

SIDNEY J. WHITE, JR.
General Attorney

Southern Bell Telephone
and Telegraph Company
Suite 400
150 South Monroe Street
Tallahassee, Florida 32301
(404) 529-5094

January 28, 1993

Mr. Steve C. Tribble
Director, Division of Records and Reporting
Florida Public Service Commission
101 East Gaines Street
Tallahassee, Florida 32301

RE: Docket No. 910163-TL

Dear Mr. Tribble:

Enclosed are an original and fifteen copies of Southern Bell Telephone and Telegraph Company's Response and Objections to Public Counsel's Thirty-Sixth Request for Production of Documents and Motions for Permanent and Temporary Protective Orders. Please file this document in the above-captioned docket.

A copy of this letter is enclosed. Please mark it to indicate that the original was filed and return the copy to me. Copies have been served on the parties shown on the attached Certificate of Service.

Sincerely,

Sidney J. White, Jr.
Sidney J. White, Jr. (2)

- ACK 1
- AFA 1
- APP 1
- CAF 1
- CMU 1
- CTR 1
- EAG 1
- LEG 1
- LIN 6
- OPC 1
- RCH 1
- SEC 1

Enclosures

cc: All Parties of Record
A. M. Lombardo
H. R. Anthony
R. D. Lackey

RECEIVED & FILED
WAS

[Signature]
FPSC-BUREAU OF RECORDS

DOCUMENT NUMBER-DATE

01109 JAN 28 89

FPSC-RECORDS/REPORTING

CERTIFICATE OF SERVICE
Docket No. 910163-TL

I HEREBY CERTIFY that a copy of the foregoing has been furnished by United States Mail this 28th day of January, 1993 to:

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

Tracy Hatch
Division of Legal Services
Florida Public Svc. Commission
101 East Gaines Street
Tallahassee, FL 32399-0863

Sidney J. White (cc)

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition on Behalf of)
Citizens of the State of Florida) Docket No. 910163-TL
to Initiate Investigation into)
Integrity of Southern Bell) Filed: January 28, 1993
Telephone and Telegraph Company's)
Repair Service Activities and)
Reports.)
_____)

SOUTHERN BELL TELEPHONE AND TELEGRAPH COMPANY'S
RESPONSE AND OBJECTIONS TO PUBLIC COUNSEL'S
THIRTY-SIXTH REQUEST FOR PRODUCTION OF DOCUMENTS
AND MOTIONS FOR PERMANENT AND TEMPORARY PROTECTIVE ORDERS

COMES NOW BellSouth Telecommunications, Inc. d/b/a Southern Bell Telephone and Telegraph Company ("Southern Bell" or "Company"), and files, (1) pursuant to Rule 25-22.034, Florida Administrative Code, and Rule 1.350 of the Florida Rules of Civil Procedure, its Responses and Objections to the Office of Public Counsel's ("Public Counsel") Thirty-Sixth Request for Production of Documents dated December 23, 1992, and (2) pursuant to Rule 1.280(c), Florida Rules of Civil Procedure, its Motion for Permanent Protective Order, and (3) pursuant to Rule 25-22.006, Florida Administrative Code, its Motion for Temporary Protective Order.

MOTION FOR PERMANENT PROTECTIVE ORDER

Some of the documents requested by Public Counsel in its Thirty-Sixth Request for Production of Documents are privileged documents. Specifically, Public Counsel has requested copies of privileged internal audits and additional work product derived from and including the details of such audits and other privileged investigations. These requests, as framed, seek to

DOCUMENT NUMBER DATE
01109 JAN 28 93
FPSC-RECORDS/REPORTING

details of the internal audit investigations commissioned and supervised by the Legal Department relating to these matters. Moreover, the documents requested constitute a substantive portion of internal investigations which were conducted in anticipation of litigation. This information is privileged on the basis of the Attorney-Client Privilege and Work Product Doctrine, or both. Thus, pursuant to Rule 1.280(c), Florida Rules of Civil Procedure, Southern Bell moves the Prehearing Officer to issue a Protective Order directing that discovery not be had with respect to these privileged documents. Southern Bell's specific responses to Request Nos. 1, 2, 3 and 5 set forth herein further specify the basis on which documents or portions of documents are deemed to be privileged.

MOTION FOR TEMPORARY PROTECTIVE ORDER

Some of the documents that will be delivered to or made available for review by Public Counsel contain proprietary confidential business information that should not be publicly disclosed. Thus, pursuant to Rule 25-22.006(5)(c), Florida Administrative Code, Southern Bell moves the Prehearing Officer to issue a Temporary Protective Order exempting these documents from § 119.07(1), Florida Statutes. These documents contain, among other things, employee personnel information unrelated to compensation, duties, qualifications, or responsibilities and other proprietary confidential business information. Such information is specifically included as proprietary confidential

business information pursuant to § 364.183, Florida Statutes. If Public Counsel subsequently notifies Southern Bell that any of the proprietary documents are to be used in a proceeding before the Commission, Southern Bell will, in accordance with Rule 25-22.006, Florida Administrative Code, file a detailed motion for protective order specifically addressing each of the documents identified.

GENERAL RESPONSE AND OBJECTIONS

1. Southern Bell objects to Public Counsel's proposed "Instruction" relating to details of privileged documents. To the extent a document responsive to any of the requests is subject to an applicable privilege, some of the information requested by Public Counsel would be similarly privileged and therefore not subject to discovery.

2. Southern Bell objects to Public Counsel's Instruction requesting "... a description of the sequence or order of the documents..." being produced. Such a request is patently unreasonable. The "sequence or order" of documents being produced is readily apparent; therefore, Public Counsel's request for a narrative description of what can be easily determined based on a review of the documents themselves is unnecessary and objectionable.

