

FLORIDA PUBLIC SERVICE COMMISSION

Fletcher Building
101 East Gaines Street
Tallahassee, Florida 32399-0850

M E M O R A N D U M

April 9, 1992

TO : DIRECTOR, DIVISION OF RECORDS AND REPORTING

FROM : DIVISION OF LEGAL SERVICES [HATCH]
DIVISION OF COMMUNICATIONS [GREER, TAYLOR]

RE : DOCKET NO. - 910163-TL - PETITION ON BEHALF OF CITIZENS
OF THE STATE OF FLORIDA TO INITIATE INVESTIGATION INTO
INTEGRITY OF SOUTHERN BELL TELEPHONE AND TELEGRAPH
COMPANY'S REPAIR SERVICE ACTIVITIES AND REPORTS.

AGENDA: 04/21/92 - CONTROVERSIAL AGENDA - PARTIES MAY
PARTICIPATE

CRITICAL DATES: NONE

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CASE BACKGROUND

This proceeding was initiated to investigate the integrity of Southern Bell Telephone and Telegraph Company, Inc.'s (Southern Bell's) repair service activities and reports. This recommendation involves a discovery dispute between Southern Bell and Public Counsel. By Order No. 25054, issued September 12, 1991, the Prehearing Officer granted Public Counsel's Motions to Compel Southern Bell to respond to Items Nos. 1 - 21 of Public Counsel's Third Set of Interrogatories dated June 6, 1991, and Items Nos. 1 and 2 of Public Counsel's Fifth Set of Interrogatories.

On September 23, 1991, Southern Bell filed a motion for reconsideration of Order 25054 by the full Commission. Public Counsel responded in opposition to Southern Bell's motion on September 30, 1991. By Order No. 25483 (Attachment I), issued December 17, 1991, the Commission, inter alia, denied Southern Bell's motion for reconsideration and affirmed the Prehearing Officer's decisions in Order 25054. In addition the Commission also adopted the policy that the appropriate standard for review of a Prehearing Officer's order is the same as that applied for a motion for reconsideration. Under this standard, the proponent of reconsideration must establish that an error of law or fact was made in the reaching the decision under review.

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FSC-RECORDS/REPORTING

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On January 2, 1992, Southern Bell filed a Motion for Reconsideration of Order No. 25483 (Attachment II). Public Counsel filed a Motion to Strike Southern Bell's Motion for Reconsideration on January 8, 1992 (Attachment III). Southern Bell responded in opposition to Public Counsel's Motion to Strike on January 20, 1992 (Attachment IV).

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission grant Southern Bell's Motion for Reconsideration of that portion of the Commission's decision that the appropriate standard for review of a Prehearing Officer's order is the same as that applied for a motion for reconsideration?

RECOMMENDATION: No. The Commission should deny Southern Bell's request for reconsideration of the Commission's decision that the appropriate standard for review of a Prehearing Officer's order is the same as that applied for a motion for reconsideration.

STAFF ANALYSIS: Southern Bell argues in its motion that the Commission errs in adopting a "reconsideration" standard for review of a Prehearing Officer's orders. In support of this notion, the Company states that Rule 25-22.038(2) "specifies that a party affected by an order may file for review of the order by the Commission." (emphasis in original) Southern Bell contrasts this with the provisions of Rule 25-22.060 which expressly addresses a party's opportunity to seek "reconsideration" of a full Commission decision. Southern Bell argues that the difference in terminology between these two sections "clearly anticipates that the full Commission will consider an order of the prehearing officer on a basis different from the standard it uses when it is asked to reconsider its own orders." The Company further argues that a reconsideration standard deprives a party of its right under the Commission's rules to have the Commission determine issues. The Company concludes by arguing that:

The Commission is not an appellate panel sitting in review of decisions of a lower tribunal. Rather, under its own rules, it is the ultimate "trial court." The Commission has not and should not delegate away its decision-making authority in those limited instances when it is asked to review a prehearing officer's decision.

With respect to the issue of the appropriate standard of review, Public Counsel argues in its motion to strike that, pursuant to Rule 25-22.060, Southern Bell is not entitled to reconsideration of an order disposing of a motion for

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reconsideration. Public Counsel further argues that, even under Rule 25-22.038(2), the Commission may review the prehearing officer's order under a standard of whether the prehearing officer made an error of fact or law.

