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ORIGINAL  
FILE COPY

July 13, 1992

Steve Tribble, Director  
Division of Records and Reporting  
Florida Public Service Commission  
101 East Gaines Street  
Tallahassee, FL 32399-0850

Re: Docket No. 920260-TL

Dear Mr. Tribble:

Enclosed for filing in the above-referenced docket on behalf of the Citizens of the State of Florida are the original and 15 copies of the Citizens' Fourth Motion to Compel.

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

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|-----------|-----|-------------|
|           | ACK | <u>✓</u>    |
|           | AFA | <u>3</u>    |
|           | APP | <u>    </u> |
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|           | COH | <u>    </u> |

Sincerely,

*Charles J. Beck*

Charles J. Beck  
Deputy Public Counsel

RECEIVED & FILED

BUREAU OF RECORDS

DOCUMENT NUMBER-DATE

07598 JUL 13 1992

FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

Comprehensive Review of the )  
Revenue Requirements and Rate )  
Stabilization Plan of Southern )  
Bell Telephone & Telegraph Company )

Docket No. 920260-TL  
Filed: July 13, 1992

CITIZENS' FOURTH MOTION TO COMPEL

The Citizens of Florida ("Citizens"), by and through Jack Shreve, Public Counsel, request the Florida Public Service Commission to compel BellSouth Telecommunications, Inc., to produce each of the documents responsive to the Citizens' sixth, seventh, eighth, ninth, tenth and eleventh requests for production of documents. In addition, the Citizens request the Commission to compel BellSouth Telecommunications to answer interrogatories contained in the Citizens' fifth set of interrogatories dated May 15, 1992.

Background

1. On May 15, 1992 the Citizens served our fifth set of interrogatories to BellSouth Telecommunications.
2. On May 8, 1992, May 12, 1992, May 13, 1992, May 15, 1992, May 21, 1992, and May 28, 1992, the Citizens served our sixth, seventh, eighth, ninth, tenth and eleventh requests for production of documents on BellSouth Telecommunications, Inc. and

BellSouth Corporation (collectively defined as "BellSouth"). The requests further defined the terms "you" and "your" as BellSouth together with its officers, employees, consultants, agents, representatives, attorneys (unless privileged), and any other person or entity acting on behalf of BellSouth. BellSouth Telecommunications, Inc., filed responses and objections to each of the sets of requests for production of documents.

BellSouth Telecommunications' objection to the definition  
of "document" or "documents"

3. BellSouth Telecommunications complains about the definition of the terms "document" and "documents," claiming the definition used by the Citizens is overbroad and objectionable pursuant to the standards it claims were adopted by the case of Caribbean Security Systems v. Security Control Systems, Inc., 486 So.2d 654 (Fla 3d DCA 1986). That case, however, makes no findings about a broad definition of the term "documents." The Court found that the specific requests, not the definition of the term "documents," would cause the company to bring its business activities to a halt if it were required to respond to the requests. Caribbean Security Systems at 656.

4. The term "documents" is commonly written broadly so that a respondent couldn't claim, for example, that a document kept as a

computer file or as electronic mail on a corporate E-mail system isn't a "document." Florida Rule of Civil Procedure 1.350(a) itself contains a rather broad definition of the term "document."

5. Moreover, it is particularly incongruous for BellSouth Telecommunications to object to this definition of the term "documents" because it uses virtually the same definition itself in discovery requests it sends to the Office of Public Counsel. See, e.g. Southern Bell's third request for production of documents to the Office of Public Counsel, docket 890256-TL, dated January 29, 1990.

6. In fact, a request for production of documents dated June 2, 1992 served by BellSouth Telecommunications, Inc., on the Florida Pay Phone Association virtually duplicates word for word the Citizens' definition of the term "document." Apparently BellSouth Telecommunications believes the definition of the term "document" used by the Citizens is perfectly acceptable for requests served by BellSouth Telecommunications, but is objectionable when served on BellSouth Telecommunications.

7. There is no merit to BellSouth Telecommunications's objection; it should be rejected.

BellSouth Telecommunications' objection to the definitions  
of the terms "you" and "your."

8. BellSouth Telecommunications argues that the terms "you" and "your" attempt to obtain documents in the possession, custody or control of entities that are not parties to this docket, and therefore object to the definition.

9. Discovery is not limited solely to documents in possession of a party. They can also be in the party's control. Parties thus can be requested to produce documents in the hands of their attorney, insurer, subsidiary, or another person outside the jurisdiction of the forum. Florida Civil Practice Before Trial, §16.56, citing 8 Wright & Miller, Federal Practice and Procedure, §2210. The term "control" is not equated to "possession." Trawick, Florida Practice and Procedure, §16-10 (1982).

10. In fact, Florida Rule of Civil Procedure 1.350(a) itself uses the terms "possession, custody or control." There would be no need to use the word "control" in addition to the word "possession" if it were not intended to reach documents that might not necessarily be in the actual possession of the other party, but subject to that party's "control."

11. The reference by BellSouth Telecommunications to the case of Broward v. Kerr, 454 So.2d 1068 (4th D.C.A. 1984) is misplaced.

That case simply stands for the obvious proposition that a party cannot be compelled to respond to interrogatories directed to an ex employee. In appropriate circumstances a party corporation can be compelled to produce documents held by an affiliate.

Medivision of East Broward v. HRS, 488 So.2d 886 (Fla. 1st DCA 1986).

