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ORIGINAL
FILE COPY

July 20, 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 Fourth 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.

Sincerely yours,

Nancy B. White
Nancy B. White (2X)

ACK _____
AFA _____
APP _____
CAF _____
CMD _____

Enclosures

CTR cc: All Parties of Record
A. M. Lombardo
EAG _____ H. R. Anthony
LEG 1 _____ R. D. Lackey
LIN 6 _____
OPC _____
RCH _____
SEC 1 _____
WAS _____
OTH _____

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CERTIFICATE OF SERVICE
Docket No. 920260-TL

I HEREBY CERTIFY that a copy of the foregoing has been
furnished by United States Mail this 20th day of July, 1992 to:

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(22)

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: July 20, 1992
Bell Telephone and Telegraph)
Company (Formerly FPSC Docket)
Number 880069-TL))
_____)

SOUTHERN BELL TELEPHONE AND TELEGRAPH COMPANY'S
OPPOSITION TO PUBLIC COUNSEL'S FOURTH 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") Fourth Motion to Compel with regard to Public Counsel's Sixth, Seventh, Eighth, Ninth, Tenth, and Eleventh Production of Document Requests dated May 8, 1992, May 12, 1992, May 13, 1992, May 15, 1992, May 21, 1992, and May 28, 1992, respectively. In addition, Southern Bell files its Opposition to Public Counsel's Motion to Compel with regard to Public Counsel's Fifth Set of Interrogatories, dated May 15, 1992.

1. On the dates listed above, Public Counsel served Southern Bell with its Sixth, Seventh, Eighth, Ninth, Tenth, and Eleventh Requests for Production of Documents as well as its Fifth Set of Interrogatories. These requests sought numerous BellSouth Corporation documents which were not in the possession, custody or control of Southern Bell.

2. On June 8, 1992, June 12, 1992, June 16, 1992, June 19, 1992, June 22, 1992, and June 29, 1992, Southern Bell filed its

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Responses and Objections to Public Counsel's Sixth, Seventh, Eighth, Ninth, Tenth, and Eleventh Requests for Production of Documents. On June 19, 1992, Southern Bell filed its Responses and Objections to Public Counsel's Fifth Set of Interrogatories. Southern Bell incorporates herein the contents of its Responses and Objections.

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 on this ground should therefore be denied.

7. In addition, Public Counsel objects to Southern Bell's position that questions concerning inside wire are irrelevant to this proceeding. Rule 1.280, Florida Rules of Civil Procedure, state that "parties may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter of the pending action." The issues that exist in this docket relate solely to Southern Bell's regulated earnings in Florida.

8. By definition, Southern Bell's unregulated services, including inside wire, are not subject to the jurisdiction of this Commission. See Order No. 17040 issued on December 31, 1986 in Docket No. 861362-TL (order deregulating inside wire). In addition, the Commission has continuously refused to compel such information. See Orders No. 19681 and 19685, dated July 15, 1988 and July 18, 1988 in Docket No. 880069; Order No. 22461 dated June 24, 1990 in Docket No. 890190; and Order No. 22412 dated

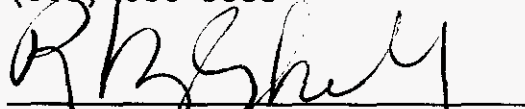
june 11, 1990 in Docket No. 890486. It should also be noted that on June 12, 1992, the Commission voted to accept the Staff Recommendation on Issue 210 dated June 5, 1992 in Docket No. 910980, In Re: Depreciation Study for United Telephone of Florida. In effect, the Commission decided to proceed with a generic rulemaking to address the appropriate treatment of inside wire services for all local exchange companies. Thus, Public Counsel will have the opportunity to seek answers to these questions in connection with that docket. Until such time, any and all data regarding Southern Bell's unregulated services, including inside wire, are not relevant to this proceeding and are not the proper subject of discovery. Therefore, Public Counsel's Motion to Compel should be denied in its entirety.

Respectfully submitted this 20th day of July, 1992.

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