

2:05pm

Mark Richard
Attorney At Law

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FILE COPY

August 26, 1994

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 in Opposition to Southern Bell Telephone and Telegraph Company's Motion for Protective Order, Motion to Strike Portions of CWA's Pre-Hearing Statement and CWA's Motion to Strike Pre-Hearing Statements and Motion to Compel Production with respect to the referenced action. Please file same.

Thank you.

Sincerely,

Mark Richard
Mark Richard

- ACK
- AFA John
- APP _____
- CAF _____
- CMU Norton
- CTR _____
- EAG _____
- LEG MR:bes
Enclosures
- LIN 6
cwa/psc.5
- OPC _____
- RCH Vinsen
- SEC 1
- WAS _____
- OTH _____

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mw

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AUG 29 1994

DOCUMENT NUMBER-DATE
08875 AUG 29 94

Richard Legal Plan, PA
304 Palermo Avenue, Coral Gables, Florida 33134
(305) 442-8772
(305) 443-5125

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 FOR PROTECTIVE ORDER,
MOTION TO STRIKE PORTIONS OF CWA'S PRE-HEARING STATEMENT
AND CWA'S MOTION TO STRIKE PRE-HEARING STATEMENTS
AND MOTION TO COMPEL PRODUCTION**

COME NOW Locals 3121, 3122 and 3107 Communication Workers of America, AFL-CIO ("CWA"), by and through their undersigned counsel, and file this combined response to Southern Bell Telephone and Telegraph Company's ("Southern Bell") Motion for Protective Order and Motion to Strike Portions of CWA's Pre-hearing Statement, CWA's Motion to Strike Pre-Hearing Statements and CWA's Motion to Compel Production, and states:

1. On August 19, 1994, Commissioner Clark, upon PSC Attorney David Smith's recommendation, announced that the PSC was without jurisdiction to hold the September 1, 1994 until the Florida Supreme Court issued its decision on the PSC's Motion to Dismiss CWA's Appeal; stated that discovery would continue in the above matter; gave CWA time to file an appropriate response to Southern Bell's Motion to Strike portions of CWA's Pre-hearing Statement and Motion for Protective Order; and temporarily canceled the August 24th deposition of Joseph Lacher until the aforementioned motions and discovery issues were resolved.

2. Southern Bell in both of its motions alleged that Mr.

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Lacher, President of Southern Bell, was too busy to attend the scheduled deposition, that the deposition was scheduled for purposes of harassment, that CWA was simply going on a fishing expedition, and that Mr. Lacher has limited knowledge of the matters at issue. Finally, Southern Bell alleged that the matters which CWA wishes to depose Mr. Lacher on are irrelevant to the case at hand.

3. Southern Bell is once again attempting to deny the CWA its rightful opportunity to participate in these proceedings and for discovery in preparation of the now apparently stayed September 1st hearing. Since the outset of CWA's first proposal on this docket, Southern Bell has filed numerous motions in order to eliminate CWA's participation in this process. The Florida Statutes and Administrative rules which govern this proceeding provide for CWA's participation as well as their right to discovery.

4. Neither the Florida Rules of Civil Procedure or any other rules excuse a witness simply because they are too important or too busy to appear for a deposition. Additionally, Mr. Lacher was apparently involved in discussions with both PSC staff and the OPC in regards to the Stipulated Settlement and the Implementation Agreement in dispute. Any communications between the PSC staff, the OPC and Southern Bell, or Mr. Lacher are clearly both relevant to the issues in dispute and are not privileged communications despite Southern Bell's assertion to the contrary.

5. Mr. Hank Anthony's (Southern Bell's Counsel) ability to

provide testimony as to discussions with both the PSC staff and OPC are also not covered under attorney-client privilege or attorney work product. Certainly, Southern Bell is not attempting to preclude the public or CWA from access to settlement discussions and negotiations related to this docket that took place with third parties.

6. Further, CWA's Request for Documents goes to the heart of the matters being litigated in this dispute, i.e., the legality of the agreement, the negotiation and settlement discussions related to the Stipulation and the Settlement agreements, determination of who would receive the unspecified refunds under the \$10 million settlement and how these funds would be disbursed.

