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JACK SHREVE
PUBLIC COUNSEL

STATE OF FLORIDA
OFFICE OF THE PUBLIC COUNSEL

c/o The Florida Legislature
111 West Madison Street
Room 812
Tallahassee, Florida 32399-1400
904-488-9330

December 16, 1992

Steve Tribble, Director
Division of Records and Reporting
Florida Public Service Commission
101 East Gaines Street
Tallahassee, FL 32399-0850

Re: Docket No. 910163-TL

Dear Mr. Tribble:

Enclosed for filing in the above-captioned proceeding on behalf of the Citizens of the State of Florida are the original and 15 copies of Citizens' Eleventh Motion to Compel and Request for In Camera Inspection of Documents.

Please indicate the time and date of receipt on the enclosed duplicate of this letter and return it to our office.

Sincerely,

Janis Sue Richardson
Janis Sue Richardson
Associate Public Counsel

- ACK _____
- AFA _____
- APP _____
- CAF _____
- CMU _____
- CTR _____
- EAG _____
- LE3 *lw/m* _____
- LIN *6* _____
- OPC _____
- RCH _____
- SEC *1* _____
- WAS _____
- OTH *Kay* _____

Enclosure

RECEIVED & FILED

Jaw

DIVISION OF RECORDS

DOCUMENT NUMBER-DATE
14611 DEC 16 1992
FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition on behalf of Citizens)
of the State of Florida to Initiate) Docket No. 910163-TL
Investigation into the Integrity of)
Southern Bell Telephone and Telegraph) Filed: December 16, 1992
Company's Repair Service Activities)
and Reports.)
_____)

**CITIZENS' ELEVENTH MOTION TO COMPEL AND REQUEST
FOR IN CAMERA INSPECTION OF DOCUMENTS**

The Citizens of Florida ("Citizens"), by and through Jack Shreve, Public Counsel, request the Florida Public Service Commission to compel BellSouth Telecommunications, Inc., ("BellSouth") d/b/a/ Southern Bell Telephone and Telegraph Company to produce each of the documents responsive to the Citizens' thirtieth set of requests for production of documents dated October 20, 1992, and to conduct an in camera inspection of all documents and portions of documents withheld by BellSouth Telecommunications based on claims of attorney-client and work product privileges.

Background

1. On October 20, 1992, Citizens served its thirtieth request for production of documents on BellSouth. Item 2 requested BellSouth to produce

a copy of the 1991 Operational Review audit performed by internal auditors and mentioned

by Shirley T. Johnson [BellSouth auditor
deposed on October 14, 1992].¹

Item 4 requested BellSouth to produce

Dwane Ward's notes related to his
responsibilities for disciplining individual
employees, which may include but is not
limited to his conversation with Mr. Charlie
Cuthbertson.²

Item 5 requested BellSouth to produce

Hilda Geer's notes related to her
responsibilities for disciplining individual
employees, which may include but is not
limited to her conversation with Mr. Charlie
Cuthbertson.³

2. BellSouth filed its response and objections to Citizens'
request on November 25, 1992. BellSouth generally objected to
Public Counsel's definition of "document(s)" and "you" and "your"
and relevance of affiliate information. Public Counsel has
responded to these general objections in prior motions and adopts
its response by reference herein. Citizens' Motion to Compel and
Request for In Camera Inspection of Documents, (Docket no.

¹ See Citizens' Motion to Compel BellSouth
Telecommunications' Operations Manager -- Shirley T. Johnson, and
BellSouth Telecommunications' Human Resource Operations Manager
Dwane Ward, to Answer Deposition Questions and Motion to Strike
the Affidavits of Shirley T. Johnson, Docket no. 910163-TL (Oct.
23, 1992) (decision pending) [hereinafter Citizens' Motion to
Compel--Johnson].

² See supra n.1 and Ward deposition attached to Citizens'
motion, pp. 14-17.

³ Ms. Geer was deposed by Public Counsel on October 14,
1992.

910163-TL, May 21, 1992). BellSouth also objected to Public Counsel's instructions:

For sets of documents, e.g. DLETHs or customer billing reports, numerical or alphabetical sequence, please include a description of the sequence or order of the documents and identify the individual or individuals who provided the information or helped in providing the information.

BellSouth refused to provide this information on the grounds that

[s]uch information is neither required when documents are produced, nor is it necessary. The "sequence or order" of the documents should be self-evident from a review of such documents.

Southern Bell Telephone and Telegraph Company's Response and Objections to Public Counsel's Thirtieth Request for Production of Documents and Motion for Protective Order, 2, ¶ 1 (Docket no. 910163-TL, Nov. 25, 1992) [hereinafter BellSouth Response]

3. This instruction was made necessary by BellSouth's production of a box of DLETHs in response to Citizens' eleventh request. The DLETHs were not in any discernible order -- not by telephone number, date, or order corresponding to the Operational Review that they were to match. Additionally, several DLETHs were provided that were not requested. [Attachment A] It took Public Counsel's staff a full week just to reorder the DLETHs in sequence corresponding to the Operational Review. BellSouth stated that the information had been provided in the same order as it was stored. [Attachment B] However, in order to avoid wasted time and effort on future productions, Public Counsel asked BellSouth to describe

the order of these types of documents and the persons pulling the documents so any questions as to order could easily be traced back to the originator. Public Counsel feels that this request is reasonable in light of prior production problems.

