

ORIGINAL  
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BEFORE THE PUBLIC SERVICE COMMISSION

In re: Comprehensive review of revenue requirements and rate stabilization plan of SOUTHERN BELL. DOCKET NO. 920260-TL

In re: Investigation into the integrity of SOUTHERN BELL'S repair service activities and reports. DOCKET NO. 910163-TL

In re: Investigation into SOUTHERN BELL'S compliance with Rule 25-4.110(2), F.A.C., Rebates. DOCKET NO. 910727-TL

In re: Show cause proceeding against SOUTHERN BELL for misbilling customers. DOCKET NO. 900960-TL

In re: Request by Broward Board of County Commissioners for extended area service between Ft. Lauderdale, Hollywood, North Dade, and Miami. DOCKET NO. 911034-TL

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APP \_\_\_\_\_  
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PREHEARING STATEMENT OF ATTORNEY GENERAL

Robert A. Butterworth, Attorney General of the State of

Florida, files his Prehearing Statement in accordance with Rule 25-22.038(3), Florida Administrative Code, and Order No. PSC-93-1567-PCO-TL, and states:

A. WITNESSES

- 1. Mike Maloy may be called to testify regarding Issues 25a and b and 26, Incentive Regulation; Issues 201-207 regarding fraudulent sale of optional services; Issues 301-310 regarding

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falsification of repair records; Issues 401-404 regarding adequacy of refunds and compensation, remedial actions, and penalties; and Issues 39 and 39a regarding quality of service and rebates.

2. Shirley Perring may be called to testify regarding staff reviews and falsification of repair records, Issues 301-310.

3. Robert Rupe may be called to testify regarding staff reviews and falsification of repair records, Issues 301-310.

4. John E. Bulko may be called to testify regarding CON Status on trouble reports and falsification of repair records, Issues 301-310.

5. Hampton Booker may be called to testify regarding staff reviews, falsification of repair records and security, Issues 301-310.

6. Melanie Davis may be called to testify regarding staff reviews and falsification of repair records, Issues 301-310.

7. Michael Jansen may be called to testify regarding falsification of repair records, Issues 301-310.

8. James Powell may be called to testify regarding falsification of repair records, Issues 301-310.

9. David E. Bailey may be called to testify regarding fraudulent sale of optional services, Issues 201-207.

10. Edward B. Olsen may be called to testify regarding fraudulent sale of optional services, Issues 201-207.

11. Donald Babair may be called to testify regarding falsification of repair records, Issues 301-310.

12. James H. Ramsey may be called to testify regarding falsification of repair records, Issues 301-310.

13. Harry Van Gordon may be called to testify regarding corporate security investigation of falsification of repair records, Issues 301-310.

14. Robert Fecht may be called to testify regarding staff reviews and falsification of repair records, Issues 301-310.

15. Martha Thomas may be called to testify regarding falsification of repair records, Issues 301-310.

The Attorney General reserves the right to call additional witnesses as may be required by later filed testimony, the completion of discovery, or new issues identified at the prehearing conferences.

B. EXHIBITS

1. Mike Maloy will sponsor the following exhibits:
  - a. MRM-1 Resume of Michael R. Maloy;
  - b. MRM-2 Final Report of the Tenth Statewide Grand Jury;
  - c. MRM-3 Advisory Opinion of the Tenth Statewide Grand Jury;
  - d. MRM-4 Chronological Summary of Key Dates;
  - e. MRM-5 Tifford letter to U.S. Attorney and F.B.I.;
  - f. MRM-6 Composite exhibit of Tifford/F.B.I. correspondence;
  - g. MRM-7 Tifford/Falsetti Complaint to F.C.C.;
  - h. MRM-8 F.C.C. letter to Tifford forwarding complaint to FPSC;
  - i. MRM-9 Alan Taylor letter to Tifford;
  - j. MRM-10 PSC Customer Trouble Reports Rules;
  - k. MRM-11 Calculation of Percentage of out-of-service timely

repaired;

- l. MRM-12 Sample Trouble Report;
- m. Settlement Agreement between Southern Bell and Office of Statewide Prosecution;
- n. Customer Complaints filed at the PSC;
- o. Sample of Trouble Reports;
- p. Staff Reviews for years 1988, 1989, and 1990 for the Miami Metro Maintenance Center;
- q. Staff Review for year 1988 for the North Dade Maintenance Center;
- r. Sworn Statements given to the Attorney General by witnesses 2 through 14 listed above.

