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June 12, 1992

ORIGINAL  
FILE COPY

VIA FEDERAL EXPRESS  
AIRBILL NO.: 1188227983

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

RE: In re: 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; Before the Florida Public Service Commission; Docket No.: 910163-TL

Dear Mr. Tribble:

Enclosed for filing in the above referenced docket is the original and fifteen (15) copies of Southern Bell's Reply to "Citizens Response and Opposition to Southern Bell's Motion for Stay".

Also enclosed please find the diskette containing this Reply.

ACK  \_\_\_\_\_  
AFA \_\_\_\_\_  
APP \_\_\_\_\_  
CAF \_\_\_\_\_

Please acknowledge receipt and filing of same by stamping and returning this letter in the enclosed postage pre-paid envelope.

CMU  \_\_\_\_\_  
CTR \_\_\_\_\_

Should you have any questions or need any further information, please feel free to contact me at any time.

EAG \_\_\_\_\_  
LEG 1 \_\_\_\_\_  
LIN 6 \_\_\_\_\_  
OPC \_\_\_\_\_

Sincerely,

*William S. Graessle*

William S. Graessle

RCH \_\_\_\_\_  
SEC 1 \_\_\_\_\_  
WAS \_\_\_\_\_

WSG/sj  
Enclosures

OTH \_\_\_\_\_  
c: Robert J. Winicki, Esquire

B:SOUTHERNBELL/Tribble.Ltr

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DOCUMENT NUMBER-DATE  
06214 JUN 15 1992  
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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: June 13, 1992

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**SOUTHERN BELL'S REPLY TO "CITIZENS RESPONSE  
IN OPPOSITION TO SOUTHERN BELL'S MOTION FOR STAY"**

Comes now, Bell South Telecommunications, Inc. d/b/a Southern Bell Telephone and Telegraph Company ("Southern Bell"), and files this reply to the "Response and Opposition to Southern Bell's Motion for Stay" served by Public Counsel on June 2, 1992. In support thereof, Southern Bell states:

As a threshold matter, Southern Bell notes that Public Counsel devotes a substantial portion of its Response to discussing the delay which would be attendant to granting Southern Bell's Motion for Stay Pending Judicial Review ("Motion for Stay").<sup>1</sup> Public Counsel characterizes this delay as "unwarranted" and claims that the public interest demands that this investigation go forward without further delay.

What Public Counsel has failed to address is that any delay has been because of Public Counsel's refusal to conduct its own investigation; instead he has sought to have Southern Bell prepare his case for him and for Southern Bell's attorneys to divulge to Public Counsel their analysis of the case and judgment

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<sup>1</sup> Southern Bell has filed a petition for review of the discovery order in the Florida Supreme Court.

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of the credibility of Southern Bell's own employees and witnesses.

The fundamental erroneous premise underlying Public Counsel's Response centers on the characterization of his own interrogatories. Public Counsel claims that his interrogatories seek only "basic information: the names of persons known by Southern Bell to have knowledge of the underlying facts at issue." If the interrogatories at issue had sought solely that legitimate information, Southern Bell would have fully responded to them in a timely manner and there would have been no delay in this docket.

However, as a review of the interrogatories at issue reveals, Public Counsel has not simply sought the names of those persons who may have knowledge of the underlying facts. Rather, Public Counsel seeks to have Southern Bell admit possible violations of this Commission's rules and regulations and perhaps other areas of the law by asking, via interrogatories, for Southern Bell to acknowledge that its employees "knowingly falsified" numerous types of documents or reports. For the reasons stated in Southern Bell's Motion for Stay, these interrogatories are improper.

The second erroneous premise is Public Counsel's characterization of Southern Bell's response to the interrogatories. Public Counsel claims that Southern Bell refuses to produce facts unearthed by Southern Bell's investigation. This is simply inaccurate as Southern Bell has

never refused to reveal the names and addresses of those in the relevant departments who may have knowledge of the compilation of service repair forms or reports. Rather, what has been objected to continually and is the subject of Southern Bell's Petition for Review of Non-Final Administrative Action now pending in the Florida Supreme Court, is Public Counsel's attempt to force Southern Bell to admit record falsification, an improper interrogatory question.