4. BellSouth raised specific objections to Citizens' requests 2, 4 and 5. BellSouth objected to producing item 2

on the basis that it calls for the production of a privileged document. The "1991 Operational Review Audit" performed by Company internal auditors was performed at the specific request of the Legal Department as a part of the repair service operations investigation conducted by and on behalf of attorneys for Southern Bell. The audit consists of interviews, analyses, and other documents comprising the fruits of this investigation. This audit was performed in order to assist Company attorneys in gathering information which was then used to render legal advice and counsel and formed the basis on which legal opinions were so rendered. Consequently, this documents is not subject to discovery under the Work-Product Doctrine and Attorney-Client privilege, or both.

BellSouth Response at 4, ¶ 9. As to item 4, BellSouth objected

to this request on the basis that it calls for the production of privileged documents. This request seeks notes compiled by the Personnel Department and derived from the privileged internal investigation in order to determine whether any individual should be disciplined and to what extent. See Southern Bell's response to Public Counsel's Twenty-Second Request for Production of Documents, Request No. 1, filed April 29, 1992.

BellSouth Response at 5, ¶ 11. As to item 5, BellSouth stated:

"see Southern Bell's response to Request No. 4." BellSouth Response at 5, ¶ 12.

The Audit Request

5. Citizens have requested the production of four other internal audits performed by the company in 1991. Citizens Seventh Motion to Compel and Request for In Camera Inspection of Documents, Docket no. 910163-TL (July 23, 1992) [hereinafter Citizens' 7th Motion]. BellSouth revealed the existence of these four audits (LMOS, KSRI, MOOSA, PSC Schedule 11) in its response to Public Counsel's first motion to compel in the rate case docket. Southern Bell's Opposition to Public Counsel's First Motion to Compel and Request for In Camera Inspection of Documents, Docket no. 920260-TL (May 15, 1992). That list, purporting to disclose all the internal audits conducted under a claim of privilege did not list the 1991 Operational Review Audit. Id. [Attachment C] It wasn't until Public Counsel deposed the company's head auditor in charge of these five audits that Public Counsel discovered the existence of the Operational Review Audit.⁴ BellSouth's failure to declare the existence of this audit in its index of privileged audits on May 15, 1992, and its failure to provide an index of privileged documents in its response to this request, nullifies its claim. See e.g., Internat'l Paper Co. v. Fibreboard Corp., 63 F.R.D. 88 (D. Del. 1974); see also Hartford Accident & Indemnity Co. v. McGann, 402 So. 2d 1361 (Fla. 4th DCA 1981) ("A blanket assertion of the privilege is unacceptable.").

⁴ See Citizens' Motion to Compel--Johnson, supra n.1.

6. Internal audits are business documents that contain factual data and analysis on the company's business operations. As such, internal audits are not privileged documents under section 90.502, Florida Statutes (1991 & 1992 Supp.). Citizens have extensively briefed this argument in prior motions to compel and incorporate those arguments by reference herein. See Citizens' 7th Motion.

7. In addition, BellSouth has stated that these documents were not prepared by corporate counsel and do not contain legal opinions or advice. BellSouth Response, supra at 4, ¶ 4. These documents contain facts. BellSouth has not shown that these audits are privileged, confidential communications between a client and an attorney. While communications may be privileged, facts are not. Upjohn Co. v. United States, 449 U.S. 383 (1981).

8. The company also claims work product immunity from production for this audit. BellSouth Response, supra at 4, ¶ 4. As this audit contains facts and data exclusively in the control of the company and does not contain legal opinions, theories or analysis, it is not privileged work product. Citizens have extensively briefed their argument as to the applicability of the work product privilege for the company's other four internal audits and adopts those arguments by reference herein. See Citizens' 7th Motion.

9. BellSouth stated the purpose of operational reviews in its response to Staff's second request for production of documents, item 2a, filed May 29, 1992 (Attachment D). Mr. Dan L. King responded as follows:

Operational reviews of IMCs have been performed by the Network organization in addition to the reviews considered necessary and conducted by the Internal Auditing Department. The objectives of operational reviews are typically much broader than the typical internal audit. Internal audits focus largely on assessing the accuracy and effectiveness of organizations, systems, and processes. Operational reviews evaluate additional areas such as employee safety habits, efficiency, productivity, training, effective use of tools and test equipment, quality of customer service, etc. In addition, operational reviews are performed on a much broader universe than the typical internal audit since we will over time perform the same OR in all states, not just one or two as in the typical internal audit. Operational reviews form the basis for the healthy self-evaluation that Network considers important to continuously improving its service, cost, and safety performance.

Mr. King provided a detailed response to Staff's companion question as to what changes in the review process resulted from the investigation. Mr. King indicated that the company had changed its feedback of review findings and its retention policy. See Southern Bell Tel. & Tel. Co. Response to Staff's Second Request for Production of Documents, 2b (May 29, 1992). [Attachment D]

10. Operational reviews have a clearly defined business purpose. An audit of those reviews would consequently have the

same business purpose -- to determine whether the company's network operations were being prudently supervised, whether customer service quality standards are being maintained, and whether any improvements in operations are warranted. The 1991 Operational Audit is a business document and, as such, is not eligible for work product immunity. See Soeder v. General Dynamics Corp., 90 F.R.D. 253 (D. Nev. 1980) (company's in-house air crash report, while prepared in anticipation of litigation, was equally spurred by a desire to improve the quality of its product, to protect future passengers, to avoid adverse publicity, and to promote its own economic interests).

