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July 20, 1992

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

**ORIGINAL
FILE COPY**

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 15 copies of Citizens' Motion to Impose a Penalty on Southern Bell Telephone and Telegraph Company for Filing and Failing to Correct False Information Submitted to the Commission.

ACK False Information Submitted to the Commission.
AFA _____ Please indicate the time and date of receipt on the enclosed
APP duplicate of this letter and return it to our office.

- CAF _____
- CMU _____
- CTR _____
- EAG _____
- LEG 10/1/92
- LRN 6
- GHC _____
- FCR _____
- SEC 1
- WAC _____
- OTR _____

Sincerely,

Janis Sue Richardson
Janis Sue Richardson
Associate Public Counsel

RECEIVED & FILED

TRB

FPSC-BUREAU OF RECORDS

DOCUMENT NUMBER-DATE

07849 JUL 20 1992

FPSC-RECORDS/REPORTS

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

CITIZENS' MOTION TO IMPOSE A PENALTY ON SOUTHERN BELL TELEPHONE AND TELEGRAPH COMPANY FOR FILING AND FAILING TO CORRECT FALSE INFORMATION SUBMITTED TO THE COMMISSION

Pursuant to section 350.0611, Florida Statutes, the Citizens' of Florida ("Citizens"), by and through Jack Shreve, Public Counsel, move the Florida Public Service Commission ("Commission" or "PSC") to impose a full penalty on BellSouth Telecommunications, Inc., doing business as Southern Bell Telephone and Telegraph Company ("Southern Bell") for filing false information with the Commission, knowingly failing to correct public record information (schedule 11s) previously filed with the Commission, and refusing to disclose public record information.

Background

1. Citizens discovered that Southern Bell had conducted an audit of its PSC schedule 11 reports¹ in the third quarter of 1991, and had uncovered "significant adverse findings."²

¹ See Fla. Admin. Code R. 25-4.0185 (requiring telecommunications companies to file schedule 11 reports on a quarterly basis).

² See Attachment A to Southern Bell's Opposition to Public Counsel's First Motion to Compel and Request for In Camera Inspection of Documents, filed May 15, 1992 in docket no. 920260-TL. The decision on the motion is still pending.

DOCUMENT NUMBER-DATE
07849 JUL 20 1992
FPSC-RECORDS/REPORTING

Citizens' twenty-sixth set of interrogatories, filed June 3, 1992, targeted this audit. Citizens asked the company to "state every adverse finding discovered in the third quarter 1991 audit of the Florida PSC schedule 11 reports"; to "state every finding on the third quarter 1991 audit of the Florida PSC schedule 11 reports that shows an inconsistency with the schedule 11s on file with the PSC"; and to "state whether you believe, or have reason to believe, that any of the Florida PSC schedule 11 reports you submitted to the PSC have any inaccurate information."

Southern Bell filed its response and objections to the twenty-sixth set of interrogatories on July 8, 1992. Southern Bell admitted that it discovered some inaccurate data in their schedule 11 reports pertaining to data submitted from its North Dade and Gainesville operations in 1990. See Southern Bell's response to the twenty-sixth interrogatory, item 8. Southern Bell claimed that the attorney-client and work product privileges protected the rest of the audit information, which contained "significant adverse findings," from discovery. Citizens filed a motion to compel Southern Bell to answer these questions on July 20, 1992.

2. Citizens requested the production of the 1991 schedule 11 audit in its twenty-fourth production of documents request, item 9, filed June 3, 1992. On July 8, 1992, Southern Bell withheld this audit under a claim of attorney-client and work product privileges.

Commission Authority to Impose Penalties

3. The Commission has exercised the discretion to impose a penalty on a utility for violation of its rules for decades. See e.g., In re: Central Truck Lines, Inc., 58 PUR 3d 365 (F.P.U.C. 1965). The Commission has the statutory authority to impose a penalty of up to \$5,000 a day for noncompliance with Commission rules under its general powers. § 350.127, Fla. Stat. (1991). Section 350.127(1), Florida Statutes provides:

The commission may impose upon any regulated company that is found to have refused to comply with or willfully violated any lawful rule or order of the commission, or any statute administered by the commission, a penalty for each such offense of not more than \$5,000, to be fixed, imposed, and collected by the commission, or the commission may, for any such violation, amend, suspend, or revoke any certificate issued by the commission. Each day that such refusal or violation continues shall constitute a separate offense. Each penalty shall be a lien upon the real and personal property of the regulated company, enforceable by the commission as a statutory lien upon the real and personal property of the regulated company, enforceable by the commission as a statutory lien under chapter 85. The net proceeds from the enforcement of any such lien shall be deposited in the General Revenue Fund.

Id. The Commission has express authority to impose a penalty of up to \$25,000 a day on any telecommunications company that refuses to comply with or willfully violates its rules. § 364.285, Fla. Stat. Section 364.285(1), Florida Statutes provides:

The commission shall have the power to impose upon any entity subject to its jurisdiction under this chapter which is found to have refused to comply with or to have willfully violated any lawful rule or order of the commission or any provision of this chapter a penalty for each offense of not more than \$25,000, which penalty shall be fixed, imposed, and collected by the commission;

or the commission may, for any such violation, amend, suspend, or revoke any certificate issued by it. Each day that such refusal or violation continues constitutes a separate offense. Each penalty shall be a lien upon the real and personal property of the entity, enforceable by the commission as a statutory lien under chapter 85. Collected penalties shall be deposited in the General Revenue Fund unallocated.

