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March 17, 1993

Mr. Steve C. Tribble  
Director, Division of Records and Reporting  
Florida Public Service Commission  
101 East Gaines Street  
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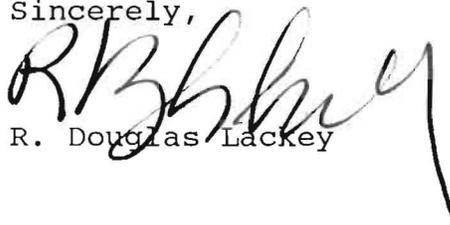
RE: Docket No. 920260-TL

Dear Mr. Tribble:

Enclosed are an original and fifteen copies of Southern Bell Telephone and Telegraph Company's Response to Staff's First Motion to Compel Complete Audit Access. Please file this document 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.

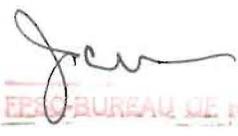
Sincerely,

  
R. Douglas Lackey

Enclosures

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

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FPSC BUREAU DE REQUISITES

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FPSC-RECORDS/REPORTING

**CERTIFICATE OF SERVICE**

**Docket No. 920260-TL**

**Docket No. 900960-TL**

**Docket No. 910163-TL**

**Docket No. 910727-TL**

I HEREBY CERTIFY that a copy of the foregoing has been  
furnished by United States Mail this 17th day of March, 1993 to:

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Nancy White

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Comprehensive Review of )  
the Revenue Requirements and Rate ) Docket No. 920260-TL  
Stabilization Plan of Southern )  
Bell Telephone and Telegraph ) Filed: March 17, 1993  
Company )  
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SOUTHERN BELL TELEPHONE AND TELEGRAPH  
COMPANY'S RESPONSE TO STAFF'S FIRST  
MOTION TO COMPEL COMPLETE AUDIT ACCESS

COMES NOW BellSouth Telecommunications, Inc. d/b/a Southern Bell Telephone and Telegraph Company ("Southern Bell" or "Company") and, pursuant to Rule 25-22.037, Florida Administrative Code, hereby files its response to the First Motion to Compel Complete Audit Access filed by the Staff of the Florida Public Service Commission ("Staff" or "Audit Team").

**BACKGROUND**

1. The Commission is currently performing an audit of Southern Bell's affiliate transactions and relationships in connection with Docket No. 920260-TL. While this audit is being conducted in Docket 920260-TL, its origins actually lie in an effort by the National Association of Regulatory Utility Commissioners (NARUC) to conduct a region-wide audit of BellSouth's affiliated transactions. Since NARUC does not have the statutory authority to conduct such an audit, the audit is being conducted under the jurisdiction of a single state, Florida.

2. Southern Bell, of course, has no objection to a proper audit being conducted by any regulatory body having jurisdiction

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FPSC-RECORDS/REPORTING

over it. Furthermore, Southern Bell, its parent corporation and affiliates intend, whenever possible, to cooperate with the auditors. However, there are limits to Southern Bell's ability to cooperate, and the Staff has reached and exceeded them.

### AFFILIATED RECORDS

3. The Staff has given Southern Bell over 100 interrogatories and requests for documents. Southern Bell has provided the information requested in the vast majority of cases. However, a problem has arisen because of Staff's insistence on receiving financial statements and total access to the general ledgers of a number of Southern Bell affiliates.<sup>1</sup> Importantly, for those affiliates with which Southern Bell had direct transactions, the affiliate involved has voluntarily agreed to produce all documents necessary to demonstrate that these transactions meet the standards for affiliated transactions as established by the Cost Allocation Manual (CAM). That is, Southern Bell and the affected affiliated companies are willing to demonstrate that all transactions between them either are correctly priced at "fully distributed costs" ("FDC") or that the transactions were priced at an appropriate "market price". The affiliates having possession of the relevant documents have also

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<sup>1</sup> 1-019 - BellSouth Information Networks; 2-001 - Sunlink (partner CSL Chastain); 2-002 - BellSouth Capital Funding Corp.; 2-004 - BellSouth Resources Inc.; 2-006 - DataServe Financial Services; 3-008 - BAPCO; 3-016 - LM Berry; 3-016 - Stephens Graphics; 3-016 - TechSouth; 3-016 - BellSouth Marketing Programs; 3-016 - Intelligent Media Services; 3-023 - BellSouth Enterprises, Inc.

agreed to produce any documents necessary to demonstrate that any "chained" FDC transactions were correctly charged in the event that the Staff's audit of a direct transaction revealed any "chained" FDC transactions. However, for those affiliates with which Southern Bell had no direct transactions and, to the extent the requests sought more than the information necessary to support any transactions, Southern Bell objected. Southern Bell's objections were based on the grounds that (1) the requests go well beyond the "reasonable access" to affiliate records afforded by Section 364.183(1), Florida Statutes, or (2) the information sought was not necessary to reach conclusions related to cost allocations or possible cross subsidies.

4. In its Motion to Compel, the Staff argues that Section 364.183(1), Florida Statutes, allows the Staff to have complete and unfettered access to the records of Southern Bell's affiliates. Even though Southern Bell has agreed to allow the Staff to trace any affiliated transaction to either (1) the source documents underlying the transaction or (2) a "market" price transaction, Staff apparently asserts that this is not sufficient. In effect, Staff wants to strike the word "reasonable" from the statute.