11. The company has sole control over the data and customer records used to produce this audit. Operational reviews, which assess the quality of customer service, must of necessity scan the data base of customer trouble reports. According to company reports (schedule 11 and 11a)⁵ submitted to the Commission, in 1991, BellSouth received 1,643,188 trouble reports. Of those, 670,535 were statused out-of-service. This data is processed through a complex computer system, which is designed to interact with the customer on initial call-in, with various employees throughout the trouble reporting and rebate process, and at times automatically. This complex system of hardware and software programs comprises linked programs, each of which has its own

⁵ BellSouth has admitted that these reports contain inaccurate data. See BellSouth response to Citizens' 26th interrogatories, item 8.

nest of subprograms and subroutines that massage customer data.
[See Affidavit of Walt Baer]

12. As an indication of the undue hardship Citizens' face in any attempt to reconstruct this internal audit, we proffer BellSouth's responses to Citizens' thirty-first document request filed on November 23, 1992.⁶ Citizens requested the company to produce various reports using its computer systems and customer data base. One report requested an evaluation of clearing times that were 12 hours or more earlier than closing times on out-of-service reports and the DLETHs (customer records).⁷ BellSouth stated in its objection to this request that:

In response to Request No. 4, Southern Bell will produce a document providing a previously generated count of the number of possible computer records that could meet the criteria set forth in this request. Although this data resides in Company databases, Southern Bell does not have the requested analyses for all time periods dating back to 1985. If Public Counsel would request a representative time period or desired sample, Southern Bell could respond accordingly.

In response to Request No. 5, Southern Bell objects to this request on the basis that it is unduly burdensome and oppressive, and the production of all documents responsive to the request would unnecessarily disrupt the Company's normal business operations. Public Counsel's request would call for the extraction of no less than 695,000 records from Company databases. Thereafter, additional manual exercises would be required to extract

⁶ Southern Bell Telephone and Telegraph Company's Response and Objections to Public Counsel's Thirty-First Request for Production of Documents and Motion for Temporary Protective Order, Docket no. 910163-TL (Nov. 23, 1992).

⁷ Citizens' Thirty-first Set of Requests for Production of Documents to BellSouth Telecommunications, Inc., Dockets nos. 910163-TL, 900960-TL, and 920260-TL, 7-8, ¶ 4-5 (Oct. 22, 1992).

additional documents from its databases and evaluate these documents for responsiveness. Such a monumental and labor intensive exercise is unwarranted, oppressive, and objectionable.

Southern Bell Telephone and Telegraph Company's Response and Objections to Public Counsel's Thirty-First Request for Production of Documents and Motion for Temporary Protective Order, 6-7, ¶ 14-15 (Nov. 23, 1992).

13. Furthermore, the company has shown that it took a total of 457.50 auditing staff hours at a cost of \$11,777.55 to produce this audit. [Attachment E: Southern Bell Tel. & Tel. Co. Response to Public Counsel's Thirtieth Set of Interrogatories, Item 1, Docket no. 910163-TL (Nov. 25, 1992). Those totals do not include other employees outside the auditing department who assisted in the preparation of the audit.⁸ Citizens do not have the financial resources, the technical skills, or access to the data to reproduce this audit. [See attached Affidavit of Walt Baer] Citizens have demonstrated substantial need and an inability without undue hardship to overcome a claim of work product immunity, if any applies.

14. An audit of the company's operational review process, must of necessity examine customer trouble reports, the coding for those reports, the repair systems, and management's handling

⁸ See Citizens' Motion to Compel--Johnson, supra n.1, and deposition of Shirley T. Johnson attached thereto [T 15-20, 34, 39-42].

of the feedback of the findings from that audit. Manifestly, this audit contains information relevant to a central issue in this docket: Whether Southern Bell managers encouraged behavior that led to employees systematically falsifying out-of-service repair records by ignoring evidence of such falsification, which was augmented by inadequate feedback and retention policies for operational reviews. This audit will provide factual data on the accuracy of the trouble reporting process, the accuracy of the error correction process, and employee motivation to ensure the integrity of the customer service quality reporting system.

15. Since Citizens cannot replicate the data nor the complex interconnected computer programming that is required to produce these audits and statistical analysis of the company's customer repair and rebate process, this Commission should order BellSouth to produce the documents. Citizens further assert that we need these documents in order to prepare our case. By their very nature, these documents contain factual information that is reasonably calculated to lead to admissible evidence. Citizens need this information in order to prepare cross-examination for company witnesses, corroborate testimony of employees/witnesses, and obtain the facts relevant to the issues in this docket.

16. Furthermore, withholding the documents would defeat the interest of justice. See Xerox Corp. v. Interna'l Bus. Machines Corp., 64 F.R.D. 367 (S.D.N.Y. 1974) (holding that IBM attorney's

notes of employee interviews were discoverable as the employees were unable to recall facts in depositions taken by Xerox). As the federal district court stated in Xerox where IBM had sole control over the information sought:

A party should not be allowed to conceal critical, non-privileged, discoverable information, which is uniquely within the knowledge of the party and which is not obtainable from any other source, simply by imparting the information to its attorney and then attempting to hide behind the work product doctrine after the party fails to remember the information.

Xerox, 64 F.R.D. at 381-82.

