

**FLORIDA PUBLIC SERVICE COMMISSION**

**Fletcher Building  
101 East Gaines Street  
Tallahassee, Florida 32399-0850**

**MEMORANDUM**

**JANUARY 19, 1995**

**TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING**

**FROM: DIVISION OF LEGAL SERVICES (ELIAS) *RVE TL*  
DIVISION OF COMMUNICATIONS (NORTON) *John***

**RE: DOCKET NO. 920260-TL - COMPREHENSIVE REVIEW OF THE  
REVENUE REQUIREMENTS AND RATE STABILIZATION PLAN OF  
SOUTHERN BELL TELEPHONE AND TELEGRAPH COMPANY**

**AGENDA: 1/31/95 - REGULAR AGENDA  
DECISION PRIOR TO HEARING - INTERESTED PERSONS MAY  
PARTICIPATE**

**CRITICAL DATES: NONE**

**SPECIAL INSTRUCTIONS: I:\PSC\LEG\WP\920260.RCM**

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**CASE BACKGROUND**

This docket was initiated by 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. By Order No. PSC-94-0172-FOF-TL the Commission approved a Stipulation and Agreement Between OPC and Southern Bell and an Implementation Agreement for Portions of the Unspecified Rate Reductions in Stipulation and Agreement Between OPC and Southern Bell (hereinafter collectively the Settlement). The terms of the Settlement require, among other things, that rate reductions be made to certain of Southern Bell's services. Some of the reductions specified particular services. Other scheduled reductions were unspecified, and interested parties were allowed to submit their own proposals for disposition of the monies.

Pursuant to the terms of the Settlement, on March 1, 1994, Southern Bell submitted its proposal to reduce its rates by \$10 million, effective July 1, 1994. Its filing contained a primary

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and an alternative proposal. Three local chapters of the Communications Workers of America (CWA), as well as McCaw Communications, Inc., submitted proposals as well. By Order No. PSC-94-0669-FOF-TL the Commission proposed to implement reductions as follows: 1) approximately \$7 million to be used to fund Southern Bell's required flow through of switched access reductions to mobile interconnection rates, and 2) the remaining \$3 million to be used to eliminate Billed Number Screening Charges to end users and to reduce DID trunk termination charges.

This matter was set for hearing when the Communications Workers of America (CWA) filed a protest to Order No. PSC-94-0669-FOF-TL. On June 27, 1994, CWA filed a Notice of Appeal of Order No. PSC-94-0669-FOF-TL with the Florida Supreme Court. The Florida Public Service Commission filed a Motion to Dismiss the appeal as premature. On August 25, 1994, the Florida Supreme Court granted the motion and dismissed CWA's appeal.

The hearing in this matter has been rescheduled for February 13, 1995. This recommendation addresses all motions related to Southern Bell's Motions to Dismiss CWA's protest of Order No. PSC-94-0669-FOF-TL.

#### DISCUSSION OF ISSUES

ISSUE 1: Should Southern Bell's Motion to Strike Portions of the CWA's Response in Opposition to Southern Bell's Renewal of its Motion to Dismiss be granted?

RECOMMENDATION: Yes.

STAFF ANALYSIS: On August 26, 1994, Southern Bell filed a Motion to Strike Portions of the CWA's Response in Opposition to Southern Bell's Renewal of its Motion to Dismiss. Southern Bell alleges that CWA's pleading contains "scandalous material", to wit, this paragraph found on page two of CWA's Response in Opposition to Southern Bell Telephone and Telegraph Company's Motion to Dismiss:

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

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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.

Southern Bell states that it "has queried the very few persons who have had telephone contact with counsel for CWA and all have absolutely repudiated the allegations as unfounded and untrue.... The accusation merely serves to wrongfully impugn the character of the persons involved and unnecessarily taint these proceedings." No response to the motion was filed by CWA.

Staff counsel contacted the counsel for CWA to discuss the allegations. CWA counsel would not identify the staff member(s) who allegedly made the statements contained in the pleading. Staff counsel has queried all staff members actively involved in this matter. All staff members deny making the statements or any similar comments.