Id. The Commission's imposition of a penalty for willful violation of its rules has been upheld by the Supreme Court of Florida. Commercial Ventures v. Beard, etc., et al., 595 So. 2d 47 (Fla. 1992) (imposing a \$7,000 fine on pay telephone company for willful violation of commission rules).

4. The Commission may require utilities to file regular reports of its service and operation. § 350.117, Fla. Stat. Commission rules require telecommunications companies to maintain a history of customer trouble reports and file a statistical report on that history with the Commission quarterly. Fla. Admin. Code R. 25-4.0185 & 4.022.

5. The Citizens believe that the company's filing of inaccurate information on its schedule 11s, the failure to notify the Commission of those inaccuracies, the refusal to disclose the extent of the inaccuracies, and the company's attempt to delay the correction of those inaccuracies through transparent claims of attorney-client and work product privileges, warrants the imposition of a penalty dating from January 1, 1990 or earlier if the audit so indicates.

Argument

6. Regulatory reports filed with the Commission are public records. Id. §§ 119.01 & 119.011(1). Schedule 11 reports

detailing the customer service quality indicators must be filed with the Commission quarterly. Fla. Admin. Code R. 25-4.0185. Schedule 11s are public record. The company audited the information that is contained in a public record. As the database for the original schedule 11s on file with the Commission and the third quarter audit is the same, the information contained in the audit is a matter of public record. Southern Bell cannot bury this information from public scrutiny by stating that the audit was performed at the request of its attorney in anticipation of litigation. How can the Commission or the Citizens' consumer advocate hope to perform their statutory oversight duties if a utility is allowed to submit inaccurate reports and then hide the facts? No stretch of the definition of privilege would permit such a manifestly unjust result.

7. Knowingly filing a false report with the Commission is a misdemeanor. § 837.06, Fla. Stat. (1991). Since a company has a legal duty to file correct information with the Commission, it has a legal duty to correct inaccurate information on file with the Commission. Each day Southern Bell fails to do so once the inaccuracies are uncovered is tantamount to willfully filing a false report. By its own admission, the audit discloses inaccuracies in the North Dade and Gainesville data for 1990, as well as other significant adverse findings in the schedule 11s on file with the Commission. If the company is permitted to hide its adverse findings behind a broad claim of privilege, then all

the information this company has filed with the Commission will be suspect.

8. Southern Bell has a legal duty to immediately disclose any inaccuracies in reports filed with the Commission. See id. Attempts to cover-up this information and willfully hide it from the Commission and other parties, perpetuates a fraud on the public. See id. No information is privileged that is in furtherance of a crime or fraud. The Commission should order Southern Bell to immediately disclose this information and levy a penalty for each day the company continues in its willful disobedience.

9. On its face, the attorney-client and work product privileges do not apply to this information. See Citizens' motion to compel, Docket No. 910163, filed July 20, 1992. Filing of regulatory reports is not a legal matter; it is a routine business matter. Auditing regulatory reports cannot be made a legal matter by having in-house counsel supervise the process. Clearly, the information contained in the audit is not privileged.

10. Southern Bell's withholding of this data under a claim of privilege is an attempt to delay the fact-finding process of pending cases. Southern Bell has sole control of the customer trouble reporting data base and the computer system by which this data is processed and analyzed. Each day that Southern Bell delays in correcting the records on file with the Commission is a day it refuses to comply with Commission rules.

11. Southern Bell provided, by its own limited response, an admission that at least some of the information contained in the schedule 11s on file with the Commission is inaccurate. What other significant adverse findings has the company uncovered? Unless the Commission compels Southern Bell to respond to Citizens' discovery requests and to correct the inaccuracies in the reports on file at the Commission, Southern Bell's schedule 11s will be suspect.

12. Additionally, Southern Bell's attempt to keep the scope of its false reports secret, calls into question the veracity of all of the companies records filed with the Commission. How can the Commission or the Citizens of this state rely on any information submitted by Southern Bell when it is clear that the company has arrogated to itself the decision of which falsifications it chooses to correct? This contravenes the Legislature's policy of regulating utilities in the public interest. § 364.041(3), Fla. Stat. The Commission can only meet its mandate of ensuring that monopoly services of telecommunications companies are subject to effective regulation if it ensures the accuracy of the reports filed.

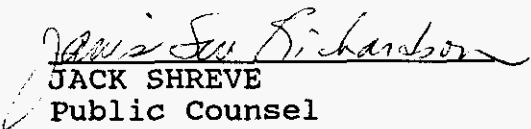
Conclusion

13. Citizens assert that Southern Bell's 1991 third quarter schedule 11 audit, and the information contained therein, is a business document containing public record data, and as such, is not covered by the attorney-client privilege, nor the more

limited work product privilege. Southern Bell has no legal justification for withholding this information from Citizens. Indeed, it has a legal duty to immediately rectify the false reports that are on file with the Commission. Its willful failure to do so and intractable claims of privilege justify this Commission in levying a heavy penalty on the company. If Southern Bell is permitted to ignore its legal duty without swift and severe punishment, the message to all other utilities in this state will be a clear clarion call to dupe the customers at-will.

WHEREFORE, Citizens respectfully request this Commission to impose a full penalty on Southern Bell for filing of a false report(s), for each day Southern Bell knowingly fails to correct the inaccuracies in the report(s), and for willfully withholding public record information.

Respectfully submitted,


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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 20th day of July, 1992.

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& Telegraph Co.)
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