17. BellSouth, as the sole proprietor of all the information relevant to this case, cannot be permitted to selectively disclose only that information that bolsters its case, while hiding unfavorable data behind a claim of privilege. To allow a public monopoly to dictate what information it will release to its regulatory agency and consumer advocate would defeat the statutory mandate granted to this Commission by the Legislature.

18. If the Commission finds that extraneous communication between the attorney and non-legal employees are so entwined within the audits to render them privileged, then Citizens' move the Commission to order BellSouth to produce copies with those protected communications redacted. If the information contained in these audits proves this allegation and the Commission finds

the documents in their entirety privileged, then Citizens move the Commission to strike any affirmative defense raised on this issue. Fla. Stat. § 90.510 (1991); see Affiliated of Fla., Inc. v. U Need Sundries, Inc., 397 So. 2d 764 (Fla. 2d DCA 1981).

The Personnel Notes Request

19. BellSouth has failed to demonstrate that either the attorney-client privilege or the work product doctrine apply to the notes of its personnel department employees. BellSouth has the burden of showing that these documents meet the definition of attorney-client privilege and/or qualify for a work product immunity from discovery. See Hartford Accident & Indemnity Co. v. McGann, 402 So. 2d 1361 (Fla. 4th DCA 1981). BellSouth must prove each element of the privilege claimed.⁹ Id. It has failed

⁹ Federal courts have generally accepted the test elements listed by Judge Wyzanski in United States v. United Shoe Machinery Corp., 89 F. Supp. 357, 358-59 (D. Mass. 1950):

The privilege applies only if (1) the asserted holder of the privilege is or sought to become a client; (2) the person to whom the communication was made (a) is a member of the bar of a court, or his subordinate and (b) in connection with this communication is acting as a lawyer; (3) the communication relates to a fact of which the attorney was informed (a) by his client (b) without the presence of strangers (c) for the purpose of securing primarily either (i) an opinion on law or (ii) legal services or (iii) assistance in some legal proceeding, and not (d) for the purpose of committing a crime or tort, and (4) the privilege has been (a) claimed and (b) not waived by the client.

to show that the information was a communication between an attorney and a client, that the information was communicated in confidence for the purpose of securing legal advice, or that the privilege has not been waived.

20. The notes were written by company employees, not an attorney. The notes were taken in a conference with senior management, not an attorney. No evidence has been presented that an attorney was present. No evidence has been presented that the information was imparted to lower-level personnel department employees for the purpose of securing legal advice. Rather, the the purpose was to discipline network operations employees.¹⁰ The company admits that disciplining employees is a business decision.¹¹ Further, the notes of the senior personnel manager, which formed the basis of the conference and the notes at issue herein, have been voluntarily produced by BellSouth. See Citizens' Motion to Compel BellSouth Telecommunications' Vice President Network-South Area C.J. Sanders and BellSouth Telecommunications' General Manager--Human Resources C.L. Cuthbertson, Jr., to Answer Deposition Questions, Dockets nos.

S.E.C. v. Gulf Western Indus., Inc., 518 F. Supp. 675, 681 (D.D.C. 1981).

¹⁰ See supra n.1, and Ward deposition attached to Citizens' motion.

¹¹ Southern Bell Telephone and Telegraph Company's Objections to Public Counsel's First Set of Requests for Admissions, Dockets nos. 910163-TL and 920260-TL, 4, ¶ 14 (July 24, 1992).

910163-TL and 920260-TL (July 2, 1992). Citizens have briefed the application of attorney-client privilege and work product immunity for personnel department notes in its prior motion and adopts its arguments by reference herein. See Citizens' Eighth Motion to Compel and Request for In Camera Inspection of Documents and Expedited Decision, Dockets nos. 910163-TL and 920260-TL (Aug. 21, 1992) and supra n.1.

21. These documents are related to personnel actions taken by non-legal managers in accordance with company personnel practices. Mr. Cuthbertson's notes, the origin of the notes at issue herein, have been voluntarily produced, which waives any ostensible claim of privilege the company is asserting. Citizens ability to obtain the facts and prepare their case has been seriously compromised by the delay in receiving information needed to carry our investigation forward. The Commission should compel BellSouth to produce these notes.

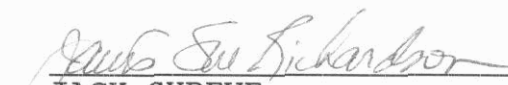
Request for In Camera Inspection

22. A final determination of privilege for the documents withheld must be made by the Commission, not by the party asserting the privilege. The Commission can only determine the existence of a privilege after a careful examination and narrow application of the law to the specific document in an in camera inspection. Eastern Air Lines, Inc. v. Gellert, 431 So. 2d 329

(Fla. 3d DCA 1983). "The purpose of this examination is not to determine whether there is good cause to overcome the privilege, but rather to determine whether the items are, as a matter of law and fact, entitled to the privilege at all." Internat'l Tel. & Tel. Co. v. United Tel. Co. of Fla., 60 F.R.D. 177, 185 (M.D. Fla. 1973) (emphasis in original). The Commission can protect against disclosure of any opinion work product by ordering redacted copies to be produced, which contain only factual data. Citizens seek the facts, not company counsel's opinion.

WHEREFORE, the Commission should compel BellSouth immediately to produce all documents responsive to Citizens' request.