Southern Bell cites Rule 1.140(f), Florida Rules of Civil Procedure, as authority for its motion. However, only the portion of the Florida Rules of Civil Procedure governing discovery (Rules 1.280 through 1.400) are incorporated by reference into the rules governing practice before the Florida Public Service Commission (Rule Chapter 25-22, Florida Administrative Code). Rule 25-22.037(2)(a), Florida Administrative Code, explicitly authorizes the filing of a motion to strike.

Trawick's Florida Procedure (1993 Edition) defines scandalous as "unnecessary allegations censuring or accusing a party." In Ropes v. Stewart, 45 So. 31 (Fla. 1907), the Florida Supreme Court reviewed allegations similar to those found in CWA's Response in Opposition to Southern Bell Telephone and Telegraph Company's Motion to Dismiss. In pleadings, Stewart accused the defendant of using "perjury and evil influence on the judge and jury" in order to obtain a verdict against the plaintiff. The court upheld the granting of the defendant's motion to strike.

Staff believes that, on their face, CWA's allegations suggest improper conduct by the other parties. By its failure to respond to Southern Bell's Motion, it can be assumed CWA does not contest the motion. Therefore, staff recommends that Southern Bell's Motion to Strike Portions of the CWA's Response in Opposition to Southern Bell's Renewal of its Motion to Dismiss should be granted.

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**ISSUE 2:** Should Southern Bell Telephone and Telegraph Company's Motion to Dismiss the Communication Workers of America's Petition on Proposed Agency Action and Southern Bell's Renewal of its Motion to Dismiss the Communications Workers of America's Petition be granted?

**RECOMMENDATION:** No. CWA has standing to challenge the revenue reduction approved by the Commission in Order No. PSC-94-0669-FOF-TL.

**STAFF ANALYSIS:** On July 1, 1994, BellSouth Telecommunications d/b/a Southern Bell Telephone and Telegraph Company ("Southern Bell") filed a Motion to Dismiss the Communication Workers of America's Petition on Proposed Agency Action for Formal Hearing. Southern Bell alleges that CWA's Petition does not adequately state a substantial interest. Southern Bell states that "The substantial interest alleged by the CWA is not only impermissably vague, but is beyond the legal authority of this Commission to accomplish." Southern Bell alleges five separate reasons why the Petition should be dismissed.

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.... 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.

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."

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

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hearing under Section 120.57, Florida Statutes in the form provided for by Rule 25-22.036.

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.

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.

On July 15, 1994, CWA responded stating that "CWA not only seeks a hearing on their (sic) proposal, but believes a hearing is necessary to challenge the approved plan. CWA is opposed to the way the \$10 million refund is designed and wishes to challenge it even if the CWA proposal is denied."

After the CWA filed its direct testimony on August 2, 1994, Southern Bell filed a Renewal of its Motion to Dismiss the Communications Workers of America's Petition on August 10, 1994. The pleading reasserts and incorporates the allegations of Southern Bell's Motion to Dismiss and further argues that CWA failed in its direct testimony to address the issue "of the Commission's authority vel non to enact the proposal made by the CWA." Southern Bell alleges that "...it is incumbent upon the petitioner to bring forth proposals for Commission action which are within the legitimate authority of the Commission to undertake. The CWA has failed to address this issue in their direct testimony and thus, they have not met their burden." Southern Bell suggests that the CWA's Petition should be dismissed for this additional reason.

On August 18, 1994, CWA filed its response to the Renewal of its Motion to Dismiss the Communications Workers of America's Petition. CWA reaffirmed its objection to the rate reductions proposed by Order No. PSC-94-0669-FOF-TL. This basis alone is sufficient to proceed. In the Settlement approved by Order No. PSC-94-0172-FOF-TL, the Company agreed that "interested parties"

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could submit proposals. CWA's allegation that most, if not all, of its members are Southern Bell ratepayers is uncontested. For these reasons, Staff recommends that Southern Bell's Motion to Dismiss and Renewal of its Motion to Dismiss should be denied.

**ISSUE 3:** Should this docket be closed?

**RECOMMENDATION:** No.

**STAFF ANALYSIS:** A hearing is scheduled for February 13, 1995 in this docket. Therefore, the docket should remain open.