

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Comprehensive review of) DOCKET NO. 920260-TL
the revenue requirements and) ORDER NO. PSC-94-0994-FOF-TL
rate stabilization plan of) ISSUED: August 18, 1994
SOUTHERN BELL TELEPHONE AND)
TELEGRAPH COMPANY.)
_____)

The following Commissioners participated in the disposition of this matter:

J. TERRY DEASON, Chairman
SUSAN F. CLARK
JULIA L. JOHNSON
DIANE K. KIESLING

ORDER GRANTING MOTION FOR EMERGENCY RELIEF

BY THE COMMISSION:

I. BACKGROUND

This docket was initiated pursuant to Order No. 25552 to conduct a full revenue requirements analysis and to evaluate the Rate Stabilization Plan under which BellSouth Telecommunications, Inc. d/b/a Southern Bell Telephone and Telegraph Company (Southern Bell or the Company) had been operating since 1988. On January 5, 1994, a Stipulation and Agreement Between OPC and Southern Bell was submitted and, on January 12, 1994, an Implementation Agreement for Portions of the Unspecified Rate Reductions in Stipulation and Agreement Between OPC and Southern Bell was also submitted (hereinafter, collectively, the Settlement). By Order No. PSC-94-0172-FOF-TL (the Order) we approved the Settlement. The Settlement requires, that rate reductions be made to certain of Southern Bell's services according to the schedule set forth in the Settlement. Some of the reductions have already been implemented. By the terms of the Settlement, certain amounts were set aside for rate reductions to be specified on the schedule established by the Settlement.

Under the parameters set forth in the Settlement, approximately four months before the scheduled effective dates of the unspecified rate reductions, Southern Bell will file its proposals for the required revenue reductions. Interested parties may also file proposals at that time. Parties which have already received or are scheduled to receive rate reductions for the

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services to which they subscribe, are generally precluded from taking positions that would benefit themselves.

In this first round of reductions, the Florida Interexchange Carriers Association (FIXCA), the Ad Hoc Telecommunications Users Group (Ad Hoc), the Department of Defense (DOD), and the Florida Pay Telephone Association (FPTA) are precluded by the Settlement from making proposals which would benefit themselves. In addition to Southern Bell, two other entities filed proposals: McCaw Cellular Communications (McCaw) and certain local chapters of the Communications Workers of America (CWA).

Under the terms of the Settlement and the Order, Southern Bell submitted its proposal to reduce its rates by \$10 million. Its filing contained a primary and an alternative proposal. Three local chapters of the Communications Workers of America (CWA), as well as McCaw Communications, Inc., also submitted proposals. By Order No. PSC-94-0669-FOF-TL, we proposed to implement a modified version of Southern Bell's alternative proposal which called for approximately \$7 million to be used to fund Southern Bell required flow through of switched access reductions to mobile interconnection rates, and the remaining \$3 million to be used to eliminate Billed Number Screening Charges to end users and to reduce DID trunk termination charges.

On June 22, 1994, CWA filed a "Petition on Proposed Agency Action for Formal Hearing" regarding Order No. PSC-94-0669-FOF-TL. On June 29, 1994, Southern Bell filed a Motion For Emergency Relief seeking to implement the rate reductions described in Order No. 94-0669-FOF-TL pending resolution of CWA's protest. CWA responded to the Motion on July 7, 1994. Southern Bell implemented the rates that are the subject of the Motion For Emergency Relief on July 1, 1994. We address herein only Southern Bell's Motion. CWA's Petition is currently set for hearing on September 1, 1994.

II. MOTION FOR EMERGENCY RELIEF

In support of its motion Southern Bell argues that the likelihood of CWA's success in securing its proposed result is remote given the legal infirmities of CWA's proposal. Further, Southern Bell argues that only the ratepayers will be harmed by the delay in implementing the proposed rate reductions. Finally, in order to avoid prejudicing any potential claim that CWA may have related to the disposition of the \$10 million, Southern Bell states that "money could still be set aside for the cooperatives proposed by CWA."

CWA responded on July 7, 1994. CWA argues that Southern Bell's Motion for Emergency Relief is for the purpose of circumventing the remedies available to CWA as prescribed by law. CWA also states that "this matter is of such importance to the CWA that oral arguments must be heard prior to any action being taken by the Public Service Commission."

CWA's argument that the requested rate reductions will circumvent CWA's potential remedies is incorrect. CWA's substantial interests are not in any way affected by the implementation of the rate reductions. The rate reductions requested by Southern Bell will be only for the period until a final disposition is reached. To the extent CWA is successful in persuading this Commission to adopt its view of the appropriate disposition of the \$10 million, the decision implementing such disposition will be prospective only. Under the settlement there is no retroactive distribution of the funds that accumulate during the pendency of the dispute to the "winners" of the Commission's final distribution decision. Accordingly, the rate reductions can not prejudice any claim that CWA may have. With respect to CWA's request for oral argument, it had ample opportunity to address its concerns during the agenda conference held July 19, 1994, during which we discussed this matter and made our decision.

Upon consideration, we find that Southern Bell's proposal to implement the rate reductions pending resolution of CWA's protest of the Order disposing of the \$10 million is appropriate and should be approved. The reductions directly benefit the customers of the services whose rates are reduced. Further, the reductions avoid Southern Bell's retention and accumulation of the revenues that are required by the Settlement to be returned to the benefit of ratepayers.

As discussed above, we have approved the Motion for Emergency Relief. A question now arises as to what effect, if any, our approval has on the Settlement. The Settlement provides that if there is a delay in the implementation of the reductions, Southern Bell will refund the revenues from the amount set aside that accumulate between the implementation date established by the Settlement and the actual implementation date. The Settlement does not by its terms expressly provide for interim rate reductions. Southern Bell and Public Counsel state that the implementation of rate reductions during the interim until a final decision is reached is consonant with the stipulation. We agree. Therefore, we find that the implementation of the interim rate reductions in this instance is consistent with the intent of the Settlement and our approval has no effect on the Settlement.

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We note that on July 1, 1994, Southern Bell implemented the rate reductions described in Order No. PSC-94-0669-FOF-TL without prior authorization. We understand that part of the reason the rates were put into effect stems from the issuance of Order No. 94-0669-FOF-TL and the associated protest period. In order to comply with the Order if it had become final, Southern Bell had to begin the implementation process before the protest period had expired. It appears logistically difficult if not impossible to have stopped the reductions before the July 1 effective date at the point CWA's protest was filed on June 22, 1994. However, it is troubling that Southern Bell has left the reductions in place without any authorization in anticipation that the Commission would approve the emergency motion. On balance, under these circumstances, it does not appear that any further action is warranted.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the Motion For Emergency Relief filed by BellSouth Telecommunications, Inc. d/b/a Southern Bell Telephone and Telegraph Company is granted as set forth in the body of this Order. It is further

ORDERED that this docket shall remain open.

By ORDER of the Florida Public Service Commission, this 18th day of August, 1994.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as

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well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water or sewer utility by filing a notice of appeal with the Director, Division of Records and Reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Civil Procedure. The notice of appeal must be in the form specified in Rule 9.900 (a), Florida Rules of Appellate Procedure.