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Southern Bell Telephone
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Legal Department
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September 23, 1991

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 - Repair Service Investigation

Dear Mr. Tribble:

Enclosed please find an original and fifteen copies of Southern Bell Telephone and Telegraph Company's Motion for Reconsideration to the Full Commission of Order No. 25054 and Request for Oral Argument, which we ask that you file in the 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 to the parties shown on the attached Certificate of Service.

ACK _____
AFA _____
APP _____
CAF _____

Sincerely yours,

Harris R. Anthony
Harris R. Anthony
(2)

CMU 1 Enclosures

CTR _____
cc: All Parties of Record
ENG _____ A. M. Lombardo
LEG 1 R. Douglas Lackey

LRI 6

CPC _____

ROH _____

SEC 1 RECEIVED & FILED

WAS _____

OTH _____
FPSC BUREAU OF RECORDS

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CERTIFICATE OF SERVICE
Docket No. 910163-TL

I HEREBY CERTIFY that a copy of the foregoing has been
furnished by United States Mail this *23rd* day of *Sept.*, 1991,
to:

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

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

Harris R. Anthony
(ae)

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Investigation into the Integrity of Southern Bell's Repair Service Activities and Reports) Docket No. 910163-TL
)
) Filed: September 23, 1991
)
)

**SOUTHERN BELL TELEPHONE AND TELEGRAPH COMPANY'S
MOTION FOR RECONSIDERATION TO THE FULL COMMISSION
OF ORDER NO. 25054 AND REQUEST FOR ORAL ARGUMENT**

COMES NOW Southern Bell Telephone and Telegraph Company ("Southern Bell" or "Company"), pursuant to Rule 25-22.038(2), Florida Administrative Code, and files its Motion for Reconsideration to the Full Commission of Order No. 25054.

1. On September 12, 1991, the Prehearing Officer issued Order No. 25054 (the "Order") in the above-captioned docket in which he granted two Motions to Compel filed by Public Counsel. The first Motion to Compel was filed on July 11, 1991, and related to Southern Bell's response and objections to Interrogatories Nos. 1 through 21 of Public Counsel's Third Set of Interrogatories dated June 6, 1991. The second Motion to Compel was filed on July 18, 1991, and related to Southern Bell's responses and objections to Interrogatories 1 and 2 of Public Counsel's Fifth Set of Interrogatories dated June 11, 1991.

2. Southern Bell objected to responding to the interrogatories on the basis that they called for the provision of information that was privileged as attorney work product. Each of the interrogatories requests that Southern Bell's

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attorneys evaluate information that employees have provided in statements to Southern Bell. These statements themselves are attorney work product, which has not been disputed by Public Counsel, and are thus privileged. See, Surf Drugs, Inc. v. Vermette, 236 So.2d 108 (Fla., 1970).

3. In an effort to obtain information not permitted to be discovered under the ruling of the Surf Drugs case, Public Counsel seeks to obtain from Southern Bell information such as the names of employees, if any, who may have knowledge regarding specified alleged facts. The interrogatory asks not for Southern Bell simply to identify persons who are knowledgeable regarding the procedures related to the subject matter of Interrogatory Nos. 1-10. As noted in Southern Bell's Opposition to Public Counsel's Motion to Compel, attached hereto as Attachment "A", Southern Bell would have complied with such a request, as it would fall within the type of information required to be provided under the Surf Drugs holding. What Public Counsel has requested, however, goes beyond what Surf Drugs requires. Public Counsel seeks to have Southern Bell provide a list of persons having knowledge about specific alleged fraudulent activity. Such a request was proscribed in Surf Drugs. To order Southern Bell to provide this information would require Southern Bell's attorneys to evaluate the substance of each of the privileged statements

and reach a judgment as to each person's knowledge, or lack thereof, of certain specified alleged acts. This process of evaluation, opinion and judgment by attorneys for one party in an adversarial proceeding is attorney work product and protected from discovery under Florida Law. Colonial Penn Ins. Co. v. Blair, 380 So.2d 1305, 1306 (Fla. App. 5th Dist. 1980).

4. The September 12, 1991 Order contains no rationale for its holding that the mental processes of counsel for Southern Bell in evaluating the privileged statements are not attorney work product. The Order ignores the differences between the interrogatories propounded by Public Counsel to which Southern Bell objects and the holding of Surf Drugs that a party may request the identities of persons having relevant information. 236 So.2d at p. 113.

5. The issue in this instance is not whether the interrogatories request merely the identity of persons having relevant knowledge. They do not. Rather they ask for the identity of persons who, for example, have knowledge of "falsifying completion times of repair service forms, reports or records." Emphasis added. See Interrogatory No. 1, Public Counsel's Third Set of Interrogatories. Southern Bell cannot provide an answer to this request without indicating who, if anyone, in the judgment of its counsel, based on statements to

counsel which themselves are undisputedly privileged, may have had knowledge whether or not persons have falsified such reports, etc.

6. Public Counsel is an adversarial party to Southern Bell in this proceeding. The adversarial process demands that, absent a showing of substantial need, each party should prepare its own case. One party should not have the advantage of forcing its adversary to prepare the case against itself. Dodson v. Persell, 390 So.2d 704, 708 (Fla. 1980) Public Counsel has not attempted to make any showing of need. Accordingly, the Commission should deny Public Counsel's Motion to Compel with regard to Interrogatory Nos. 1-10.

7. With respect to Interrogatory No. 11, Southern Bell has identified all responsive documents. Southern Bell's response lists numerous documents that are responsive and makes specific reference to its privileged internal investigation. Thus, as noted in its Opposition to Public Counsel's Motion to Compel, Southern Bell has responded fully to Interrogatory No. 11.

8. The Order also does not discuss any basis or rationale for its granting Public Counsel's Motion to Compel with respect to Interrogatory Nos. 12-21. On this basis alone, the Order is procedurally deficient and should not be affirmed. Regarding the substance of Southern Bell's objections to these interrogatories,

Public Counsel asks Southern Bell to identify subscriber specific information for those customers whose service appears, for example, to have had trouble with a falsified completion time. To the extent Southern Bell has such information from a source other than its privileged internal investigation, Southern Bell has already provided it to Public Counsel. To the extent that such information, if any, would be derived from that privileged investigation, it itself is also privileged. Such information is an integral part of the investigation and thus privileged.

9. Finally, Interrogatory Nos. 1 and 2 of Public Counsel's Fifth Set of Interrogatories merely asks for additional information concerning the persons sought to be identified in Nos. 1-10 of the Third Set of Interrogatories. Indeed, No. 2 of the Fifth Set goes so far as to ask for "the type of information held by that person." This clearly goes beyond a mere listing of what a person may generally be knowledgeable about and, when taken in conjunction with Interrogatory Nos. 1-10, asks for an evaluation by counsel for Southern Bell of the substance of the privileged statements. Such an effort is impermissible and should be denied.

10. Public Counsel could properly request Southern Bell to identify the name of any person with knowledge relevant to the proceeding. Public Counsel has available to it the means to

obtain properly the same information which it has requested Southern Bell to provide to him. The Commission should require Public Counsel to utilize appropriate channels of discovery rather than requiring attorneys for Southern Bell to conduct discovery on behalf of Public Counsel.

WHEREFORE, for the foregoing reasons, Southern Bell respectfully requests that the Full Commission reconsider Order No. 25054 and deny Public Counsel's Motions to Compel dated July 11, 1991 and July 18, 1991.

Respectfully submitted,

SOUTHERN BELL TELEPHONE AND
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