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BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of :
Comprehensive review of the : DOCKET NO. 920260-TL
Revenue Requirements and Rate :
Stabilization Plan of Southern :
Bell Telephone and Telegraph :
Company :

PROCEEDINGS: PREHEARING CONFERENCE

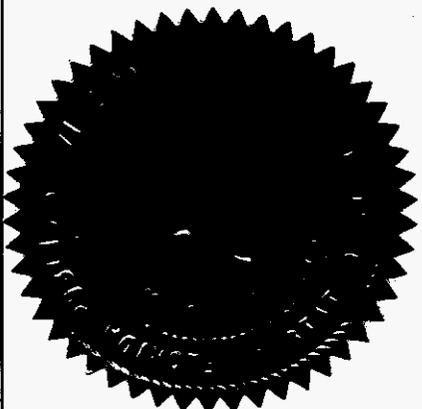
BEFORE: COMMISSIONER SUSAN F. CLARK
Prehearing Officer

DATE: Friday, August 19, 1994

TIME: Commenced at 8:00 a.m.
Concluded at 8:20 a.m.

PLACE: FPSC Hearing Room 122
101 East Gaines Street
Tallahassee, Florida

REPORTED BY: SYDNEY C. SILVA, CSR, RPR
OFFICIAL COMMISSION REPORTER



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1 APPEARANCES:

2 CINDY B. HALLOCK, 304 Palermo Avenue, Coral
3 Gables, Florida 33134, Telephone No. (305) 442-8772,
4 appearing on behalf of **Communications Workers of**
5 **America, Locals 3121, 3122, 3107.**

6 NANCY WHITE, c/o Marshall M. Criser, 150 South
7 Monroe Street, Suite 400, Tallahassee, Florida 32301,
8 Telephone No. (904) 222-1201, on behalf of **Southern Bell**
9 **Telephone and Telegraph Company.**

10 TRACY HATCH, Division of Legal Services,
11 Florida Public Service Commission, 101 East Gaines
12 Street, Tallahassee, Florida 32399-0863, Telephone No.
13 (904) 487-2740, appearing on behalf of the **Commission**
14 **Staff.**

15 DAVID E. SMITH, Division of Appeals, Florida
16 Public Service Commission, 101 East Gaines Street,
17 Tallahassee, Florida 32399-0862, Telephone No. (904)
18 488-7464, **Counsel to the Commissioners.**

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P R O C E E D I N G S

(Hearing convened at 8:10 a.m.)

COMMISSIONER CLARK: Call the prehearing to order. Will you read the notice.

MR. HATCH: Pursuant to notice, this time and place have been set for the prehearing conference in Docket No. 920260-TL, Comprehensive Review of the Revenue Requirements and Rate Stabilization Plan of Southern Bell Telephone and Telegraph Company.

COMMISSIONER CLARK: Take appearances.

MS. WHITE: Nancy White for Southern Bell Telephone Company.

MS. HALLOCK: Cindy Hallock for Communications Workers of America.

MR. HATCH: Tracy Hatch, 101 East Gaines Street, appearing on behalf of the Commission Staff.

MR. SMITH: David Smith, Director of Appeals for the Commission, appearing as counsel to the Commissioners.

COMMISSIONER CLARK: Mr. Hatch.

MR. HATCH: Yes, ma'am. There are a couple of preliminary matters that you probably need to take up before you get to the heart of the prehearing order.

First, in some discussions that I had with Mr. Smith on the Appeals Staff, it appears there may be

1 some problems with proceeding in this case with respect
2 to the appeal that is currently pending in the Supreme
3 Court. Probably David can address that better.

4 MR. SMITH: Yes. Commissioner, as you know,
5 when an appeal is filed, the Commission loses
6 jurisdiction to hear any matter which would affect the
7 substance of the appeal. In this case, the
8 Communications Workers have protested the proposed
9 agency action and filed an appeal; and it appears to me
10 that the same issues are before the court that are to be
11 decided in the course of this hearing. In my opinion,
12 you have no jurisdiction to proceed with this hearing at
13 this time.

14 COMMISSIONER CLARK: Ms. Hallock?

15 MS. HALLOCK: Yes. Mr. Hatch just made me
16 aware of this position.

17 Our opinion, I mean, it is certainly up to the
18 Commissioner what you choose to do, but I assume you
19 have a copy of the Supreme Court's order granting your
20 motion to toll time until the motion to dismiss -- until
21 disposition of the motion to dismiss.