Respectfully submitted,


JACK SHREVE

Public Counsel
CHARLES J. BECK
Deputy Public Counsel
JANIS SUE RICHARDSON
Associate Public Counsel

Office of Public Counsel
c/o The Florida Legislature
111 West Madison Street
Room 812
Tallahassee, Florida 32399-1400

(904) 488-9330

Attorneys for the Citizens
of the State of Florida

**CERTIFICATE OF SERVICE
DOCKET NO. 910163-TL**

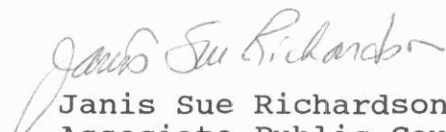
I HEREBY CERTIFY that a correct copy of the foregoing has been furnished by U.S. Mail or hand-delivery to the following persons on this 16th day of December, 1992.

Marshall Criser, III
BellSouth Telecommunications,
Inc. (Southern Bell Telephone
& Telegraph Co.)
150 S. Monroe St., Suite 400
Tallahassee, FL 32301

John Hoag
Department of Legal Affairs
Presidential Circle
4000 Hollywood Blvd., Suite 505-S
Hollywood, FL 33021

Tracy Hatch
Jean Wilson
Division of Legal Services
Fla. Public Service Commission
101 East Gaines Street
Tallahassee, FL 32301

David Wells
Robert J. Winicki
William S. Graessle
Mahoney, Adams & Criser, P.A.
3300 Barnett Center
50 North Laura Street
P.O. Box 4099
Jacksonville, FL 32201


Janis Sue Richardson
Associate Public Counsel

ATTACHMENT A

LETTER FROM CHARLES BECK TO HARRIS ANTHONY



JACK SHREVE
PUBLIC COUNSEL

STATE OF FLORIDA
OFFICE OF THE PUBLIC COUNSEL

c/o The Florida Legislature
111 West Madison Street
Room 812
Tallahassee, Florida 32399-1400
904-488-9330

September 20, 1991

VIA FAX

Harris R. Anthony
General Attorney Florida
Southern Bell Telephone and
Telegraph Company
150 West Flagler St., Suite 1910
Miami, FL 33130

Re: Docket No. 910163-TL

Dear Hank:

Our document request no. 4 in our eleventh set of requests for production of documents dated July 31, 1991 asked Southern Bell to provide DLETHs for the entire trouble history of a number of different phone numbers. Your response dated September 4, 1991 stated that you would provide all documents in your possession, custody, or control responsive to the request.

First, we received no documents whatsoever for the following phone numbers:

661-0828	264-3084
592-9671	592-6757
591-9670	591-1958
266-2260	661-7927
262-1763	

Second, instead of providing DLETHs, you provided us something called ETHs.

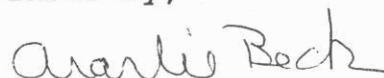
Third, for those phone numbers for which ETHs were provided, it appears Southern Bell went out of its way to provide all of the documents mixed up in a random order. For example, one number may have had as many as 20 sheets, yet those sheets were scrambled throughout the entire batch of pages provided by Southern Bell. Therefore, in order to put all of the documents related to one phone number together, we had to re-sort the entire package of pages produced.

Mr. Anthony
Page 2
September 20, 1991

I would appreciate an explanation about why the documents were provided in what appears at first glance to be an effort to purposely mix up the documents and make it difficult, if not impossible, to put them back together in the correct order. Secondly, no explanation was provided about why documents were not provided for some of the telephone numbers. Finally, I do not understand why the documents were not simply provided in one continuous computer printout. The way in which the documents were provided makes me wonder whether we in fact have the entire printout for each of the phone numbers for which you provided documents.

I look forward to your response at your earliest convenience.

Sincerely,



Charles J. Beck
Deputy Public Counsel

CJB/dd

ATTACHMENT B

LETTER FROM HARRIS ANTHONY TO CHARLES BECK

RECEIVED

OCT 01 1991

Harris R. Anthony
General Attorney-Florida

Office of
Public Counsel

Southern Bell Telephone
and Telegraph Company
Museum Tower Building
Suite 1910
150 West Flagler Street
Miami, Florida 33130
Phone (305) 530-5555

September 27, 1991

Charles J. Beck, Esq.
Assistant Public Counsel
Office of the Public Counsel
111 W. Madison Street
Room 812
Tallahassee, FL 32399-1400

FILE COPY

RE: Docket No. 910163-TL

Dear Mr. Beck:

I am in receipt of your letter dated September, 20, 1991, regarding Southern Bell's response to item no. 4 of Public Counsel's Eleventh Set of Requests for Production of Documents. The following will confirm the information that I provided to you during our earlier telephone conversation of this week.

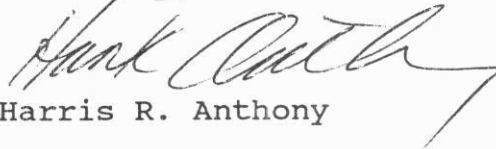
With regard to the nine specified telephone numbers for which Southern Bell provided no documentation, Southern Bell's records show that those nine telephone numbers have never had any reported trouble history. Thus, there are no documents, either a DLETH or an ETH, for those particular numbers. As I also informed you, and as Southern Bell will more fully describe in its responses to certain other interrogatories, a "DLETH" is an on-line trouble history that contains certain information, usually for the previous fourteen months. Southern Bell has previously indicated, however, that it is now keeping Florida DLETH records for a longer period of time until the matters under review in Docket No. 910163 have been resolved. Trouble history information other than that currently in the DLETH data base is kept on separate computer tapes and is known as "ETH" information.

