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ORIGINAL
FILE COPY

January 8, 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 12 copies of Citizens' Motion to Strike Southern Bell's Motion for Reconsideration of Order No. 25483 to be filed in this docket.

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

- ACK _____
- AFA _____
- APP _____
- CAF _____
- CMU _____
- CTR _____
- EAG _____
- LEG 1 w/oz
- LIN 6
- OPC _____
- RCH _____
- SEC 1
- WAS _____
- OTH _____

Enclosure

Sincerely,

Darlene Driscoll

Darlene Driscoll

DOCUMENT NUMBER-DATE

00281 JAN-8 1992

FPSC-RECORDS/REPORTING

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: January 8, 1992

**CITIZENS' MOTION TO STRIKE SOUTHERN BELL'S MOTION
FOR RECONSIDERATION OF ORDER NO. 25483**

The Citizens of Florida ("Citizens"), by and through Jack Shreve, Public Counsel, pursuant to Florida Administrative Code Rule 25-22.037, file this motion to strike the Motion for Reconsideration of Order No. 25483 filed by Southern Bell and Telephone and Telegraph Company ("Southern Bell") on January 2, 1992. Citizens request the Commission: (1) to deny Southern Bell's request pursuant to Florida Administrative Code Rule 25-22.060(1); (2) to reaffirm its Order No. 25483, denying Southern Bell's first request for reconsideration; and (3) to compel Southern Bell's response to Citizens' discovery requests.

1. The Commission rule on reconsideration states that it "will not entertain any motion for reconsideration of any order which disposes of a motion for reconsideration." Fla. Admin. Code R. 25-22.060(1)(a). On September 23, 1991, Southern Bell filed a Motion for Reconsideration to the Full Commission of Order No. 25054 and A Request for Oral Argument. The Commission denied the company's request in Order No. 25483. Southern Bell initially filed for "reconsideration" of the prehearing officer's

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decision and not for a "review" of that decision by the full commission. Southern Bell is not entitled to a reconsideration of an order disposing of a motion for reconsideration.

2. Even if the Commission finds that a full commission review under 25-22.038(2) would permit a party to request reconsideration by the full commission of its order on review, the standard of review is the same. A decision-making body may review a prehearing officer's discovery decisions under the standard that the prehearing officer made an error in fact or law. See Department of Prof. Reg. v. Smith, 451 So.2d 872, 873 (Fla. 1st DCA 1984) ("Section 120.58(2), Florida Statutes (1982), permits the Department to review the discovery order and, if error is determined, enter an order prohibiting the ordered discovery to respondents.").

3. The Commission on review determined that Southern Bell did not show that the prehearing officer had made a substantive error of fact or law. Order No. 25483 at 2. The Commission applied the appropriate standard of review in issuing Order No. 25483. Southern Bell has, therefore, failed to show any error of fact or law on which to base an approval of its request for reconsideration.

4. The prehearing officer's order and the Commission's order on reconsideration stated the correct rule of law. "[T]he interrogatories propounded by Public Counsel to Southern Bell are

completely within the scope of the Surf Drugs¹ holding." Order No. 25483 at 3. The identification of persons with knowledge relevant to this investigation into the integrity of Southern Bell's service activities and reports does not constitute work product and is not privileged.

5. The purpose of a prehearing conference is to expedite the resolution of a case by narrowing the issues and resolving disputes over discovery and admission of evidence. To allow a full de novo review of every decision by a prehearing officer would impose a further administrative layer to an already lengthy process. Citizens have diligently pursued discovery in this matter since July 11, 1991. Six months later, Citizens are still waiting to receive an answer to their request. Southern Bell has interposed objections and delayed producing what it lawfully must produce. The Commission should put an end to Southern Bell's delayed and compel it to respond to Citizens' request for discovery.

¹ Surf Drugs, Inc. v. Vermette, 236 So.2d 108 (Fla. 1970).

WHEREFORE, Citizens respectfully request this Commission to strike Southern Bell's second motion for reconsideration dated January 2, 1992.

Respectfully submitted,

JACK SHREVE
Public Counsel


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Associate Public Counsel

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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 8th day of January, 1992.

Marshall Criser, III
Southern Bell Telephone and
Telegraph Company
150 S. Monroe St., Suite 400
Tallahassee, FL 32301

Suzanne Summerlin
Division of Legal Services
Fla. Public Services Commission
101 East Gaines Street
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