMMISSIONER CLARK: Right, okay.

9 MR. BECK: Which seems to me we have an issue
10 in the case that was raised this morning about what's
11 the amount of revenues to be refunded, if any. But
12 that won't be available in the hearings at the end of
13 January and the beginning of February. Typically, Bell
14 takes 75 days to compute their intrastate earnings.

15 It would seem to me we need a short hearing
16 sometime after the agenda conference is set to
17 determine the amounts to be refunded and how. It just
18 occurred to me that procedurally there is a problem
19 that needs a solution.

20 COMMISSIONER CLARK: Has any other party
21 given that some thought?

22 MR. HATCH: It appears to us that you really
23 can't -- I mean, Mr. Beck is right, you can't really
24 determine '93 earnings up front, it can't be done.
25 Their numbers won't be final until March, plus their

1 tax number won't be final until the third quarter.
2 There's lots of things that can't be done up front, so
3 you're going to almost be forced to have a separate
4 subproceeding to determine '93 actuals; because that's
5 what everybody agreed to what we're going to do
6 for '93.

7 COMMISSIONER CLARK: Mr. Anthony?

8 MR. ANTHONY: I understand Mr. Beck's
9 concern; and it's a matter of getting the surveillance
10 report filed and everybody agreeing to it, whatever
11 that number is, or disagreeing and resolving that. To
12 the extent that's the underlying issue, then we don't
13 have -- we understand the concern and I don't have a
14 solution. It may be that we have to have a subsequent
15 hearing, it may be that there's no dispute about '93
16 and so there's no need for a hearing, but I understand
17 the concern that it can't be dealt with in the rate
18 case itself.

19 COMMISSIONER CLARK: Mr. Hatch, I'd like to
20 leave this with you to get in touch with the Chairman's
21 office and the telecommunications staff and see how you
22 want to handle it. If you need my assistance, let me
23 know.

24 MR. BECK: Our last item is a request for a
25 ruling on the confidentiality of Dr. Cooper's

1 testimony.

2 COMMISSIONER CLARK: You don't have one yet?

3 MR. BECK: No.

4 MR. HATCH: Dr. Cooper's testimony is in the
5 pipeline, we're working on the draft now -- in part
6 because of Mr. Beck's prompting, but in part because we
7 only got it back again in July, because it was unclear
8 to us what was going to happen with it. We sent it
9 back thinking he might want to change something; he
10 sent it back saying, "I don't want to change anything,"
11 and that's where we are.

12 COMMISSIONER CLARK: Okay.

13 MR. BECK: Just trying to get it done now so
14 it's not --

15 COMMISSIONER CLARK: No, I appreciate that.
16 The reason to have these status conferences was so we
17 would stay on top of things. So I'll get with Staff
18 and we'll get that done as soon as possible.

19 MR. BECK: Thank you.

20 COMMISSIONER CLARK: One last thing, Mr.
21 Gross, would you like to make an appearance?

22 MR. GROSS: Michael Gross, on behalf of the
23 Attorney General's Office.

24 COMMISSIONER CLARK: Does anyone else need to
25 make an appearance? I think that concludes the Staff's

1 conference. Thank you.

2 (Thereupon, the status conference concluded
3 at 1:22 p.m.)

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1 F L O R I D A)
 2 :
 3 COUNTY OF LEON)

CERTIFICATE OF REPORTER

4 I, SYDNEY C. SILVA, CSR, RPR, Official
 5 Commission Reporter,

6 DO HEREBY CERTIFY that the Status Conference
 7 4E in this cause, Docket Nos. 920260-TL, 900960-TL,
 8 910163-TL, and 910727-TL, was heard by the Florida
 9 Public Service Commission at the time and place herein
 10 stated; it is further

11 CERTIFIED that I stenographically reported
 12 the said proceedings; that the same has been
 13 transcribed under my direct supervision, and that this
 14 transcript, consisting of 23 pages, constitutes a true
 15 transcription of my notes of said proceedings.

16 DATED this 20th of October, A. D., 1993.

17 *Sydney C. Silva*

18 SYDNEY C. SILVA, CSR, RPR
 19 Official Commission Reporter
 20 (904) 488-5981

21 STATE OF FLORIDA)
 22 :
 23 COUNTY OF LEON)

24 The foregoing certificate was acknowledged
 25 before me this 20th of October, 1993, by SYDNEY C.
 SILVA, who is personally known to me.

Pamela A. Canell

PAMELA A. CANELL
 Notary Public - State of Florida



PAMELA A. CANELL
 MY COMMISSION # CC 248413 EXPIRES
 December 16, 1996
 BONDED THRU TROY FAIR INSURANCE, INC.