The ETH trouble history information provided by Southern Bell for the various telephone numbers specified by Public

Counsel are provided in the order in which they were printed from Southern Bell's computer tapes. The ETH information consists of two different data bases which are contained on five separate computer tapes. When the information was obtained from these tapes it was printed in chronological order. Information regarding one telephone number may therefore appear at different points in the print-out because that telephone number had a trouble history at different times. Southern Bell, of course, in no way attempted to scramble that information. Finally, the documents were not provided in one continuous computer print-out because it was easier to split the print-outs for copying purposes.

I trust that this answers any questions that you may have. Should any questions remain, however, please do not hesitate to contact me.

Sincerely,

A handwritten signature in cursive script, appearing to read "Harris R. Anthony".

Harris R. Anthony

HRA:jn

ATTACHMENT C
BELLSOUTH INDEX OF AUDITS

"Attachment A"

LIST OF COMPLETED AUDITS CLASSIFIED AS ATTORNEY WORK PRODUCTS

LEGEND OF ABBREVIATIONS USED:

- | | | | | | |
|----|-----------|-----|--------------------------------|------------------|---------------------|
| 1. | RATING | S | - SATISFACTORY | | |
| | | SF | - SATISFACTORY WITH FINDINGS | | |
| | | SAF | - SIGNIFICANT ADVERSE FINDINGS | | |
| 2. | COMPANIES | BSC | - BELLSOUTH CORPORATION | | |
| | | BSE | - BELLSOUTH ENTERPRISES | | |
| | | BSS | - BELLSOUTH SERVICES | | |
| | | BST | - BELLSOUTH TELECOMMUNICATIONS | | |
| | | SBT | - SOUTHERN BELL | | |
| | | SCB | - SOUTH CENTRAL BELL | | |
| 3. | STATES | AL | - ALABAMA | KY - KENTUCKY | NC - NORTH CAROLINA |
| | | FL | - FLORIDA | LA - LOUISIANA | SC - SOUTH CAROLINA |
| | | GA | - GEORGIA | MS - MISSISSIPPI | TN - TENNESSEE |

<u>CYCLE & FUNCTION</u>	<u>TITLE</u>	<u>RAT- ING</u>	<u>AUDITED COMPANY(IES)</u>	<u>ATTORNEY</u>
<u>First Quarter 1990</u>				
17-12	Public Communications Proposals for Broward County	S	SBT	H. R. Anthony
17-13	Accuracy of Coin Commission Payments	SAF	SBT	H. R. Anthony
51-02	Personnel Guidelines	S	SBT	H. R. Anthony
<u>Second Quarter 1990</u>				
17-10	Service Center - Public Communications	SAF	SBT	L. E. Gill
17-14	Commission Accuracy - Coin	SAF	SBT	A. S. Povall, Jr
17-15	Commission Accuracy - Coin	SAF	SBT	F. Walters
17-16	Coinless-Telephone Commission Accuracy	SAF	SBT	L. E. Gill
18-01	Coin Telephone Settlements	SAF	SBT	L. E. Gill
<u>Third Quarter 1991</u>				
15-03	Customer Adjustments - Loop Maintenance Operations System (LMOS)	SAF	BST-FL	H. R. Anthony
16-06	Mechanized Adjustments - Mechanized Out of Service Adjustments (MOOSA) - Florida	SAF	BST-FL	H. R. Anthony
53-15	Key Service Indicator (KSRI) - Network Customer Trouble Rate	SAF	BST-FL	H. R. Anthony
63-04	PSC Schedule 11	SAF	BST-FL	H. R. Anthony

<u>CYCLE & FUNCTION</u>	<u>TITLE</u>	<u>RAT- ING</u>	<u>AUDITED COMPANY(IES)</u>	<u>ATTORNEY</u>
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Fourth Quarter 1991

G10-21-15	Independent Contractor vs. Employee Status	SAF	BSC, BSE BST-ALL STATES	K. W. Kochler
B10-62-02	Environmental Management	SAF	BST-ALL STATES	K W Kochler

ATTACHMENT D

BELLSOUTH RESPONSE TO STAFF'S 2D REQUEST

REP2 Item 20

SOUTHERN BELL TEL. & TEL. CO.
FPSC DOCKET 910163-TL
FPSC DIVISION OF RESEARCH
SECOND REQUEST FOR PRODUCTION OF DOCUMENTS
MAY 29, 1992
ITEM 2.(a).
PAGE 1 OF 1

REQUEST: Please explain why operational reviews of IMCs have traditionally been conducted from within the Network organization rather than by the Internal Audit Department.

RESPONSE: Operational reviews of IMCs have been performed by the Network organization in addition to the reviews considered necessary and conducted by the Internal Auditing Department. The objectives of operational reviews are typically much broader than the typical internal audit. Internal Audits focus largely on assessing the accuracy and effectiveness of organizations, systems, and processes. Operational reviews evaluate additional areas such as employee safety habits, efficiency, productivity, training, effective use of tools and test equipment, quality of customer service, etc. In addition, operational reviews are performed on a much broader universe than the typical internal audit since we will over time perform the same OR in all states, not just one or two as in the typical internal audit. Operational reviews form the basis for the healthy self-evaluation that Network considers important to continuously improving its service, cost, and safety performance.