2. Each of the witnesses listed in paragraphs 2 through 14, in addition to Mr. Maloy, will sponsor his or her sworn statement.

The Attorney General reserves the right to introduce additional exhibits as may be required by later filed testimony, the completion of discovery, or new issues identified at the prehearing conferences.

C. BASIC POSITION

The Commission did not have authority to approve the incentive profit provisions of Southern Bell's current incentive rate scheme and it still lacks statutory authority to approve the similar excessive profit incentives requested in the pending petition. Operating efficiency is not an aspiration to be rewarded by excessive profits. It is statutorily mandated for all

regulated utilities, Southern Bell included, and at the price of reasonable profits.

The 1990 revisions to Chapter 364, Florida Statutes, demand a finding that an alternative method of regulation include adequate safeguards to assure that the rates for monopoly services do not subsidize competitive services. Such a finding is a statutory, mandatory prerequisite, which has not been met here. Secondly, there is no showing, as required by Section 364.036(2)(c), Florida Statutes, that Southern Bell's alternative method will provide identifiable benefits to consumers not otherwise available under existing regulatory procedures. It is the Attorney General's position that any such benefits must be either new substantive monopoly telecommunications services not offered by the other companies, which are governed by traditional ratemaking, or operating efficiencies that substantially exceed that of other companies. Absent these two findings, alternative regulation (excessive profit or not) cannot be approved.

The alternative method of regulation sought here would result in reduced regulatory oversight by the Commission, when recent history suggests that more rather than less regulatory oversight is indicated. A Southern Bell settlement with the Office of the Statewide Prosecution involved allegations of sales fraud, customer misbilling, and fraudulent repair reports occurring during Southern Bell's incentive regulation. Under incentive regulation, Southern Bell's misconduct was neither discovered nor rectified by this Commission although the facts

were reported to the Commission by a so-called "whistleblower." It would be irresponsible to grant Southern Bell reduced regulatory flexibility in the face of its recent history. Regulatory prudence would dictate a return to the same full rate base regulation governing every other utility in this State.

Incentive regulation has failed to achieve its goals of efficiency and quality of service by providing the wrong incentives. On the contrary, this alternative method of regulation has promoted and fostered an environment at Southern Bell where quality of service and ethical conduct have been subordinated to higher earnings. Moreover, incentive regulation has failed to produce revenue sharing for customers.

Incentive regulation contemplates reward for exemplary behavior, not for fraud and mismanagement. Fraud and mismanagement should be punished rather than rewarded. Therefore, Southern Bell should be removed from incentive regulation and punished by imposition of penalties, including an equity penalty, in the event that the allegations of fraud and mismanagement are sustained. Additionally, the Commission should institute more effective monitoring and auditing procedures similar to those contained in the Settlement Agreement between Southern Bell and the Office of Statewide Prosecution in order to prevent a recurrence of any further misconduct.

#### D. FACT ISSUES

See Attorney General's Position on Issues below.

E. LEGAL ISSUES

See Attorney General's Position on Issues below.

F. POLICY ISSUES

See Attorney General's Position on Issues below.

ATTORNEY GENERAL'S POSITION ON ISSUES

The Attorney General will respond below to specific issues for which it is taking a position at this time. The Attorney General's position with respect to all other issues for which there is no specific response is, "No position at this time." The Attorney General is not taking a position on such issues either because the matter is not presently at issue for the Attorney General or because the Attorney General is unable to take a position at this time. The Attorney General hereby reserves the right to raise and take a position on any such issue at the time of hearing or in its post-hearing statement as provided for in Order No. PSC-93-0644-PCO-TL and Rule 25-22.038(3), Florida Administrative Code. Paragraphs A and B above regarding witnesses and exhibits, delineate which witness will address each issue. Each of the positions on issues stated below is numbered in accordance with the numbering of issues identified in Appendix A to Order No. PSC-93-1726-PCO-TL.

COST OF CAPITAL

9. The Attorney General joins and adopts the position of Public Counsel as stated in its prehearing statement and in the testimony of its witness, James A. Rothschild, as to the appropriate cost of common equity capital for Southern bell.