Southern Bell's response to the motion to strike states that a "review" of a prehearing officer's order is not the same as a motion for reconsideration by the Commission of its own order and that, therefore, the Company's motion for reconsideration is appropriate. Southern Bell also argues that the Commission's adoption of a reconsideration standard for review was raised for the first time in Order No. 25483 and that reconsideration is appropriate.

Rule 25-22.038, Florida Administrative Code, generally establishes the Commission's designation of the Prehearing Officer as well as the Commission's delegation of procedural matters to the Prehearing Officer. The provision for review of a Prehearing Officer's order by the Commission is found in Rule 25-22.038(2). That Section provides as follows:

(2) Orders of the Prehearing Officer. A party who is adversely affected by any such order or notice may seek reconsideration by the Prehearing Officer, or review by the Commission panel assigned to the proceeding, by filing a motion in support thereof within ten (10) days of service of the notice or order. Unless raised within this time, any error claimed with reference to discovery, scheduling, prehearing requirements, or the prehearing order will be waived, absent good cause shown.

Southern Bell's argument, reduced to its essentials, is that if a party fails to persuade a Prehearing Officer of the merits of its position, that party is guaranteed an opportunity to reargue its full case again before the full Commission to hopefully persuade at least three of the remaining four Commissioners to agree with its previously unpersuasive arguments or in some cases to try out entirely new arguments. Rule 25-22.038(2) does not compel such a second full bite at the apple. The notion that Rule 25-22.038(2) grants an entitlement to a de novo review of a Prehearing Officer's order is incorrect. The Rule provides only that a party make seek review of an order. It does not compel a specific standard by which the Commission will conduct such review. The Commission's designation of and the delegation of authority over procedural matters to the Prehearing Officer are unquestionably within the Commission's discretion. It is equally within the Commission's discretion to establish the standard by which it will review a Prehearing Officer's decisions.

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Southern Bell has raised no error of law or fact inherent in the Commission's decision to limit the scope of Commission review of a Prehearing Officer's order. Southern Bell simply wishes that the Commission had reached a different result. Accordingly, Staff recommends that the Commission deny Southern Bell's Motion for Reconsideration of that portion of Order No. 25483 adopting the Commission's decision that the appropriate standard for review of a Prehearing Officer's order is the same as that applied for a motion for reconsideration.

ISSUE 2: Should the Commission grant Southern Bell's Motion for Reconsideration of that portion of Order No. 25483 that affirms the Prehearing Officer's Order to Compel Southern Bell to respond to certain of Public Counsel's discovery requests?

RECOMMENDATION: No. The Commission should deny Southern Bell's request for reconsideration of that portion of Order No. 25483 that affirms the Prehearing Officer's Order to Compel Southern Bell to respond to certain of Public Counsel's discovery requests.

STAFF ANALYSIS: Southern Bell argues that Order No. 25483 mischaracterizes Southern Bell's willingness to respond to appropriate discovery requests. The Company reiterates its previous argument that Public Counsel's discovery requests go beyond those allowed by Surf Drugs, Inc. v. Vermette, 236 So.2d 108 (Fla. 1970) because they require counsel for Southern Bell to analyze otherwise privileged information in order to respond.

Public Counsel responded by arguing that the Prehearing Officer's and the Commission's determination that the discovery propounded by Public Counsel was within the scope of the Surf Drugs holding is correct.

The arguments raised by Southern Bell in its second motion for reconsideration on this issue have been raised and rejected twice before. Southern Bell has failed to raise any matter that the Commission failed to consider or overlooked. Accordingly, Staff recommends that the Commission deny the Company's Motion for reconsideration on this issue. If the Commission adopts Staff's recommendation on this issue, Staff further recommends that the Company be ordered to respond to the discovery request within 10 days from the date of issuance of the order reflecting the Commission's decision.

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ISSUE 3: Should this docket remain open?

RECOMMENDATION: Yes, this docket should remain open.

STAFF ANALYSIS: This recommendation deals only with one discovery matter. Therefore, this docket should remain open for further proceedings on Public Counsel's Petition.

