

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition on Behalf of
Citizens of the State of Florida
to Initiate Investigation into
the Integrity of SOUTHERN BELL
TELEPHONE AND TELEGRAPH COMPANY'S
Repair Service Activities and
Reports.

) Docket No. 910163-TL

Comprehensive Review of the
Revenue Requirements and Rate
Stabilization Plan of SOUTHERN
BELL TELEPHONE AND TELEGRAPH COMPANY.

) Docket No. 920260-TL

Show cause proceeding against
SOUTHERN BELL TELEPHONE AND TELEGRAPH
COMPANY for misbilling customers.

) Docket No. 900960-TL

Investigation into SOUTHERN BELL
TELEPHONE AND TELEGRAPH COMPANY'S
compliance with Rule 25-4.110(2),
F.A.C.

) Docket No. 910727-TL
) Filed:
)
)
)

ATTORNEY GENERAL'S RESPONSE TO SOUTHERN BELL'S
RESPONSE IN OPPOSITION TO PUBLIC COUNSEL'S
FOURTEENTH MOTION TO COMPEL AND REQUEST
FOR IN CAMERA INSPECTION OF DOCUMENTS

- JACK ✓
- AFA
- APP
- CAF 1
- CMU
- CTR
- EAG
- LEG 1
- LIN 6
- OPC
- RCH 1
- SEC 1
- WAS
- OTH

The Attorney General of the State of Florida, Robert A.

Butterworth ("Attorney General"), by and through his undersigned
counsel, hereby files his Response to Southern Bell's Response in
Opposition to Public Counsel's Fourteenth Motion to Compel and
Request For In Camera Inspection of Documents. In support
thereof, the Attorney General states as follows:

1. By its Thirty-First Request for Production of Documents
on Southern Bell, Public Counsel requested, among other things,

RECEIVED & FILED
Lew
FPSC-BUREAU OF RECORDS

DOCUMENT NUMBER-DATE
02459 MAR-48

documents which Southern Bell produced for the Attorney General and the Office of the Statewide Prosecution in conjunction with certain investigations being conducted by those offices.

2. By its Response in Opposition, filed February 5, 1993, Southern Bell, among other things, argues it cannot produce the documents requested by Public Counsel because Section 905.27, Florida Statutes prohibits their production.

3. Although Southern Bell denies knowledge of which, if any, of its documents were actually presented to the Grand Jury, it apparently takes the position that providing Public Counsel with any of the documents that might have gone before the Grand Jury will subject Southern Bell to prosecution under the provisions of Chapter 905, Florida Statutes.

4. At the Final Prehearing Conference in this case, on Tuesday, February 23, the undersigned argued that Section 905.27, Florida Statutes did not prohibit Southern Bell from providing Public Counsel with documents it had supplied to the Attorney General or the Office of Statewide Prosecution, even if there was some possibility that those documents had been presented to the Grand Jury. The undersigned went further, arguing that the plain language of Section 905.27, Florida Statutes, would not prohibit Southern Bell from providing Public Counsel with documents it knew for a certainty had been presented to the Grand Jury, so

long as, in the words of the statute, it did not disclose that the documents had been received by the Grand Jury.

5. During the oral arguments on this issue, Commissioner Clark asked the undersigned whether the Attorney General, as a party to the case, would take the position that Southern Bell merely providing the documents requested by Public Counsel would not constitute a violation of Section 905.27, Florida Statutes.

6. The relevant portion of Section 905.27, Florida Statutes, states:

(1) A grand juror, state attorney, assistant state attorney, reporter, stenographer, interpreter, or any other person appearing before the Grand Jury shall not disclose the testimony of a witness examined before the Grand Jury or other evidence received by it except when required by a court to disclose the testimony for the purpose of: . . . (Emphasis Supplied)

The above language, coupled with that of subsection 905.27(2), Florida Statutes, proscribes persons from: (1) disclosing the testimony of a witness examined before the Grand Jury; or (2) disclosing "other evidence received by it".

7. It is the Attorney General's position that the clear intent of Section 905.27, Florida Statutes, is to protect the

integrity and secrecy of the actual Grand Jury proceedings themselves. Pursuant to this position, a witness who had testified before the Grand Jury could give precisely the same testimony before another body, so long as he or she did not disclose they had given the testimony before the Grand Jury. Furthermore, a person who knows documentary or other evidence was received by the Grand Jury can produce the documents in other proceedings, so long as he or she does not disclose that these documents were received by the Grand Jury. In this context, the phrase "received" means actually received by or presented to the members of the Grand Jury while they are in session, and not merely obtained by agents of the Grand Jury outside of the Grand Jury Room.

8. In view of the above, it is the Attorney General's position that Southern Bell can fully comply with Public Counsel's discovery request with no fear it will be subject to a violation of Section 905.27, Florida Statutes. However, should Southern Bell, either through its officers, directors, or other agents, know that certain testimony or other evidence was received by the Grand Jury while in session, it must refrain from disclosing the same.

