BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition on Behalf of Citizens of the State of Florida to Initiate Investigation into the Integrity of SOUTHERN BELL TELEPHONE AND TELEGRAPH COMPANY'S Repair Service Activities and Reports	DOCKET NO. 910163-TL
In Re: Comprehensive Review of the Revenue Requirements and Rate Stabilization Plan of SOUTHERN BELL TELEPHONE AND TELEGRAPH COMPANY	DOCKET NO. 920260-TL
In Re: Show cause proceeding against SOUTHERN BELL TELEPHONE AND TELEGRAPH COMPANY for misbilling customers	DOCKET NO. 900960-TL
In Re: Investigation into SOUTHERN BELL TELEPHONE AND TELEGRAPH COMPANY'S compliance with Rule 25-4.110(2), F.A.C.	DOCKET NO. 910727-TL ORDER NO. PSC-93-1016-FOF-TL ISSUED: July 12, 1993

The following Commissioners participated in the disposition of this matter:

J. Terry Deason, Chairman
Thomas M. Beard
Susan F. Clark
Luis J. Lauredo
Julia L. Johnson

ORDER DENYING MOTION FOR REVIEW

By the Commission:

BACKGROUND

Order No. PSC-93-0334-PCO-TL (Order), issued by the Prehearing Officer on March 4, 1993, in the above consolidated docket, granted Public Counsel's 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.

On March 15, 1993, Southern Bell filed a Motion For Review of the Prehearing Officer's Order by the full Commission. On March 25, 1993, Public Counsel filed its Response thereto.

DISCUSSION

Southern Bell has not identified in the Order error of fact or law that would meet the appropriate standard for reconsideration or review. Diamond Cab Co. of Miami v. King, 146 So. 2d 889 (Fla. 1962); Pingree v. Quaintence, 399 So. 2d 161 (Fla. 1st DCA 1981); Order No. PSC-92-0339-FOF-TL (5/13/92).

During a deposition of C. J. Sanders and C. L. Cuthbertson, Jr., BellSouth Telecommunications' Vice President Network - South Area and General Manager - Human Resources, respectively, Southern Bell objected to questions asked by Public Counsel concerning employee discipline matters. The objections were based on a claim that information about these matters was privileged from discovery under the attorney-client and work-product doctrines.

We have already held that the underlying documents comprising handwritten notes, witness statements and summaries were not privileged from discovery. Order Nos. PSC-93-0292-FOF-TL (2/23/93); PSC-93-0517-FOF-TL (4/6/93). Accordingly, Southern Bell's reiteration here of its disagreement with Order Nos. PSC-93-0151-CFO-TL and PSC-93-0294-PCO-TL (2/23/93), review of which we denied in the February 23, 1993 and April 6, 1993 orders, does not identify an issue of fact or law that the Prehearing Officer overlooked or an error requiring review. Though Southern Bell further argues that the deposition questions represented an attempt by Public Counsel to force the deponents to divulge privileged information, that argument is inconsistent with the Commission's previous holding that the documents were not privileged.

Finally, as noted in Upjohn Co. v. United States, 449 U.S. 383, 395, the attorney-client privilege "extends only to communications and not to facts." Therefore, even were the documents privileged communications, the deposition questions would not be precluded by the attorney-client privilege. Upjohn, supra. Similarly, even had the documents been found to be privileged work-product, the deposition questions would not have been precluded. United States v. Pepper's Steel and Alloys, Inc., 132 F.R.D., 695, 699 (S.D. Fla. 1990); Surf Drugs, Inc. v. Vermette, 236 So. 2d 108, 113 & n. 15 (Fla. 1970).

In view of the above, it is

ORDERED by the Florida Public Service Commission that Southern Bell's Motion For Review of Order No. PSC-93-0334-PCO-TL be denied. It is further

ORDERED that this docket remain open.

By ORDER of the Florida Public Service Commission this 12th day of July, 1993.

STEVE TRIBBLE, Director
Division of Records and Reporting

by: Kay Flynn
Chief, Bureau of Records

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), Florida Statutes, to notify parties of any administrative hearings or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: 1) reconsideration within 10 days pursuant to Rule 25-22.038(2), Florida Administrative Code, if issued by a Prehearing Officer; 2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or 3) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or sewer utility. A motion for reconsideration shall be filed with the Director, Division of Records and Reporting, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.