3. Southern Bell objects to Public Counsel's definition of "document" or "documents." Public Counsel's definition of these terms is overly broad and is objectionable pursuant to standards

adopted in Caribbean Security Systems v. Security Control Systems, Inc., 486 So. 2d 654 (Fla. App. 3rd District 1986).

4. Southern Bell objects to Public Counsel's definition of "you" and "your" as well as the definition of "BellSouth." It appears that Public Counsel, through its definition of these words, is attempting to obtain discovery of information in the possession, custody, or control of entities that are not parties to this docket. Requests for Production may be directed only to parties, and any attempt by Public Counsel to obtain discovery from non-parties should be prohibited. See Rule 1.340, Florida Rules of Civil Procedure; Broward v. Kerr, 454 So. 2d 1068 (4th D.C.A. 1984).

5. Southern Bell does not believe it was Public Counsel's intent to require Southern Bell to produce again the same documents previously produced in other dockets, but to the extent it does, Southern Bell objects on the basis that such a request would be unduly burdensome, oppressive and unnecessary, and for these reasons is prohibited.

6. The following Specific Responses are given subject to the above-stated General Responses and Objections.

SPECIFIC RESPONSES

7. With respect to Request No. 1, Southern Bell objects to this request on the basis that it calls for the production of proprietary confidential business information in the form of information relating to Company employee-related disciplinary

activities. These documents contain specific references to the individuals involved in disciplinary activities and other matters pertaining to such disciplinary activity, which documentation was created for internal Company purposes and was not intended for public disclosure. The information in such documents is unrelated to any normal compensation, duties, or responsibilities of such employees. Consequently, pursuant to § 364.183(f), Florida Statutes, this information is exempt from the inspection and review provisions of § 119.07, Florida Statutes.

Notwithstanding this objection, Southern Bell will produce responsive documents, not otherwise privileged, that are in its possession, custody, or control at a mutually convenient time and place subject to the Company's Motion for Temporary Protective Order set forth above. Southern Bell objects to producing any responsive documents that comprise a substantive portion of or incorporate any of the substance of, the privileged internal investigations commissioned and supervised by attorneys for Southern Bell. These investigations, and the information generated as a result, are privileged on the basis of the Attorney Client Privilege and Work Product Doctrine.

8. With respect to Request No. 2, Southern Bell objects to this request on the basis that it calls for the production of privileged documents. The documents responsive to this request were specifically generated as a result of audits conducted originally at the direct request of, and under the direct

supervision of, attorneys for Southern Bell. Any reaudits were likewise conducted at the direct request and under the direct supervision of the Legal Department. The information obtained from these documents was used by attorneys for Southern Bell to render legal advice and counsel to the Company in anticipation of litigation.

9. With respect to Request No. 3, Southern Bell objects to this request on the basis that some of the information contained in the documents responsive to the request is either privileged information or proprietary confidential business information. To the extent information contained in any of the documents otherwise responsive to this request, constitutes a substantive record of the details of any privileged audit or other investigatory activity, such information is not discoverable based on the Attorney Client Privilege or the Work Product Doctrine, or both. In addition, some of the responsive documents contain proprietary confidential business information in the form of employee specific personnel information unrelated to compensation, duties, qualifications or responsibilities. This information is specifically considered to be proprietary confidential business information pursuant to Section 364.183(f), Florida Statutes. Notwithstanding this objection, Southern Bell will produce these responsive documents, to the extent not privileged in whole or in part, in its possession, custody, or

control at a mutually convenient time and place, subject to the Company's Motion for Temporary Protective Order set forth above.

10. With respect to Request No. 4, Southern Bell has no additional responsive documents not already produced in this docket.

11. With respect to Request No. 5, Southern Bell objects to this request on the basis that it is overly vague and ambiguous, and Southern Bell cannot determine with reasonable certainty what documents are being sought. Public Counsel's request seeks documents "...written since January, 1992 that were not previously provided." Read literally, this request seeks all documents that Southern Bell has in its possession, custody, or control, created after January, 1992, which Public Counsel also has not yet requested. Such an overly broad and vague reference to unspecified documents is both inappropriate and objectionable. However, since Public Counsel has specified that it is seeking production of certain documents "...concerning disciplining of employees..." related to matters covered under this docket, Southern Bell will produce such responsive documents, subject to the same objections and conditions set forth in the Company's response to Request No. 3.

12. With respect to Request No. 6, Southern Bell will produce responsive documents that are in its possession, custody, or control at a mutually convenient time and place.

13. With respect to Request No. 7, Southern Bell will produce responsive documents that are in its possession, custody, or control at a mutually convenient time and place.

14. With respect to Request No. 8, Southern Bell has no documents responsive to this request.


15. With respect to Request No. 9, Southern Bell will produce responsive documents, not otherwise privileged, that are in its possession, custody, or control at a mutually convenient time and place.


16. With respect to Request No. 10, Southern Bell will produce responsive documents that are in its possession, custody, or control at a mutually convenient time and place.

17. With respect to Request No. 11, see documents responsive to Request No. 10.

Respectfully submitted this 28th day of January, 1993.

SOUTHERN BELL TELEPHONE
AND TELEGRAPH COMPANY


HARRIS R. ANTHONY
J. PHILLIP CARVER
c/o Marshall M. Criser
400 - 150 South Monroe Street
Tallahassee, Florida 32301
(305) 530-5555


R. DOUGLAS LACKEY
SIDNEY J. WHITE, JR.
4300 - 675 West Peachtree St., N.E.
Atlanta, Georgia 30375
(404) 529-5094