RESPONSE PROVIDED BY: D. L. KING
NORTH N2A1, 3535 COLONNADE PARKWAY
BIRMINGHAM, ALABAMA 35243

15:2

SOUTHERN BELL TEL. & TEL. CO.
FPSC DOCKET 910163-TL
FPSC DIVISION OF RESEARCH
SECOND REQUEST FOR PRODUCTION OF DOCUMENTS
MAY 29, 1992
ITEM NO. 2.(b).
PAGE 1 OF 2

REQUEST: Please indicate whether and how Southern Bell reassessed this assignment of responsibility for performing audits and reviews of IMCs after problems and allegations regarding repair record falsification surfaced, and describe any resultant changes. If applicable, please provide copies of documentation (memoranda, correspondence, reports, procedures, etc.) that verify whether such a re-evaluation took place.

RESPONSE: Yes, a re-evaluation of the operational review (OR) process for IMCs did occur and positive actions have been taken to improve the discipline applied to these ORs. There has been no change in the responsibility for performing the Network operational reviews since these reviews are considered to be a necessary self-review to ensure that continuous improvements in service, cost, and safety occur. The Internal Audit Department will continue to perform all official audits as deemed necessary to ensure that appropriate controls are functioning within the Corporation, including the Network departments.

There have been improvements instituted in the Network operational review process to ensure that all findings receive the necessary management attention. We have modified the BellSouth Practices that are used as the basis for IMC operational reviews to specify which management positions receive feedback from operational reviews, to require formal follow-up reports on all adverse findings, to provide for follow-up focused operational reviews to ensure that corrective action plans have been effective, and to provide for the retention of appropriate documents relating to the review for a period of not less than five years. The following quotation is taken from the revised IMC review package:

"6.0 FEEDBACK

The review activities are directed toward the feedback meeting and the written report. Prior to the formal feedback meeting, informal meetings will be held with the local management team to discuss the findings of the review. This allows for general questions and discussions. Problems discovered should be clearly described. The team and the local district representative(S.) should agree on a proposed fix/solution.

REP 2

SOUTHERN BELL TEL. & TEL. CO.
FPSC DOCKET 910163-TL
FPSC DIVISION OF RESEARCH
SECOND REQUEST FOR PRODUCTION OF DOCUMENTS
MAY 29, 1992
ITEM 2.(b).
PAGE 2 OF 2

If integrity issues are identified during the review, the reviewer will direct them to the team leader who will in turn notify the appropriate area officer.

The formal feedback will be scheduled for the following week after the review is completed. This will be an oral face-to-face feedback session conducted in the District where the review occurred. All levels of line management and the appropriate staff representatives should be invited to attend the meeting. A senior manager (Officer, GM, AVP, Director, etc.) from outside the District should attend all feedbacks.

Formal written feedback will be prepared and distributed to the responsible line Manager(s), Operations Manager(s), General Manager(s), and Vice President(s), and to the responsible staff Operations Manager(s), Director(s), and Assistant Vice President(s).

7.0 IMPROVEMENT PLANS / FOLLOW-UP REVIEWS

An improvement plan should be implemented to address each sub-module in the review package which earned 85 or fewer points. Written feedback of the District's plan of action for improvement must be provided to _____ within fourteen (14) days after the formal feedback is presented to the District. Local follow-up reviews using the guidelines outlined in the review package should be conducted to ensure satisfactory compliance.

Centers receiving an Overall Rating of 79 or fewer points must implement an improvement plan monitored by Local Staff. A follow-up review on all sub-modules which were rated unsatisfactory will be scheduled and performed within three (3) months of the original review.

8.0 REVIEW DOCUMENTATION RETENTION PERIOD

All Operational Review and follow-up review documentation will be retained for five years."

RESPONSE PROVIDED BY: D. L. KING
NORTH N2A1, 3535 COLONNADE PARKWAY
BIRMINGHAM, ALABAMA 35243

ATTACHMENT E
BELLSOUTH RESPONSE TO CITIZENS' 30TH INTERROGATORY

F10-15-03 - CUSTOMER ADJUSTMENTS - LMOS

EMPLOYEE NAME	TITLE / DEPARTMENT	TOTAL DOLLARS	TOTAL HOURS
L. DYE	ASSOCIATE MANAGER / INTERNAL AUDITING	\$13,247.65	477.50
R. MUSCHAMP	ASSOCIATE MANAGER* / INTERNAL AUDITING	\$7,354.44	255.50
M. PEREZ	ASSOCIATE MANAGER / INTERNAL AUDITING	\$6,289.71	211.00
M. RODRIGUEZ	MANAGER / INTERNAL AUDITING	\$9,056.94	273.50
TOTAL		\$35,948.74	1217.50

F10-16-06 - CUSTOMER ADJUSTMENTS - MOOSA

EMPLOYEE NAME	TITLE / DEPARTMENT	TOTAL DOLLARS	TOTAL HOURS
L. DYE	ASSOCIATE MANAGER / INTERNAL AUDITING	\$16,029.35	570.00
TOTAL		\$16,029.35	570.00