9. During the same oral arguments, Commissioner Clark inquired why the Attorney General or the Office of Statewide Prosecution could not make its investigative files on Southern


Bell available to both Public Counsel and the Commission Staff to reduce duplicative investigative effort and to otherwise assist the Commission in its investigation of Southern Bell's lapses in its non-contact sales and repair service reports.

10. In response to Commissioner Clark's request, the Attorney General and Office of Statewide Prosecution are willing to make public certain sworn statements and documentary evidence received in connection with its still active investigation of Southern Bell's non-contact sales and repair service reports. In doing so, both the Attorney General and Office of Statewide Prosecution make clear that the production of these documents is not a waiver of the Section 119.07(3)(d) provision exempting these documents from inspection and examination by the public on demand. Rather, as argued previously, the Attorney General and Office of Statewide Prosecution take the position that these documents, while being exempt from inspection and examination as public records, may be publicly disclosed, on the agency's determination that doing so is in the public interest and that the disclosure will not compromise the integrity of the active investigation.

11. It is the determination of the Attorney General and Office of Statewide Prosecution that the public disclosure of the documents being supplied to the Commission Staff and Public Counsel will not compromise the integrity of the active

investigation and, furthermore, that their disclosure, at the request of Commissioner Clark, will aid the Commission's own investigation of Southern Bell's activities, which is in the public interest.

Respectfully submitted this 4th day of March, 1993.


Michael B. Twomey
Assistant Attorney General
Department of Legal Affairs
Room PL-01, The Capitol
Tallahassee, FL 32399-1050

Telephone: (904) 488-5899

CERTIFICATE OF SERVICE
DOCKET NOS. 920260-TL, 910163-TL, 900960-TL, 910727-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 4th day of March, 1993.

Marshall Criser, III
BellSouth Telecommunications,
Inc. (Southern Bell Telephone
& Telegraph Company)
150 S. Monroe St., Suite 400
Tallahassee, FL 32301

Harris B. Anthony
BellSouth Telecommunications,
Inc. (Southern Bell Telephone
& Telegraph Company)
150 W. Flagler St., Suite 1910
Miami, FL 33130

Robin Norton
Division of Communications
Fla. Public Service Commission
101 East Gaines Street
Tallahassee, FL 32301

Doug Lackey
BellSouth Telecommunications,
Inc. (Southern Bell Telephone
& Telegraph Company)
4300 Southern Bell Center
Atlanta, GA 30375

Angela Green
Division of Legal Services
Fla. Public Service Commission
101 East Gaines Street
Tallahassee, FL 32301

Edward Paschall
Florida AARP Capital City Task
Force
1923 Atapha Nene
Tallahassee, FL 32301

Charlotte Brayer
275 John Knox Rd., EE 102
Tallahassee, FL 32303

Richard D. Melson
Hopping, Boyd, Green & Sams
23 South Calhoun Street
P.O. Box 6526
Tallahassee, FL 32314

Michael J. Henry
MCI Telecommunications Corp.
MCI Center
Three Ravinia Drive
Atlanta, GA 30346

Joseph A. McGolthlin
Vicki Gordon Kaufman
McWhirter, Grandoff & Reeves
522 E. Park Ave., Suite 200
Tallahassee, FL 32301

Rick Wright
AFAD
Fla. Public Service Commission
101 East Gaines Street
Tallahassee, FL 32301

Peter M. Dunbar
Haben, Culpepper, Dunbar
& French, P.A.
306 N. Monroe St.
P.O. Box 10095
Tallahassee, FL 32301

Patrick K. Wiggins
Wiggins & Villacorta, P.A.
P.O. Drawer 1657
Tallahassee, FL 32302

Dan B. Hendrickson
P.O. Box 1201
Tallahassee, FL 32302

Monte Belote
Florida Consumer Action Network
4100 W. Kennedy Blvd., #128
Tampa, FL 33609


Joseph P. Gillan
J. P. Gillan and Associates
P.O. Box 541038
Orlando, FL 32854-1038

Floyd R. Self
Messer, Vickers, Caparello,
French, Madsen & Lewis, P.A.
P.O. Box 1876
215 S. Monroe St., Suite 701
Tallahassee, FL 32302-1876

Chanthina R. Bryant
Sprint
3065 Cumberland Circle
Atlanta, GA 30339

Michael W. Tye
AT&T Communications of the
Southern States, Inc.
106 East College Avenue
Suite 1410
Tallahassee, FL 32301

Charles J. Beck
Deputy Public Counsel
Office of the Public Counsel
c/o The Florida Legislature
111 West Madison Street
Room 812
Tallahassee, FL 32399-1400


Michael B. Twomey
Assistant Attorney General