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ORIGINAL  
FILE COPY

July 1, 1994

Mrs. Blanca S. Bayo  
Director, Division of Records and Reporting  
Florida Public Service Commission  
101 East Gaines Street  
Tallahassee, Florida 32301

RE: Docket No. 920260-TL

Dear Mrs. Bayo:

Enclosed are an original and fifteen copies of Southern Bell Telephone and Telegraph Company's Motion to Dismiss the Communications Workers of America's Petition on Proposed Agency Action for Formal Hearing. Please file these documents in the captioned docket.

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 (BW)

Enclosures

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

*Vinson*

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WBS

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**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 1st day of July, 1994 to:

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Nancy B. White (paw)

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Comprehensive Review of )  
the Revenue Requirements and Rate ) Docket No. 920260-TL  
Stabilization Plan of Southern )  
Bell Telephone and Telegraph ) Filed: July 1, 1994  
Company )  
\_\_\_\_\_ )

SOUTHERN BELL TELEPHONE AND TELEGRAPH COMPANY'S  
MOTION TO DISMISS THE COMMUNICATIONS WORKERS OF  
AMERICA'S PETITION ON PROPOSED AGENCY ACTION FOR FORMAL HEARING

COMES NOW, BellSouth Telecommunications, Inc., d/b/a Southern Bell Telephone and Telegraph Company ("Southern Bell") and moves that the Florida Public Service Commission ("Commission") dismiss the Communications Workers of America's ("CWA") Petition on Proposed Agency Action for Formal Hearing for the reasons set forth below.

1. By Order No. PSC-94-0172-FOF-TL, dated February 11, 1994, the Commission approved the Stipulation and Agreement Between the Office of Public Counsel and Southern Bell, as well as the Implementation Agreement for Portions of the Unspecified Rate Reductions in Stipulation and Agreement Between the Office of Public Counsel and Southern Bell (collectively, the "Settlement"). The Settlement, while effectively settling the issues in the above captioned docket, left certain sums of money available for disposition in 1994, 1995, and 1996. For example, the Settlement provided for a \$10 million revenue reduction, which was not specifically allocated, to be implemented on July 1, 1994. The Settlement allowed all parties to submit proposals as to how that \$10 million revenue reduction should be implemented. As required, on March 1, 1994, Southern Bell filed

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its rate design proposal in connection with this \$10 million revenue reduction.

2. On or about February 18, 1994, the Communication Workers of America ("CWA") filed a Proposal for Implementation of the \$10 Million Reduction. In its Proposal, the CWA requested that the \$10 million be used to fund the creation of a "workers/citizens cooperative." CWA suggested that such a cooperative be composed of the Public Counsel and members selected by the Commission, organized labor, and the public. The so-called purpose of the cooperative would be to allow the public to participate in the debate regarding the so-called information superhighway.

3. By Order No. PSC-94-0669-FOF-TL, dated June 2, 1994, the Commission approved Southern Bell's modified alternative proposal to provide for rate reductions as follows: elimination of Billed Number Screening charges for residential and business customers by approximately \$1.9 million; reduction of rates for DID trunk terminations by approximately \$800,000.00; and reduction of mobile interconnection usage rates by approximately \$7.3 million. These rate reductions were ordered to be implemented effective July 1, 1994.

4. In denying the CWA's proposed use of these funds, the Commission found that not only did the Commission lack statutory authority to create the cooperative suggested by the CWA, but that the Commission also lacked the authority to place the \$10 million at such a cooperative's disposal. Therefore, the Commission correctly rejected the CWA's proposal.

5. The Commission issued its order as a Notice of Proposed Agency Action. On June 22, 1994, the CWA filed a purported Petition on Proposed Agency Action for Formal Hearing. Southern Bell hereby moves to dismiss CWA's Petition on several grounds.