F10-53-15 - KSRI - NETWORK CUSTOMER TROUBLE REPORT RATE

EMPLOYEE NAME	TITLE / DEPARTMENT	TOTAL DOLLARS	TOTAL HOURS
L. DYE	ASSOCIATE MANAGER / INTERNAL AUDITING	\$3,350.70	135.00
R. MUSCHAMP	ASSOCIATE MANAGER* / INTERNAL AUDITING	\$1,303.05	52.50
M. PEREZ	ASSOCIATE MANAGER / INTERNAL AUDITING	\$1,303.05	52.50
M. RODRIGUEZ	MANAGER / INTERNAL AUDITING	\$6,776.55	247.50
TOTAL		\$12,733.35	487.50

F10-55-02 - NETWORK OPERATIONAL REVIEWS

EMPLOYEE NAME	TITLE / DEPARTMENT	TOTAL DOLLARS	TOTAL HOURS
L. DYE	ASSOCIATE MANAGER / INTERNAL AUDITING	\$2,233.80	90.00
R. MUSCHAMP	ASSOCIATE MANAGER* / INTERNAL AUDITING	\$3,164.55	127.50
M. PEREZ	ASSOCIATE MANAGER / INTERNAL AUDITING	\$1,861.50	75.00
M. RODRIGUEZ	MANAGER / INTERNAL AUDITING	\$4,517.70	165.00
TOTAL		\$11,777.55	457.50

F10-63-04 - PSC SCHEDULE 11

EMPLOYEE NAME	TITLE / DEPARTMENT	TOTAL DOLLARS	TOTAL HOURS
L. DYE	ASSOCIATE MANAGER / INTERNAL AUDITING	\$3,243.00	110.50
R. MUSCHAMP	ASSOCIATE MANAGER* / INTERNAL AUDITING	\$8,115.16	260.50
<u>M. PEREZ</u>	<u>ASSOCIATE MANAGER / INTERNAL AUDITING</u>	<u>\$10,838.74</u>	<u>364.50</u>
M. RODRIGUEZ	MANAGER / INTERNAL AUDITING	\$22,446.44	713.50
TOTAL		\$44,643.34	1449.00

AUDIT ASSISTANCE:

C. JONES	SUMMER INTERN** / INTERNAL AUDITING	\$5,426.55	583.5
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Notes:

* retired as of 10-31-91.

** provided clerical assistance such as spreadsheet creation, keying, copying on all audits.

INFORMATION PROVIDED BY:

Maria Rodriguez
Manager - Internal Auditing
Room 687
666 NW 79th Avenue
Miami, Florida 33126
(305) 263-2500

ATTACHMENT F
AFFIDAVIT OF NEED
and UNDUE HARDSHIP

AFFIDAVIT

STATE OF FLORIDA

COUNTY OF LEON

BEFORE ME, the undersigned authority, personally appeared Walt Baer, who stated that he is currently a Regulatory Analyst with the Florida Office of the Public Counsel, and has provided the following opinion on Southern Bell Telephone's trouble reports.

1. To the best of my knowledge, BellSouth customer trouble reports are processed by a computerized system of linked software. Customer trouble reports are received and processed by the Loop Maintenance Operations System [LMOS]. LMOS analyzes and identifies out-of-service conditions that form the database for in-house and PSC regulatory reports and customer rebates.

2. To evaluate the adequacy and effectiveness of internal controls and the quality of performance of these systems, BellSouth performs internal audits, operational reviews, and statistical analyses. Five such audits took place in the third quarter of 1991 (LMOS, Key Service and Revenue Indicators, Mechanized Out of Service Adjustments, PSC Schedule 11, and Operational Review).

3. The necessity of utilizing computers to assist in the audits is obvious when one understands the enormous size of the data base, which represents the trouble reports that have to be analyzed to determine whether a refund is due to the consumer. The volume of total trouble reports of which the number of out-of-service (OOS) reports are a subset, and trouble reports that are out-of-service for greater than 24 hours, which is a subset of the OOS reports, can be seen by way of the Schedule 11 and 11a reports furnished to the Florida Public Service Commission by BellSouth. Without access to BellSouth's audits, the Office of the Public Counsel Staff would have to receive all the manuals and procedures that explain how to read trouble reports, the paper copies of each trouble report, and each customer bill to verify the accuracy of BellSouth's entire trouble repair and rebate system. All this information would then have to be tabulated into some comprehensible form to determine the degree to which BellSouth has met its claim of maintaining its high quality of customer service with appropriate incentives and integrity.

4. It would be difficult to even estimate how long it would take for the Public Counsel staff to analyze just the 1,643,188 total reports for 1991, or the total OOS report for 1991 of 670,537. Indeed, given the complexity of the audits, the enormous amount of data, and the unique computer system required to process it, the task is impossible.

5. All of the customer data and the computer systems that are needed to produce this audit are under the sole control of BellSouth Telecommunications, Inc. and cannot be obtained from any other source.

DATED at Tallahassee, this 16th day of December, 1992.

Walter W. Baer
STATE OF FLORIDA
COUNTY OF LEON

The foregoing instrument was acknowledged before me this 16th day of December, 1992, by Walter W. Baer, who:

A) is/are personally known to me OR _____ who has/have produced _____ a driver's license OR _____ other identification: _____ as identification; and

B) Who _____ did OR did not take an oath.

Kay W. Harder
Signature of Notary Public

(SEAL/EXPIRATION DATE)

Kay W. Harder
Printed name of Notary Public

Notary Public
Title or Rank



KAY W. HARDER
MY COMMISSION # CC 191547 EXPIRES
April 7, 1996
BONDED THRU TROY FAIR INSURANCE, INC.