22 MR. SMITH: That's right.

23 MS. HALLOCK: So I'm not sure if we're waiting
24 for the court to determine, you know, on their motion to
25 dismiss or we're to file briefs. At this point, our

1 understanding was that we were to proceed with this; but
2 obviously --

3 MR. SMITH: No, the courts did -- I requested
4 that the court toll the time for any further proceedings
5 in the court; and the purposes of that was to prevent
6 unnecessary efforts filing the briefs and preparing the
7 record and so on. The court has only stayed those
8 proceedings, it has nothing with this proceeding --

9 COMMISSIONER CLARK: Until the motion to
10 dismiss is ruled on?

11 MR. SMITH: That's right.

12 COMMISSIONER CLARK: Ms. White.

13 MS. WHITE: Of course I'm not happy about
14 Staff's legal opinion, but we are willing to accept it.
15 The problem we have is that we think discovery should be
16 held in abeyance in this matter until such time as the
17 Commission retakes jurisdiction of this proceeding.

18 I guess what I'm concerned about is if
19 discovery is allowed to continue I want to make sure
20 that this Commission and you as the Prehearing Officer
21 will have the jurisdiction to rule on discovery
22 disputes, of which I'm sure there are going to be some.

23 COMMISSIONER CLARK: Ms. Hallock, are you
24 conducting discovery at this time?

25 MS. HALLOCK: We at this point have filed a

1 request for production and notice of deposition to
2 Mr. Lacher. I believe that Southern Bell -- yesterday,
3 we received certain motions addressing these issues,
4 objecting to various, a motion to strike, a motion for
5 protective order, documents requiring confidentiality;
6 so there are clearly several issues in dispute as to
7 discovery.

8 COMMISSIONER CLARK: Mr. Smith, what do I do?

9 MR. SMITH: Well, the general principle is
10 that a lower court has no authority to proceed with any
11 matter which would affect the merits of the appeal or
12 undermine the court's jurisdiction. It seems to me that
13 procedural matters could conceivably go forward but I
14 can't foresee what situation might arise which would in
15 some way impinge on the court's jurisdiction, so that's
16 really the test.

17 The other consideration is, of course, do you
18 want a case to go forward where the whole thing may be
19 obviated by the court's decision?

20 COMMISSIONER CLARK: But as I understand it,
21 the motion to dismiss, what is the basis on which you --
22 you have filed the motion to dismiss?

23 MR. SMITH: Right, we have filed the motion to
24 dismiss. The basis of the motion to dismiss is
25 basically you can't appeal a PAA order when an

1 opportunity for a hearing has been held out.

2 COMMISSIONER CLARK: Okay. So it will come
3 back, if the motion to dismiss is granted, it comes back
4 to us to hold a hearing; is that right?

5 MR. SMITH: It will come back and presumably
6 direct the Commission to go ahead with the hearing, yes.

7 COMMISSIONER CLARK: If the petitioner
8 determines that they want to continue to proceed that
9 way?

10 MR. SMITH: Yes.

11 MR. HATCH: It seems in either case, win, lose
12 or draw at the court, whichever sides wins or loses,
13 you're going to have a hearing because the principal
14 issue on appeal is that we didn't give them a hearing.
15 So it seems that, if it comes back, if we win on the
16 motion to dismiss, it's coming back for a hearing; if
17 they win, it's coming back for a hearing.

18 MR. SMITH: Either way, that's right.

19 COMMISSIONER CLARK: Do you have a
20 recommendation on allowing discovery to continue?

21 MR. SMITH: My recommendation would be to hold
22 it in abeyance because of the procedural, you know, the
23 possibilities of difficulties and wasted effort and
24 possibility of interfering with the court's
25 jurisdiction.

1 MR. HATCH: We can play point-counterpoint
2 here because David and I had this discussion yesterday.
3 My recommendation would be the opposite, and that would
4 be to allow discovery to go forward. And the only
5 reason that I would do that is, assuming it doesn't run
6 afoul of any problem in the court, is that the hearing
7 scheduled for September 1 came about because an open day
8 happened to pop up.

