

a

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ORIGINAL
FILE COPY

June 17, 1992

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

RE: Docket No. 920260-TL

Dear Mr. Tribble:

Enclosed please find an original and fifteen copies of Southern Bell Telephone and Telegraph Company's Opposition to Public Counsel's Third Motion to Compel which we ask that you file in the above-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 on the parties shown on the attached certificate of Service.

- ACK _____
- AFA ³ _____
- APP _____
- CAF _____
- CMU _____
- CTR _____
- EAG _____
- LEG _____
- LIN _____
- OPC _____
- ROW _____
- SEC _____
- VIC _____
- OWB _____

Sincerely yours,

Nancy B. White (copy)

Nancy B. White

Enclosures

- cc: All Parties of Record
- 6 A. M. Lombardo
- H. R. Anthony
- R. D. Lackey

RECEIVED & FILED

[Signature]
BUREAU OF RECORDS

DOCUMENT NUMBER-DATE

06372 JUN 17 1992

FPSC-RECORDS/REPORTS...

**CERTIFICATE OF SERVICE
Docket No. 920260-TL**

I HEREBY CERTIFY that a copy of the foregoing has been
furnished by United States Mail this 17th day of June, 1992 to:

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Nancy B. White (q)

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Comprehensive Review of) Docket No. 920260-TL
the Revenue Requirements and Rate)
Stabilization Plan of Southern) Filed: June 17, 1992
Bell Telephone and Telegraph)
Company (Formerly FPSC Docket)
Number 880069-TL))
_____)

SOUTHERN BELL TELEPHONE AND TELEGRAPH COMPANY'S
OPPOSITION TO PUBLIC COUNSEL'S THIRD MOTION TO COMPEL

COMES NOW BellSouth Telecommunications, Inc. d/b/a Southern Bell Telephone and Telegraph Company ("Southern Bell" or "Company"), pursuant to Rule 25-22.037, Florida Administrative Code, and herewith files its Opposition to the Citizens' of Florida ("Public Counsel") Third Motion to Compel with regard to Public Counsel's Third, Fourth and Fifth Production of Document Requests dated April 10, 1992, April 22, 1992 and April 27, 1992, respectively. In support of its Motion, Southern Bell shows the following:

1. On April 10, 1992, April 22, 1992 and April 27, 1992, Public Counsel served Southern Bell with its Third, Fourth and Fifth Requests for Production of Documents. These requests sought numerous BellSouth Corporation documents which were not in the possession, custody or control of Southern Bell.

2. On May 22, 1992, May 27, 1992 and June 1, 1992, Southern Bell filed its Responses and Objections to Public Counsel's Third, Fourth and Fifth Requests for Production of Documents. Southern Bell incorporates herein the contents of its Responses and Objections.

DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REPORTS

3. Turning to the specifics of Public Counsel's motion, Public Counsel first addresses Southern Bell's objection to Public Counsel's attempt to include BellSouth Corporation as a party to this proceeding. While Southern Bell does not object, assuming the request is not otherwise objectionable, to producing BellSouth Corporation documents it has in its possession, custody or control, it is entirely improper to attempt to subject BellSouth Corporation to discovery in this proceeding in the manner Public Counsel has utilized.

4. In Medivision of East Broward County, Inc. v. Department of Health and Rehabilitative Services, 488 So.2d 886 (Fla. 1st DCA 1986), the standard for compelling a parent corporation to produce documents in a proceeding where its subsidiary is a party is clearly articulated. In Medivision, the court said that the parent corporation could be required to respond to discovery when the parent and subsidiary acted "as one" with regard to the matter which was the subject of the proceeding. Significantly, this same standard has been applied by this Commission in Docket No. 850100-WS, In re: Application of Du-Lay Utility Company, Inc. for Authority to Increase Rates for Water and Sewer Service in Duval County, Florida.

5. In this case, Southern Bell and its parent have not "acted as one" with regard to the subject matter of this proceeding. The subject matter of this proceeding is a comprehensive review of the existing rate stabilization plan of Southern Bell. Public Counsel alleges it is seeking information

in its Production of Documents concerning charges for services rendered by BellSouth Corporation to Southern Bell. Southern Bell has given Public Counsel all documents it has in its possession, custody, or control which are responsive to these document requests. Furthermore, Public Counsel has not sought discovery from Southern Bell's parent with regard to specific interrogatories, but instead has simply included BellSouth Corporation in the definitional section of the request in a way that requires BellSouth to respond to every request posed by Public Counsel. Public Counsel has failed to carry its burden to show that Southern Bell and BellSouth Corporation have "acted as one" in this docket.

6. Public Counsel also objects to Southern Bell's position that the definition of the term "document" is overbroad and objectionable. Southern Bell disagrees. The definition offered by Public Counsel includes every possible form in which information could be retained, without regard to the practicality of searching for such information. The court in Caribbean Security Systems v. Security Control Systems, Inc., 486 So.2d 654 (Fla.App. 3d Dist. 1986) considered a definition of "document", similar to that Public Counsel is using, to be inappropriate. Such a definition in this proceeding, especially in light of the extremely broad requests made by Public Counsel, is an unreasonable and perhaps even an impossible one with which to comply. Consistent with the Objection, Southern Bell has made reasonable efforts to comply with Public Counsel's requests and

has not deliberately withheld any "document" responsive to Public Counsel's request. Nevertheless, no one could be certain of having complied given the overreaching definition Public Counsel has used. Public Counsel's Motion to Compel should therefore be denied.

Respectfully submitted this 17th day of June, 1992.

ATTORNEYS FOR SOUTHERN BELL
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