The essential concern of Public Counsel's position is revealed by paragraph 7 of its Response. There, Public Counsel concedes that if he asks appropriate interrogatories, Public Counsel may have to investigate his own case and make his own legal conclusions, even if it involves discovery from "hundreds or even thousands" of persons.

Public Counsel's analogy to an automobile accident case, wherein Public Counsel claims that Southern Bell would refuse to provide the name of the driver, is pure legerdemain. Public Counsel characterizes Southern Bell's position as mandating that Public Counsel ask for the names of all Southern Bell employees with driver's licenses and that Public Counsel could then find the name of the driver of the car at issue by deposing each of these employees.

This is a strawman. Southern Bell agrees that the name of the driver in the car accident analogy is a fact which would not be covered by the work product privilege. However, the type of interrogatories advocated by Public Counsel seeks not only the

name of the driver, but requests Southern Bell to identify all witnesses who would opine that the driver was grossly negligent or was violating specific provisions of the traffic laws. Under the Supreme Court's decision in Surf Drugs Inc. v. Vermette, 236 So.2d 108 (Fla. 1970), this is impermissible. The interrogatories propounded by Public Counsel in this case suffer from these same infirmities.

Finally, Public Counsel claims that Southern Bell will not be irreparably harmed if this Commission denies Southern Bell's Motion for Stay, arguing that Southern Bell has no right to "conceal this information."

As stated throughout Southern Bell's Motion for Stay, what Public Counsel seeks in his interrogatories are admissions by Southern Bell on ultimately legal issues and to obtain Southern Bell's attorneys' work product, which Southern Bell has a clear right to keep confidential. As Public Counsel concedes, once divulged, the "cat is out of the bag" and cannot later be put back in. Thus, the harm to Southern Bell is irreparable and its Motion for Stay should be granted.

#### CONCLUSION

Under the law, regardless of how easy Public Counsel's job would be were it otherwise, Public Counsel is required to conduct its own investigation and not have Southern Bell and its attorneys prepare Public Counsel's case.

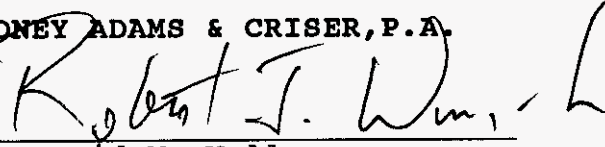
Respectfully Submitted,

**SOUTHERN BELL TELEPHONE AND  
TELEGRAPH COMPANY**

Harris R. Anthony  
General Attorney-Florida  
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**MAHONEY ADAMS & CRISER, P.A.**

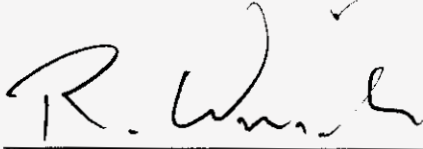
By



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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing has been furnished by U.S. Mail to **JACK SHREVE, PUBLIC COUNSEL, CHARLES J. BECK, ASSISTANT PUBLIC COUNSEL**, Office of Public Counsel, c/o The Florida Legislature, 111 West Madison Street, Room 812, Tallahassee, Florida 32399-1400; **TRACY HATCH, ESQUIRE**, Division of Legal Services, Florida Public Service Commission, 101 East Gaines Street, Tallahassee, Florida 32301; and **ROBERT VANDIVER, ESQUIRE**, Division of Legal Services, Florida Public Service Commission, 101 East Gaines Street, Tallahassee, Florida 32301, this 12 day of June, 1992.

  
\_\_\_\_\_  
Attorney

B:SOUTHERNBELL\Reply.Res