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition on behalf of Citizens) DOCKET NO. 910163-TL
of the State of Florida to initiate)
investigation into integrity of SOUTHERN) ORDER NO. 25483
BELL TELEPHONE AND TELEPHONE COMPANY'S)
repair service activities and reports.) ISSUED: 12/17/91
_____)

The following Commissioners participated in the disposition of this matter:

THOMAS M. BEARD, Chairman
SUSAN F. CLARK
J. TERRY DEASON
BETTY EASLEY
MICHAEL MCK. WILSON

FINAL ORDER DENYING SOUTHERN BELL
TELEPHONE AND TELEGRAPH COMPANY'S
MOTION FOR RECONSIDERATION OF ORDER
NO. 25054 AND FOR ORAL ARGUMENT

BY THE COMMISSION:

Order No. 25054, issued by the prehearing officer on September 23, 1991, granted Public Counsel's Motions to Compel Southern Bell to respond to Items Nos. 1 through 21 of Public Counsel's Third Set of Interrogatories and Items Nos. 1 and 2 of its Fifth Set of Interrogatories. Southern Bell filed a Motion for Reconsideration of this Order and Request for Oral Argument on September 23, 1991, to which Public Counsel filed an Opposition on September 30, 1991. Southern Bell subsequently filed a Reply to Public Counsel's Opposition on October 11, 1991.

The first matter to be determined is whether Southern Bell's Motion for Oral Argument should be granted. We find that oral argument will not assist us in our decision on this matter. The pleadings filed by the parties are fully adequate. Therefore, we deny Southern Bell's Motion for Oral Argument on its Motion for Reconsideration of Order No. 25054.

The second matter for our decision is the standard which this Commission will apply to Southern Bell's Motion for Reconsideration of Order No. 25054. The Company argues that Rule 25-22.038(2), Florida Administrative Code, provides for full Commission review of a prehearing officer's discovery order. Southern Bell argues that

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a different standard applies to full Commission review of a prehearing officer's discovery order than applies to full Commission reconsideration of a full Commission order. The Company asserts that Rule 25-22.060, Florida Administrative Code, applies to full Commission reconsideration of a full Commission order. Therefore, the Company states it is entitled to a "de novo" review of the prehearing officer's order.

The standard argued for by Southern Bell is inappropriate because it impinges on the prehearing officer's authority to resolve discovery disputes and to dispose of the procedural matters involved in any particular docket. Therefore, we find that the appropriate standard to be applied is the legal standard for a motion for reconsideration. The Company must establish, therefore, that the prehearing officer made an error in fact or law in his decision that requires that the full Commission reconsider his decision. Diamond Cab Co. of Miami v. King, 146 So.2d 889 (Fla. 1962); Pingree v. Quaintence, 394 So.2d 161 (Fla. 1st DCA 1981). This standard has not been met in Southern Bell's Motion for Reconsideration of Order No. 25054.

The third matter to be determined is the substantive question of whether the Commission should reconsider the prehearing officer's Order No. 25054, of whether the Company has established that the prehearing officer has, indeed, made an error in fact or law. Southern Bell states:

[Order No. 25054] 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 113.

This is simply not the case. Order No. 25054 discusses the significance of the holding in Surf Drugs, Inc. v. Vermette, 236 So.2d 108 (Fla. 1970) and the arguments presented by Public Counsel and Southern Bell and then goes on to grant the Public Counsel's Motions to Compel. That, in and of itself, provides a rationale for the Company.

Southern Bell argues that the interrogatories propounded by Public Counsel are not permitted by Surf Drugs because they ask for

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the Company's attorneys' "mental processes" in evaluating the statements provided by the employees that have been interviewed during the Company's investigation. The Company is more than willing to provide Public Counsel a list of persons having some knowledge of general topics, but not the list of persons that have indicated knowledge that is relevant to this investigation.

The prehearing officer's holding indicates that, in his opinion, the limited "mental processes" involved in Southern Bell's attorneys' identification of persons having certain general types of knowledge do not constitute attorney work product. We agree and find that the interrogatories propounded by Public Counsel to Southern Bell are completely within the scope of the Surf Drugs' holding. This was the holding of the prehearing officer in Order No. 25054 and, therefore, because the Company has not established that Order No. 25054 contains any error in fact or law, this Commission will not reconsider that Order.

Based on the foregoing, it is, therefore,

ORDERED by the Florida Public Service Commission that Southern Bell Telephone and Telegraph Company's Motion for Reconsideration of Order No. 25054 is hereby denied. It is further

ORDERED that Southern Bell Telephone and Telegraph Company's Motion for Oral Argument on its Motion for Reconsideration is hereby denied.