6. First, and most important, the Commission has no authority to grant the CWA's original proposal. The Commission has only such authority as is granted by statute. United Telephone Company of Florida v. Public Service Commission, 496 So.2d 116 (Fla. 1986). Chapters 350 and 364 of the Florida Statute contain the Commission's authority with regard to telecommunications companies. A statutory agency does not possess any inherent powers; it is limited to the powers granted by statute. Barry v. Garcia, 573 So.2d 932 (Fla. 3rd DCA 1991) and Context Development Co. v. Dade County, 374 So.2d 1143 (Fla. 3rd DCA 1979). Nothing in Chapters 350 and 364 gives the Commission the authority to create the cooperative suggested by the CWA or to place \$10 million to be used for rate reductions at such a cooperative's disposal. Such an action would be an improper delegation of the Commission's legislatively mandated authority.

7. The Commission recognized this limitation in its order disposing of the \$10 million stating:

The determination as to how the first round of rate reductions stemming from the Settlement...will be implemented is solely the responsibility of the Commission. Without any statutory authority, the Commission cannot delegate this decision to any other entity.

See Order No. PSC-94-0669-FOF-TL, issued June 2, 1994.

Indeed, in an earlier order, the Commission stated:

[W]e do not possess the legal capacity of a private party to enter into contracts covering our statutory duties. Indeed, we cannot abrogate - by contract or otherwise - our authority to assure that our mandate from the legislature is carried out. As a result, we may not bind the Commission to take or forego action in derogation of our statutory obligations.

See Order No. 22352, issued December 29, 1989.

8. Because of the Commission's lack of authority, as described above, the CWA's allegation that the lack of an evidentiary hearing is a denial of rights has no merit. There is no duty on the part of the Commission to grant a hearing on a proposal which is clearly outside of the Commission's statutory authority. Indeed, the Commission does not even have the right to grant such a hearing. It is the duty of the Commission to observe the law as it is written and the refusal of such a hearing was proper in all respects. Pickerill v. Schott, 55 So.2d 716 (Fla. 1951).

9. Second, CWA alleges that the Settlement required an evidentiary hearing on the rate design proposals for the allocation of the unspecified \$10 million rate reduction. However, as noted by the Commission in the order approving the Settlement, Order no. PSC-94-0172-FOF-TL, dated February 11, 1994, attempts to bind the Commission "to a specified future course of action by adoption of the Settlement must fail as a matter of law." See, e.g. United Telephone Company v. Public Service Commission, 496 So.2d 116, 118 (Fla. 1986). Thus, while the Settlement stated that hearings would be held, both the

Commission and the parties acknowledged the parties could not bind the Commission in this fashion. Moreover, the Commission declared that such provisions were void ab initio. Order No. PSC-94-0172-FOF-TL, page 6. Therefore, CWA's allegation concerning the Commission's "illegal" attempts to avoid a hearing under the terms of the Settlement is fatally flawed and must fail. The Commission was not required to hold such a hearing as discussed herein and CWA's Petition should be dismissed on that basis.

10. Third, CWA's Petition should be dismissed on the ground that it fails to comply with Commission rules and Florida Statutes. Rule 25-22.029(4) states that one whose substantial interests are affected by the Commission's proposed action may file a petition for hearing under Section 120.57, Florida Statutes in the form provided for by Rule 25-22.036. Both the statute and Rule 25-22.036 require that the party seeking such a hearing be substantially affected by the Commission's action. Further, the Commission may deny the Petition if it does not adequately state a substantial interest.

11. In order to provide a substantial interest in the outcome of the proceeding, a party must show that (1) he "will suffer injury in fact which is of sufficient immediacy to entitle him to a Section 120.57 hearing and (2) that his substantial injury is of a type or nature which the proceeding is designed to protect." Agrico Chemical Company v. Department of Environmental Regulation, 406 So.2d 478 (Fla. 2nd DCA 1981). The first part of



the test deals with the degree of injury and the second part of the test deals with the nature of the injury. Id.