7. Southern Bell's numerous motions are simply an attempt to distract the parties and the PSC from focusing on the upcoming hearing and adding additional unnecessary time, legal fees and costs to the process. CWA has continually maintained that it would work with the parties in order to attempt to settle this dispute, but has been ignored by all parties. At the Pre-hearing conference CWA once again offered to set up a telephone conference with the parties in order to resolve these numerous discovery issues. CWA has not received any response to its offer.

8. Ordinarily, CWA would not move to strike the below mentioned prehearing statements. However, Southern Bell has raised the issue of CWA's filing of its direct testimony. Southern Bell's continuous attempts to pursue dismissal of the CWA petition based on the filing date of the direct testimony leaves CWA with no other

choice but to go forward with this motion to strike.

9. Pursuant to the Rules of the Florida Public Service Commission, the prehearing statements in this action should have been filed with the Commission and served upon the parties on or before August 15, 1994.

10. The following pre-hearing statements filed by several parties to this litigation were served upon the CWA in violation of the PSC's Order Establishing Procedure, Order No. PSC-94-0893-PCO-TL issued on July 21, 1994:

a. The prehearing statement of Southern Bell was not received by CWA until August 18, 1994, three (3) days after the due date.

b. The prehearing statement of McCaw was not received by CWA until August 17, 1994, two (2) days after the due date.

c. The prehearing statement of Florida Cable Television Association, Inc. was not received by CWA until August 18, 1994, three (3) days after the due date.

d. The prehearing statement of Florida Mobile Communications Association, Inc. was not received until August 19, 1994 when it was hand delivered by OPC staff member Tracy Hatch.

e. No other parties have served prehearing statements upon CWA.

11. As to Southern Bell's attempt to strike the portion of CWA's prehearing statement as to witnesses and exhibits, the prehearing statements of Southern Bell and others "reserved the right to call additional rebuttal witnesses, witnesses to respond to

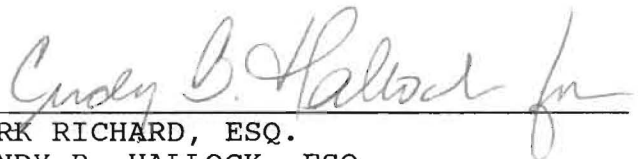
Commission inquiries not addressed in direct or rebuttal testimony and witnesses to address issues not presently designated which may be designated by the Prehearing officer at the Prehearing Conference." CWA should not be penalized for having the forethought to list specifically those witnesses and exhibits that CWA thought would address the same issues as reserved by the other parties simply because they did not use the words "reserved the right to call . . ." in their prehearing statement.

11. Finally, Southern Bell has moved to strike certain of CWA's issues of fact. As stated previously these issues are at the heart of the dispute and will be addressed at the September 1st (or rescheduled) hearing. To remove these issues would unduly prejudice CWA as these issues are subparts of the primary issues. In order to fully address the issues and provide the CWA with the hearing it is entitled to, the PSC must afford CWA with every opportunity to present its case.

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

- a. deny Southern Bell's Motion for Protective Order and Motion to Strike Certain Portions of CWA's Pre-hearing Statement;
- b. reschedule the deposition of Joseph Lacher;
- c. order Southern Bell to produce documents pursuant to CWA's Request for Production; and,
- d. grant CWA's Motion to Strike Southern Bell's, McCaw's, Florida Cable's, and Florida Mobile's pre-hearing

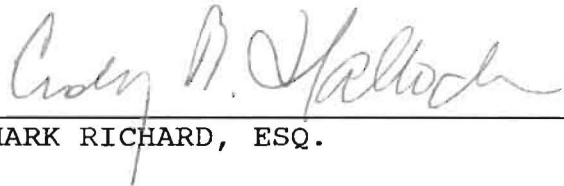
statements.



MARK RICHARD, ESQ.
CINDY B. HALLOCK, ESQ.
Attorneys for Communications Workers
of America Locals 3121, 3122 and 3107
304 Palermo Avenue
Coral Gables, FL 33134
Telephone: 305/443-5125

Certificate of Service

I HEREBY CERTIFY that a true and correct copy of the foregoing
was mailed to those individuals named on the attached distribution
list on this 26th day of August, 1994.



MARK RICHARD, ESQ.

cwa/protection.res