

Mark Richard
Attorney At Law

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August 16, 1994

VIA FEDERAL EXPRESS

Florida Public Service Commission
Division of Records and Reporting
101 East Gaines Street
Tallahassee, Florida 32301

Re: Docket No. 920260-TL

Dear Sir or Madam:

Enclosed please find an original and fifteen (15) copies of my clients' Response to Southern Bell Telephone and Telegraph Company's Motion to Dismiss filed August 10, 1994 with respect to the referenced action. Please file same.

Thank you.

ACK ✓

AFA John

APP _____

CAF _____

CML Norton

CTR _____

EAG _____

LEG Stach

LIN L

OPC _____

ROH Vinson

SEC 1

WAS _____

WTH _____

Sincerely,

Mark Richard
Mark Richard

Dictated By Mark Richard
But Signed in His Absence
To Avoid Delay.

MR:bes
Enclosures

cwa/psc.2

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90
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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Comprehensive Review of) Docket No. 920260-TL
the Revenue Requirements and Rate)
Stabilization Plan of Southern Bell)
Telephone and Telegraph Company.)
)
)

**RESPONSE IN OPPOSITION TO SOUTHERN BELL TELEPHONE
AND TELEGRAPH COMPANY'S MOTION TO DISMISS**

COME NOW Locals 3121, 3122 and 3107 Communication Workers of America, AFL-CIO ("CWA"), by and through their undersigned counsel, and file this response to Southern Bell Telephone and Telegraph Company's ("Southern Bell") most recent Motion to Dismiss CWA's Petition on Proposed Agency Action for Formal Hearing, and states:

1. CWA adopts its argument from its previously filed response to Southern Bell's Motion to Dismiss.

2. Assuming arguendo that the CWA proposal is violative of the law, CWA also specifically requested a hearing to address the \$10 million plan as proposed by the Public Service Commission (hereafter "PSC" or the "Commission"). Regardless of the Commission's opinion on the CWA plan, the union sought a hearing on the proposed agency action. There is no reason why CWA should not be afforded such hearing.

3. The PSC never sought, nor received, any definitive ruling from its own counsel as to the legality of the CWA proposal. How was it even determined that the CWA plan was in fact illegal? Additionally, CWA requested to have the PSC modify the proposal so that it would be "legal." The PSC did not even respond to such a request. However, the Commission has a practice of having Mr. Pruitt and the parties informally work out legal questions, if

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possible. CWA was denied this opportunity. The requested hearing should not be dismissed. It should be held in light of the history of this docket.

4. Finally, CWA through inadvertence did file its direct testimony at 10:30 a.m. on Tuesday, instead of 5:00 p.m. on the day before. This error occurred because counsel mistakenly thought the August 1, 1994 deadline was for servicing the document, not for filing it in Tallahassee.

In no way could anyone suffer prejudice. The hearing was scheduled for a month later than the late filed date (August 2 versus September 1). Neither Southern Bell nor staff suffered harm. (Also, the prehearing order did not indicate a late filing would be cause for a dismissal. Only the pre-hearing statement carried with it such a severe penalty).

It appears that everyone is looking for a way to "kill this case." CWA counsel have received calls from staff and Southern Bell stating that the petition was a loser and that the PSC has already made up its mind. It appears, by the nature of the calls, that the other parties are working with each other to sabotage CWA's good faith effort to have a hearing. If the parties seek an amicable resolution why don't they say that up front and in the open. Perhaps the case can be resolved. But, moving to dismiss a case because of a one-day late filed document, is a move affording little respect for our 4,000 members, Chapter 120 and the integrity of the PSC.

WHEREFORE, Locals 3121, 3122 and 3107 Communication Workers of America, AFL-CIO request the Florida Public Service Commission deny

Southern Bell's most recent Motion to Dismiss.



MARK RICHARD, ESQ.
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of America Locals 3121, 3122 and 3107
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Certificate of Service

I HEREBY CERTIFY that a true and correct copy of the foregoing
Response in Opposition to Southern Bell's Motion to Dismiss was
mailed to those individuals named on the attached distribution list
on this 16th day of August, 1994.



MARK RICHARD, ESQ.

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