9 COMMISSIONER CLARK: I see.

10 MR. HATCH: And if another day happens to pop
11 up -- well, let me go back. The first full Commission
12 day available on the calendar now is May 13 of next
13 year, unless something changes or gets moved or gets
14 cancelled. If another day can pop up, then if discovery
15 has already been done, then you may be in a better
16 position to go forward with the hearing.

17 COMMISSIONER CLARK: Ms. Hallock, let me, if I
18 hold the proceeding in abeyance, do you want to argue
19 with respect to whether discovery should continue?

20 MS. HALLOCK: Mr. Richard is lead counsel; he
21 is in California sleeping at this moment. Although he
22 did give me permission to call him at 5:30, I would
23 prefer not to. (Laughter)

24 If we are going to continue with discovery,
25 what I would suggest is that --

1 COMMISSIONER CLARK: No, I want to know if you
2 want to continue with discovery, because I presume you
3 are the party that will be conducting it.

4 MS. HALLOCK: Correct, we would. And in order
5 to, perhaps for judicial economy, there are several
6 motions here, perhaps a conference could be set up,
7 telephone conference with the parties, to try to resolve
8 these matters internally rather than, you know, proceed
9 in this manner. We have not had that opportunity.

10 COMMISSIONER CLARK: Okay. Ms. White.

11 MS. WHITE: Southern Bell would prefer that
12 the motions that are just filed, particularly the ones
13 with regard to striking portions of the prehearing
14 statement and as to the deposition of Mr. Lacher, which
15 is set for next Wednesday, the 24th of August, be dealt
16 with today if at all possible.

17 COMMISSIONER CLARK: I frankly haven't seen
18 those motions. Let me say this. I will hold the
19 proceeding in abeyance because I don't think that we can
20 proceed.

21 Now, with respect to discovery, I think I'm
22 inclined to agree with Mr. Hatch that I will allow it to
23 go forward because of the possibility of being moved --
24 if the court sends it back to us and we're in a position
25 of being able to hold a hearing, I would like to do that

1 at the first available time. So I would like the
2 parties to be ready.

3 MS. WHITE: May I ask you, if discovery
4 disputes arise --

5 COMMISSIONER CLARK: I will handle it.

6 MS. WHITE: -- the Commission will handle it?

7 COMMISSIONER CLARK: Yes, we will deal with
8 discovery disputes.

9 Well, all right, let me ask this. You have
10 filed a motion for protective order, is that what it is?

11 MS. WHITE: That's correct, as to Mr. Lacher's
12 deposition.

13 COMMISSIONER CLARK: All right. Has
14 Ms. Hallock or Mr. Richard been able -- has the time
15 passed for them to file a response?

16 MS. WHITE: No, ma'am, it has not. My motion
17 was filed yesterday; we received the notice of
18 deposition, I believe, on Tuesday, so I filed it as soon
19 as possible. As I said, the deposition itself is
20 scheduled for next Wednesday, the 24th, so it was
21 scheduled even before their time period had passed.

22 COMMISSIONER CLARK: I will cancel the holding
23 of that deposition until you have had the time to
24 respond to the motion for protective order and I will
25 rule on that as soon as possible. What is the other

1 remaining --

2 MS. WHITE: One of the other motions was a
3 motion for protective order -- I mean, excuse me, a
4 motion to strike portions of the prehearing statement.
5 If the hearing is not going to go forward on the 1st,
6 that motion could be argued at a later date, that does
7 not have the urgency of the motion for protective order.

8 And the third motion, of course, is our motion
9 to dismiss which we filed earlier.

10 COMMISSIONER CLARK: Okay. The motion to
11 dismiss this proceeding?

12 MS. WHITE: That's correct.

13 COMMISSIONER CLARK: Okay.

14 Ms. Hallock, have you had an opportunity to
15 respond to their motion to strike portions of your
16 prehearing statement?

17 MS. HALLOCK: Again, we received this
18 yesterday.

19 COMMISSIONER CLARK: All right. I will wait
20 until I get the response. I may not allow oral argument
21 on it, I may rule on it without taking oral argument on
22 either motion.