12. There are webs of interrelationships between BellSouth Telecommunications and BellSouth Corporation. Attachment 1 to the Citizens' second motion to compel dated May 13, 1992 is an excerpt from the BellSouth cost allocation manual showing some of these relationships. For example, BellSouth Telecommunications receives a host of services from BellSouth Corporation on a daily basis, including:

- a. Executive support;
- b. Regional planning services, such as corporate, strategic marketing and technical (including development);
- c. Accounting and tax services such as internal corporate reports, consolidated tax returns, accounting policies rulings and interpretations and internal audit policy;
- d. Financial services, such as securing capital, maintaining investor relations, administering pension fund, preparing consolidated financial reports, providing budget assistance and economic forecasts;
- e. Personnel services related to labor relations, relocation, wages, salaries and assessment;
- f. Legal assistance on taxes, antitrust and federal matters;

- g. Public affairs involving federal regulatory and federal legislative activities;
- h. public relations related to financial advertising and media information; and
- i. Security.<sup>1</sup>

13. These services provided by BellSouth Corporation do not come for free. According to the 1991 annual report filed by Southern Bell with this Commission, BellSouth Corporation charged Southern Bell's Florida operations \$29,604,298 during 1991 for these services. The ratepayers of BellSouth Telecommunications pay for these charges through the rates set by this Commission.

14. The last time the Commission looked at the production of documents from BellSouth Corporation, it turned out that the parent company had a wealth of new information not previously available. In Southern Bell's Caller I.D. docket. docket 891194-TP, the Prehearing Officer ordered BellSouth Corporation to conduct a search for documents in its possession responsive to requests for production of documents. The Prehearing Officer ordered Southern Bell to produce the list of responsive documents.

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<sup>1</sup> BellSouth Telecommunications also provides a number of services to BellSouth Corporation on a daily basis, including regulatory support and aircraft.

15. On November 30, 1990 Southern Bell produced the list ordered by the Prehearing Officer and identified 180 responsive documents in the possession of BellSouth Corporation. A copy of Southern Bell's letter is attached to the Citizens second motion to compel dated May 13, 1992 as attachment 2. Some of the documents were copies of documents previously provided by Southern Bell, but most were documents never before provided. The documents, provided after the conclusion of evidentiary hearings, contained a host of new information concerning issues in that docket. If the parent had such information available about Caller I.D., then surely it would have important information about the relationship between BellSouth Telecommunications and other BellSouth affiliates.

16. For the purpose of responding to requests for production of documents in this case, BellSouth Telecommunications acts as one with BellSouth Corporation. Under the standard enunciated in Medivision of East Broward, Inc., v. H.R.S., 488 So.2d 886 (Fla. 1st DCA 1986), it is entirely appropriate to include BellSouth Corporation as a corporation required to respond to requests for production of documents. Indeed, the tie between Southern Bell and BellSouth Corporation is a much stronger tie than the one reviewed by the Court in Medivision. Here, the operations of the parent corporation BellSouth Corporation are actually financed in large part by charges passed through by BellSouth Telecommunications to its monopoly ratepayers. This is a unique



circumstance not present in the Medivision case. Medivision had no such opportunity to recover the operational costs of the parent corporation and the subsidiary corporation from monopoly ratepayers.

### Inside Wire

17. BellSouth Telecommunications' objection to the Citizens' ninth set of requests for production of documents includes an objection to producing any documents related to inside wire maintenance<sup>2</sup>. In addition, BellSouth Telecommunications refused to answer a number of interrogatories contained in the Citizens' fifth set of interrogatories related to this same issue<sup>3</sup>.

18. The Citizens intend to raise an issue regarding the regulatory treatment of inside wire maintenance, just as we did in the recent rate case of United Telephone Company of Florida. In that case the Commission decided to open a rulemaking docket to review this issue. That decision does not preclude the Citizens from pursuing that issue here. A rate case is an appropriate forum where the Commission can take its decision into account when setting overall rates. Once the Commission issues a written order in the United case, the Citizens intend to ask the Commission on reconsideration to place revenues subject to refund

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<sup>2</sup> Requests 91, 92, 93, 94, 95, 96, 98, and 99.


<sup>3</sup> Interrogatories 81, 82, 83, 84, 89, 90, 91, 92 and 93.

pending resolution of the inside wire issue. The Commission should order Southern Bell to produce the responsive documents and answer the interrogatories now. Specific information about the inside wire maintenance activities of Southern Bell are appropriate in a Southern Bell general rate proceeding.

WHEREFORE, the Citizens respectfully request the Florida Public Service Commission to compel BellSouth Telecommunications, Inc., to produce each of the documents responsive to the Citizens' third, fourth and fifth sets of requests for production of documents dated April 10, 1992, April 22, 1992, and April 27, 1992, respectively, including those responsive documents in the possession, custody or control of the parent company BellSouth Corporation. In addition, the Citizens ask the Commission to order BellSouth Telecommunications to answer the interrogatories contained in the Citizens' fifth set of interrogatories related to inside wire maintenance.

Respectfully submitted,

Jack Shreve  
Public Counsel

  
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Attorneys for the Citizens of  
the State of Florida

**CERTIFICATE OF SERVICE  
DOCKET NO. 920260-TL**

I HEREBY CERTIFY that a copy of the foregoing has been furnished by U.S. Mail or hand-delivery to the following parties on this 13th day of July, 1992.

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