### INCENTIVE REGULATION

25a. The criteria which the Commission should use in evaluating the performance of Southern Bell under incentive regulation should include, but not be limited to, decreased costs, increased revenues, increased efficiency, increased sharing of revenues with ratepayers, enhanced quality of service, and unique services, all measured in relation to the performance of other LEC's operating under ROR regulation.

25b. The incentive regulation plan under which Southern Bell is operating has failed to achieve its goals of lower costs and improved services in relation to the performance of LEC's operating under ROR regulation. Any positive results such as decreased costs of service to ratepayers have not been shown to be a result of the impetus of incentive regulation, but rather a function of declining costs experienced by the rest of the industry. Under the misplaced incentives of incentive regulation, Southern Bell has subordinated quality of service and ethical conduct in order to reduce costs and increase revenues. Moreover, incentive regulation has not produced revenue sharing for customers of the utility.

26. The Commission should not continue the incentive form of regulation for Southern Bell, and should return Southern Bell to the traditional rate of return form of regulation.

### FRAUDULENT SALES OF AND MISBILLING FOR OPTIONAL SERVICES

201. Southern Bell has been responsible for billing customers through non-contact sales programs for services they did not



order and did not desire.

202. Southern Bell service representatives failed to fully inform customers of the least expensive services available and Southern Bell has been responsible fo billing customers for services they did not desire.

203. The Attorney General is unable to take a position at this time, since Southern Bell has failed to file weekly statements of its refunds as ordered by the Commission.

204. Southern Bell's higher management had knowledge of improper billing of customers in connection with non-contact sales programs and failed to implement proper controls and take remedial action with respect to customers who had been victimized by improper billing.

205. Southern Bell failed to have adequate internal controls in place to protect customers from being improperly billed for services they did not order or desire.

206. Southern Bell service technicians, as opposed to customer service representatives, engaged in boiler room selling activities in connection with the sale of optional services, which had a negative impact on their ability to install and repair telephone equipment. In addition to effecting sales of optional services by hard sell, misleading sales tactics, service representatives actually fabricated sales by simply taking a list of subscribers and adding and billing for services never ordered or desired by the customers. The Commission should impose specific new controls and eliminate incentive regulation to

remedy the aforementioned misconduct in the future.

207. Chapter 364.03, Florida Statutes, requires that all charges made by telephone companies be fair, just, reasonable, and sufficient, and that service be adequate and sufficient. Rule 25-4.107(1), Florida Administrative Code, requires that a customer be informed of each optional service and its price. Southern Bell's fraudulent sales of optional services and misdirection of service representatives constitutes a violation of Florida Statutes and rules of the Commission.

#### FALSIFICATION OF REPAIR RECORDS

301. a. Southern Bell employees misreported and miscoded trouble reports by a variety of methods and filed these false reports with the Commission. One method was to back date the "CLEAR" and "CLOSED" times on the trouble report. Another method utilized was called "building the base."

b. Falsification of trouble reports and the resulting misreporting of the results to the Commission was widespread, affecting customers throughout the state.

c. Southern Bell and its high level management failed to take timely and adequate action to prevent recurrence of the falsification of repair records even after becoming aware of it through their own personnel and staff reviews.

302. Chapter 364.03(1), Florida Statutes, requires that all services rendered by Telephone Companies be fair, just, reasonable, and sufficient. Southern Bell has violated this statute as well as Rule 25-4.070(1), (3), (5), and (9), and Rule

25-4.0185, Florida Administrative Code, requiring the Company to meet specific repair standards, keep accurate records, and make periodic reports to the Commission.

303. Southern Bell management encouraged the behavior that led to falsification of repair records in violation of Florida Statutes and Commission Rules in regard to its repair and rebate operations. Managers were told their jobs depended on compliance with service objectives and that reporting compliance was more important than actual compliance. Also management failed to provide adequate maintenance personnel to actually meet service objectives while emphasizing the importance of reporting compliance. Furthermore, management ignored staff reviews showing the misconduct and stifled internal investigation.

304. a. Southern Bell has filed service reports that included falsified repair reports. The reports show repairs performed in less than 24 hours when they were not timely repaired, as well as timely repair of equipment not reported as out of service by the customer.

b. The accuracy of Southern Bell's Quarterly Reports is suspect due to impaired credibility engendered by past falsification.

c. Strict management controls should be imposed upon Southern Bell by the Commission to assure the filing of accurate reports.