5. Nevertheless, and irrespective of how the Staff wants the statute to read, the statute speaks of "reasonable" access to affiliated company records. The documents offered by Southern Bell satisfy this requirement and are more than sufficient to allow the Staff to fulfill its statutory obligation regarding

allocations and potential cross-subsidies. Staff's insistence upon obtaining the financial statements and general ledgers goes far beyond anything logically and reasonable necessary to determine the appropriateness or correctness of allocations, affiliate transactions or the presence of cross-subsidy.<sup>2</sup> Therefore, Staff's Motion to Compel should be denied.

6. While simple logic would dictate that Southern Bell should prevail, there are other arguments that go to the very essence of the statute that the Staff relies upon. It is undisputed that Southern Bell does not have possession, custody, or control of the documents requested. Rather, such documents are in the possession of entities that are not subject to the jurisdiction of this Commission. Many of the entities from which the Staff seeks documents have absolutely no connection with Southern Bell's operations in Florida. While the statute relied upon by Staff purports to give the Commission jurisdiction over affiliates of Southern Bell, constitutional limitations prohibit the Commission from exercising jurisdiction over these entities that do not have certain minimum contacts with Florida.

7. To invoke jurisdiction over a foreign corporation on the basis that it is conducting business in the state, either by itself or through an agent, the activities of the corporation

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<sup>2</sup> Indeed, to the extent that Southern Bell has no direct transactions with many of these affiliates, Southern Bell can hardly be found to be subsidizing the affiliates' unregulated activities. To the extent that an affiliate has had an "indirect" transaction with Southern Bell the examination of the "chained" transaction should satisfy any cross-subsidization concerns.

must be considered collectively and show a general course of business activity in the state for a pecuniary benefit. See April Industries, Inc. v. Levy, 411 So.2d 303 (Fla. 3rd Dist., 1982). Further, in order to satisfy due process requirements, the corporation must maintain certain "minimum contacts" with the forum state "such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice'". See International Shoe v. Washington, 326 U.S. 310, 316, 66 S.Ct. 154, 158 (1945). These contacts cannot be accidental or fortuitous; the corporation must "purposely avail itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws." See Burger King Corp. vs. Rudzewicz, 471 U.S. 462, 475 105 S.Ct. 2174, 2183 (1958) (quoting Hanson v. Denckla, 357 U.S. 235, 253 78 S.Ct. 1228, 1240 (1958)).

8. The Florida long arm statute, "reflects a purpose to reach as far as the federal Constitution allows". Delray Beach Aviation Corporation v. Mooney Aircraft, Inc., 332 F.2d 135, (5th Cir. 1964). The Commission's jurisdiction, of course, cannot constitutionally be any broader than that of a court. Thus, to the extent that a given corporation has been found to be outside of the jurisdiction of a Florida court under a given set of circumstances, a corporation would be equally beyond the jurisdiction of this Commission under similar circumstances. In Qualley vs. International Air Service Co., Ltd., 595 So.2d 194 (3rd DCA 1992) a corporation was, in fact, found not to be within

the jurisdiction of a Florida court on the basis of a closely comparable factual situation. In that case, the plaintiff alleged that a subsidiary of the defendant failed to pay on an open account. The defendant moved to dismiss for lack of personal jurisdiction. The Court held "that the presence of a subsidiary corporation within Florida is not enough, without more, to subject a non-Florida parent corporation to long-arm jurisdiction within" Florida. Id. at 196. What this case holds for a parent-subsiary situation is obviously equally applicable to affiliated companies.

9. In the instant case, a number of the entities have absolutely no contact with Florida and are neither authorized to do business, nor doing business in Florida.<sup>3</sup> The sole basis for jurisdiction that the Commission could assert over these entities under the theory that they were "doing business in Florida" would be through a transaction that the entities might enter into with Southern Bell. Southern Bell, however, had no direct transactions with many of these entities. Consequently, while simple logic and reason dictate that Southern Bell should prevail in this matter, it is equally apparent that there are serious legal impediments related to the request to obtain documents from entities that are beyond the constitutionally supportable limits of the jurisdiction of this Commission.

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<sup>3</sup> This list includes: BellSouth Capital Funding Corporation; DataServ Financial Services; TechSouth; BellSouth Marketing Programs; Intelligent Media Services; and BellSouth Enterprises, Inc.

### NON-FLORIDA DATA

10. The audit team also requested information regarding directory operations, billing and collection, and fiber based trials in all nine states of the BellSouth Telecommunications region.<sup>4</sup> At the outset, it should be noted that Southern Bell provided all documents responsive to this request for the state of Florida. Southern Bell objected to providing this same information for states other than Florida for the simple reason that it is totally irrelevant to the issue at hand.

11. For example, the Staff requested the computation of the publishing fee for each of the nine states. The computations of the publishing fees were made almost 10 years ago and are not readily available in most instances. While Southern Bell provided the Florida computation, even though this matter is controlled by statute in Florida, it is simply a waste of resources and time to attempt to reproduce a publishing fee established almost a decade ago for any state other than Florida. To illustrate, producing such a calculation for Mississippi and providing it to the Florida Staff would provide nothing beneficial to, or even remotely relevant to, any proceeding in Florida. While this is an example, the other requests identified by the Staff in its motion are similarly inappropriate. The information requested has absolutely nothing to do with either the matters the Staff is examining or the subject matter of

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<sup>4</sup> 1-013 - Fiber Based Trials; 3-002 - Directory Revenue; 3-007 - Revenue Sharing Factor; 3-011 - BAPCO Allocation Matrix; 4-009.1 - Billing and Collection Data

Section 364.183(1), Florida Statutes.

WHEREFORE, Southern Bell respectfully requests the entry of an order denying Staff's Motion to Compel in its entirety.

Respectfully submitted this 17th day of March, 1993.

SOUTHERN BELL TELEPHONE  
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