23 MS. HALLOCK: But I wanted to add that
24 Mr. Richard and I spoke yesterday, I am prepared to
25 respond to the motion to strike, though, even though --

1 COMMISSIONER CLARK: At this time?

2 MS. HALLOCK: Yeah.

3 COMMISSIONER CLARK: You don't want to put it
4 in writing? I don't see the necessity of doing that.
5 But if you are prepared to respond, I will go ahead and
6 hear oral argument from both of you and allow you to
7 respond to the motion to strike in writing within the
8 time frame and I'll rule.

9 MR. HATCH: It would seem, Commissioner Clark,
10 that the the motion to strike would be wrapped up in
11 holding the underlying proceeding itself in abeyance,
12 because what you're really talking about is prep for
13 trial --

14 COMMISSIONER CLARK: All right.

15 MR. HATCH: -- so all of that would go away.
16 At some point in the future when we come back to hold
17 the hearing, however it turns out, there will be new
18 opportunities certainly to refile testimony, because
19 things will have changed because discovery will have
20 gone forward. Your prehearing statement may very well
21 change dramatically between now and then.

22 COMMISSIONER CLARK: Okay.

23 MR. HATCH: You may avoid controversy
24 altogether.

25 COMMISSIONER CLARK: Ms. Hallock?

1 MS. HALLOCK: If we are going to hold off on
2 making any determination as to the prehearing statement,
3 are we also extending, even though we have a date
4 scheduled for the 1st, are we going to be changing now
5 the discovery schedule as when it is supposed to end?

6 MR. HATCH: I would anticipate that will have
7 to slip, certainly. Figuring we are going to allow
8 discovery to go forward and we don't have a hearing date
9 anywhere near, we can extend discovery out.

10 COMMISSIONER CLARK: We will address that in
11 the motion holding this proceeding in abeyance -- I mean
12 in the order holding the proceeding in abeyance.

13 MR. HATCH: Yes, ma'am, that would be fine.

14 COMMISSIONER CLARK: Is there anything else we
15 need to take up?

16 MR. HATCH: Actually, not. The discovery
17 dispute is the only one you really needed to deal with
18 and you have dealt with that. Everything else is pretty
19 much --

20 COMMISSIONER CLARK: Well, I haven't dealt
21 with it. I'm waiting for --

22 MR. HATCH: You've addressed it for now.

23 COMMISSIONER CLARK: Okay.

24 MR. HATCH: As far as everything else, it's
25 going to get put on ice with the proceeding.

1 COMMISSIONER CLARK: All right.

2 Ms. White, is there anything else we need to
3 take up?

4 MS. WHITE: No, ma'am, not that I know of.

5 COMMISSIONER CLARK: Ms. Hallock?

6 MS. HALLOCK: No, ma'am, I guess not, we're in
7 abeyance.

8 COMMISSIONER CLARK: Okay, the prehearing is
9 adjourned.

10 (Thereupon, prehearing adjourned at 8:20 a.m.)

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1 STATE OF FLORIDA)

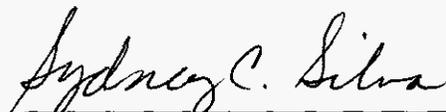
2 : CERTIFICATE OF REPORTER
 3 COUNTY OF LEON)

4 I, SYDNEY C. SILVA, CSR, RPR, Official
 Commission reporter,

5 DO HEREBY CERTIFY that the Prehearing
 Conference in Docket No. 940001-EI, was heard by the
 6 Florida Public Service Commission at the time and place
 herein stated; it is further

7 CERTIFIED that I stenographically reported the
 said proceedings; that the same has been transcribed
 8 under my direct supervision, and that this transcript,
 consisting of 14 pages, constitutes a true transcription
 9 of my notes of said proceedings.

10 DATED this 22nd day of August, 1994.

11 

12 SYDNEY C. SILVA, CSR, RPR
 13 Official Commission Reporter
 (904) 488-5981

14
 15
 16 STATE OF FLORIDA)

17 :
 18 COUNTY OF LEON)

19 The foregoing certificate was acknowledged
 before me this 22nd day of August, 1994, by SYDNEY C.
 20 SILVA, who is personally known to me.

21 

22 PATRICIA A. CHURCH
 Notary Public - State of Florida
 My Commission No. CC-90785
 23 Notary Public, State of Florida
 My Commission Expires April 20, 1995
 24 Bonded Thru Troy Fain - Insurance Inc.
 25