305. Southern Bell did not have adequate controls in place to prevent falsification of trouble reports and repair records.

Internal controls within the maintenance operating system were insufficient, and system controls, such as audits and service observing were inadequate. Additionally, high level management ignored evidence contained in Southern Bell's own Staff Reviews and stifled its internal investigation of the fraudulent practices.

306. Rebates have been denied customers who were out of service over 24 hours and not notified until after the initial 24 hour period that the fault was in the customer's equipment. Rebates have been denied to customers by closing out trouble reports before the trouble was repaired. Rebates have been denied customers by classification of service outages as "service affecting" troubles, not subject to rebates. Rebates have been denied customers due to internal coding of the Company that precluded a rebate, even though it was due.

307. Customers were denied rebates as a result of mismanagement by Southern Bell. Falsification of repair records was promoted and fostered by management, and denial of rebates was a necessary consequence of the management pressure to show compliance with service objectives. Alternatively, higher level management was negligent in failing to exercise adequate supervisory control over middle and lower level management to assure ethical and legal operation of the Company.

308. The Commission should clarify the intent of Rule 25-4.110(2), F.A.C., to require that Southern Bell and all other Telephone Companies must calculate rebates to provide 1/30th of

the monthly rate for each day, or fraction thereof, when the company fails to repair a service outage within the 24 hour target.

309. Southern Bell should be required to file a report of all rebates provided to customers as a result of the investigative dockets, including the telephone number, date of rebate, amount of rebate, reason for the rebate, and the time period during which the error occurred. Due to the passage of time and the absence of all records, it is impossible for the Commission to determine all instances where customers may have been overbilled by the Company.

310. The Commission should require the Company to retain all repair documents for a minimum of five years, including all documentation of internal and external review, service observations and audits. The Company should also be required to retain customer service records for five years, in order to address problems resulting from overbilling of customers.

The Attorney General joins with Public Counsel in requesting the Commission to hold this docket open for the Company, Commission staff and all other parties to engage in workshops in an attempt to develop new and adequate controls to protect consumers and insure a satisfactory level of confidence and integrity in maintenance of service.

ADEQUACY OF REFUNDS AND COMPENSATION,  
REMEDIAL ACTIONS, AND PENALTIES

401. The Settlement Agreement between Southern Bell and the Office of Statewide Prosecution provided for appropriate refunds

to customers. The Commission should offer its assistance in assuring that the Company executes its obligations under the Settlement Agreement and to assure that the Company has diligently identified all customers entitled to refunds.

402. The Company has taken some steps to prevent a recurrence of the inappropriate activities as required by the Settlement Agreement. The Review Program imposed by the Settlement Agreement requires Southern Bell to implement certain described systems, operations, ethics, sales incentive and sales programs by specific implementation dates during a three year Review Period. It is recommended that the Commission impose substantially similar monitoring and review requirements on a permanent or extended basis after the three year Review Period.

403. Southern Bell should be penalized one percent on return of equity for five years for falsification of repair records and one percent on return of equity for five years for fraudulent sale of optional services. Similar substantial penalties should also be assessed in the Quality of Service and Rebate dockets.

404. The settlement with the Office of Statewide Prosecution compensated only those subscribers identified. Due to the poor record retention of Southern Bell and its lack of credibility, it is impossible to identify all customers who are due refunds. Therefore, it is imperative that a penalty be assessed for the benefit of all customers.

#### QUALITY OF SERVICE

39. Southern Bell's quality of service is not adequate.

39a. Rules 25-4.070 and 25-4.110, F.A.C., 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 (CPS).

G. STIPULATIONS

The Attorney General is not aware of any issues that have been stipulated to by the parties.

H. PENDING MOTIONS

The Attorney General does not have any pending motions on which it seeks any action.


I. INABILITY TO COMPLY

The Attorney General is not aware of any requirement set forth in Order No. PSC-93-0644-PCO-TL that cannot be complied with.

Dated this 6th day of December, 1993.

Respectfully submitted,

ROBERT A. BUTTERWORTH  
ATTORNEY GENERAL



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CERTIFICATE OF SERVICE

DOCKET NOS. 920260-TL, 910163-TL, 910727-TL, 900960-TL, 911034-TL

I HEREBY CERTIFY that a copy of the foregoing transmittal letter has been furnished by U.S. Mail this 6<sup>th</sup> day of December, 1993 to all parties on the service list.

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