12. The substantial interest alleged by the CWA is not only impermissably vague, but is beyond the legal authority of this Commission to accomplish. The CWA states that its members, as ratepayers, will be substantially injured because the Commission erred when it rejected the CWA's proposal to distribute the \$10 million to a "workers/citizens cooperative." The allegation fails the second part of the substantial interest test in that the sole injury alleged by the CWA was the Commission's rejection of the CWA's proposed cooperative. This "injury" does not fall within the zone of interest intended to be protected by Chapters 350 and 364, Florida Statutes, because the nature of the action requested was beyond the statutory authority of the Commission to grant, as discussed above. Metsch v. University of Florida, 550 So.2d 1149 (Fla. 3rd DCA 1989). Further, this allegation fails the first part of the substantial interest test because the allegation fails to show that the interest of the members of the CWA will be substantially affected in any manner that differs from the interests of the public. Florida Society of Ophthalmology v. State Board of Optometry, 532 So.2d 1279 (Fla. 1st DCA 1988). Thus, CWA's Petition should be dismissed on the basis that it does not adequately state a substantial interest within the Commission's authority.

13. Fourth, CWA's petition should be dismissed on the ground that the CWA did not identify any disputed issues of material fact which would justify a hearing under Section

120.57(1), Florida Statutes. While CWA purported to list disputed issues of material fact in Paragraph 13 (a-g) of its Petition, a close reading of these issues reveals that they are issues of law, not fact. The failure of the CWA to identify disputed issues of material fact, as opposed to legal issues, prevents the CWA from being entitled to an evidentiary hearing proceedings pursuant to Section 120.57(1). See, Florida Dept. of Transportation v. J.W.C. Company, Inc., 396 So.2d 778 (Fla. 1st DCA 1981) and Brevard Community College v. Florida Public Employees Commission, 376 So.2d 16 (Fla. 5th DCA 1979). Thus, CWA's request for a formal hearing should be dismissed for this reason as well.

14. Finally, with regard to the merits of the CWA's original proposal, the creation of such a cooperative would simply be redundant and thus a waste of limited resources. There already exist two entities whose primary function is to serve the public interest in the area of telecommunications regulation in Florida. These entities are the Commission itself and the Office of Public Counsel.

15. The legislature created the Commission to regulate public utilities and declared that purpose to be in the public interest. Section 364.01, Florida Statutes, specifically provides that the Commission shall exercise its powers to protect the public health, safety, and welfare in the area of telecommunications services. The Commission has exclusive jurisdiction to regulate and supervise telecommunications companies with respect to rates and services. See Section

364.01, Florida Statutes. The Commission is required to balance the interests of the companies it regulates with those of the state's ratepayers. See Citizens of the State of Florida v. Public Service Commission, 435 So.2d 784, 789 (Fla. 1983); Order No. 20104, issued 10/3/88 in Docket No. 880685-TL; and Order No. 17040, issued on December 31, 1986 in Docket Nos. 861362, 860674, 861139, and 860984. The creation of a cooperative as suggested by the CWA would not only be an illegal delegation of the Commission's powers, it would also be redundant of the very purpose of the Commission.

16. The legislature also provided for the appointment of a Public Counsel to "represent the general public of Florida" before the Commission. Section 350.061, Florida Statutes. Public Counsel is required to provide legal representation for all of the citizens of Florida in Commission proceedings. In order to fulfill that role, Public Counsel has specifically enumerated powers, which include appearing before the Commission to set forth any position deemed to be in the public interest. Section 350.0611, Florida Statutes. Thus, all citizens, including workers, have full and fair representation before the Commission.

17. The Citizens of the State of Florida thus have more than adequate representation with respect to telecommunications issues in the form of the Commission and Public Counsel. There is absolutely no need for a third entity to advance a possible public interest which is already thoroughly represented. This is particularly so when the \$10 Million available July 1, 1994 can

be used to reduce various telephone rates and thereby provide a direct benefit to Southern Bell's ratepayers.

18. For all these reasons, Southern Bell respectfully submits that the CWA's Petition is flawed on its face. What it seeks, this Commission cannot do. Accordingly, the Petition should be dismissed with prejudice.

WHEREFORE, Southern Bell requests that the Commission issue an Order dismissing the Petition on Proposed Agency Action of the CWA for the reasons described herein.

Respectfully submitted this 1st day of July, 1994.

SOUTHERN BELL TELEPHONE AND  
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