By ORDER of the Florida Public Service Commission, this 17th
day of DECEMBER, 1991.



STEVE TRIBBLE, Director
Division of Records and Reporting

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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 hearing 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 wastewater 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.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Investigation into the) Docket No. 910163-TL
Integrity of Southern Bell's)
Repair Service Activities and) Filed: January 2, 1992
Reports)
_____)

SOUTHERN BELL TELEPHONE AND TELEGRAPH COMPANY'S
MOTION FOR RECONSIDERATION OF ORDER NO. 25483

COMES NOW Southern Bell Telephone and Telegraph Company ("Southern Bell" or "Company"), pursuant to Rule 25-22.060, Florida Administrative Code, and files its Motion for Reconsideration of Order No. 25483.

I. BACKGROUND

1. On December 17, 1991, the Commission issued Order No. 25483 (the "Order") in the above-captioned docket, in which it affirmed Order No. 25054 of the Prehearing Officer. The latter order had 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 Interrogatory 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 Interrogatory Nos. 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 requested that Southern Bell's

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

II. ARGUMENT

3. The Order first errs in concluding that the "standard of review" to be used by the Commission regarding a discovery order issued by the prehearing officer is the same standard as that which applies to reconsideration by the Commission, pursuant to Rule 25-22.060, Florida Administrative Code, of a final order issued by the Commission itself. Rule 25-22.038(2), Florida Administrative Code, specifies that a party affected by an order of the prehearing officer may file for review of the order by the Commission. The Rule further states that the failure to file within ten (10) days for such review shall constitute a waiver of any objection. If the Commission applies the same standard for review of a prehearing officer's order as it applies to reconsideration of a final order of the Commission itself, a party's opportunity to have the Commission fully consider a matter that was disputed before and initially decided by the prehearing officer is lost.

4. The Order fails to recognize and explain the difference in terminology used by the two different rules. A "review" by

the Commission of a prehearing officer's decision is contemplated by Rule 25-22.038(2), Florida Administrative Code, while the Commission undertakes "reconsideration" of its own orders pursuant to Rule 25-22.060, Florida Administrative Code. This difference in terminology clearly anticipates that the full Commission will consider an order of the prehearing officer on a basis different from the standard it uses when it is asked to reconsider its own orders. When a decision-making body is asked to reconsider a decision that it has made, it is appropriate to limit such reconsideration only to instances where the decision-making body has made an error of law or fact. Otherwise, there would be no finality with regard to its decision. However, where the decision-making body is reviewing an order by a prehearing officer designated by the decision-making body there should be a different standard of review, one that allows a party to argue its case to the Commission. Otherwise, a party would be deprived of its right under the Commission's rules to have the Commission determine issues.

5. Order No. 25483 finds that application of "de novo" standard of review will somehow impinge on the authority of the prehearing officer in discovery matters. This is not the case. First, most such orders are not the subject of review by the full Commission. Thus, the use of a prehearing officer to decide discovery issues would still provide for administrative economy. Furthermore, the Rule provides for access from the prehearing

officer to the Commission to allow a party to pursue to the full Commission a preliminary matter which may affect its important substantive rights. The Commission is not an appellate panel sitting in review of decisions of a lower tribunal. Rather, under its own rules, it is the ultimate "trial court." The Commission has not and should not delegate away its decision-making authority in those limited instances when it is asked to review a prehearing officer's decision.


6. With regard to the determination that Order No. 25054 of the prehearing officer contains no error of law or fact, Southern Bell also disagrees and respectfully requests that the Commission reconsider its determination. The Order mischaracterizes Southern Bell's willingness to respond to appropriate discovery requests. Southern Bell once again states that if Public Counsel were to propound the interrogatories approved in Surf Drugs, Inc. v. Vermette, 236 So.2d 108 (Fla. 1970), Southern Bell would provide responses without objection. Southern Bell has no objection to responding to interrogatories that request the names and addresses of person with knowledge relevant to this docket. However, Public Counsel's interrogatories go much further. The interrogatories request information with regard to certain activities that fit a given category, e.g., alleged fraudulent activity, and, as a consequence, require counsel for Southern Bell to analyze otherwise privileged information in order to respond. Thus, the

interrogatories go too far, as they ask for Southern Bell Counsel's mental impressions and thus request information which must be attorney work product. The Commission has committed an error of law by failing to recognize that a response to Public Counsel's interrogatories would require Southern Bell to provide information that is attorney work product and is thus privileged.

WHEREFORE, for the foregoing reasons, Southern Bell respectfully requests that the Full Commission reconsider Order No. 25483 and deny Public Counsel's Motion to Compel dated July 11, 1991 and July 18, 1991.

Respectfully submitted,

SOUTHERN BELL TELEPHONE AND
TELEGRAPH COMPANY



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ATTACHMENT II
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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 *7th* day of *Jan.*, 1992,
to:

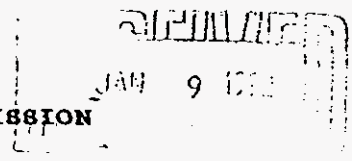
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Harris R. Anthony
(PL)

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ATTACHMENT III
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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Investigation into the)	
Integrity of Southern Bell's)	Docket No. 910163-TL
Repair Service Activities and)	Filed: January 8, 1992
Reports)	

**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).

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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

/s/
Janis Sue Richardson
Associate Public Counsel

Office of Public Counsel
c/o The Florida Legislature
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Attorneys for the Citizens
of the State of Florida

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ATTACHMENT III
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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
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Suzanne Summerlin
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/s/
Janis Sue Richardson
Associate Public Counsel

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Investigation into the) Docket No. 910163-TL
Integrity of Southern Bell's)
Repair Service Activities and) Filed: January 20, 1992
Reports)
_____)

SOUTHERN BELL TELEPHONE AND TELEGRAPH COMPANY'S
RESPONSE TO PUBLIC COUNSEL'S MOTION TO STRIKE
SOUTHERN BELL'S MOTION FOR RECONSIDERATION OF ORDER NO. 25483

COMES NOW BellSouth Telecommunications, Inc., d/b/a/ Southern Bell Telephone and Telegraph Company ("Southern Bell" or "Company"), pursuant to Rule 25-22.037(2)(b), Florida Administrative Code, and files its Response to Public Counsel's Motion to Strike Southern Bell's Motion for Reconsideration of Order No. 25483, in the above-referenced docket.

1. On January 8, 1992, the Office of Public Counsel ("Public Counsel") filed its Motion to Strike Southern Bell's Motion for Reconsideration of Commission Order No. 25483. The basis for the Public Counsel's Motion is that pursuant to Commission Rule 25-22.060(1)(a), Florida Administrative Code, the Commission will not entertain a motion for reconsideration of any order disposing of a motion for reconsideration.

2. However, as Public Counsel acknowledges in its Motion, Southern Bell's motion is the first motion it has filed for reconsideration of Order No. 25483. Southern Bell's prior motion was for full Commission review pursuant to Rule 25-22.038(2), Florida Administrative Code, of Order No. 25054 issued by the prehearing officer. As Southern Bell has repeatedly pointed out, a review of a prehearing officer's order by the full Commission is

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ATTACHMENT IV
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not the same thing as reconsideration by the Commission of its own order. Thus, Southern Bell's motion for reconsideration of Order No. 25483 is the first reconsideration the Commission will entertain with respect to its decision on this matter. Moreover, Southern Bell's motion raises for reconsideration its argument that the Commission's adoption of a "standard of review" equivalent to that used for motions for reconsideration when reviewing a prehearing officer's motion is an error of law. Indeed, since this issue was raised for the first time in the review by the Commission, this is the first time Southern Bell has had the opportunity to urge reconsideration of this issue. Public Counsel's motion to strike is, therefore, groundless and should be denied.

WHEREFORE, for the reasons stated above Southern Bell requests that the Commission deny Public Counsel's Motion to Strike Southern Bell's Motion for Reconsideration of Order No. 25483.

Respectfully submitted,

SOUTHERN BELL TELEPHONE AND
TELEGRAPH COMPANY

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ATTACHMENT IV
PAGE 3 OF 3 PAGES

CERTIFICATE OF SERVICE
Docket No. 910163-TL

I HEREBY CERTIFY that a copy of the foregoing has been
furnished by United States Mail this *21* day of *January*, 1992,
to:

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