

FLORIDA PUBLIC SERVICE COMMISSION

Fletcher Building
101 East Gaines Street
Tallahassee, Florida 32399-0850

M E M O R A N D U M

April 20, 1993

TO : DIRECTOR OF RECORDS AND REPORTING (TRIBBLE)

FROM : DIVISION OF APPEALS (BELLAK) *RCS DES*

RE: : DOCKET NOS. 910163-TL - 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; 920260-TL - COMPREHENSIVE REVIEW OF THE REVENUE REQUIREMENTS AND RATE STABILIZATION PLAN OF SOUTHERN BELL TELEPHONE AND TELEGRAPH COMPANY; 900960-TL - SHOW CAUSE PROCEEDING AGAINST SOUTHERN BELL TELEPHONE AND TELEGRAPH COMPANY FOR MISBILLING CUSTOMERS; AND 910727-TL - INVESTIGATION INTO SOUTHERN BELL TELEPHONE AND TELEGRAPH COMPANY'S COMPLIANCE WITH RULE 25-4.110(2), F.A.C., REBATES

AGENDA : MAY 4, 1993 - CONTROVERSIAL - PARTIES MAY PARTICIPATE

PANEL : FULL COMMISSION

FILE NAME: I:\PSC\APP\WP\910163#4.RCM

BACKGROUND

Order No. PSC-93-0335-PCO-TL (Order), issued by the Prehearing Officer on March 4, 1993, in the above consolidated docket, granted Public Counsel's Motion To Compel BellSouth Telecommunications' Human Resource Operations Manager Dwayne Ward to answer deposition questions.

On March 15, 1993, Southern Bell filed a Motion For Review of the Prehearing Officer's Order by the full Commission. On March 25, 1993, Public Counsel filed its Response thereto.

DISCUSSION OF ISSUES

ISSUE 1: Should Southern Bell's Motion For Review be granted?

STAFF RECOMMENDATION: No. The motion should be denied.

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4-22-93

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STAFF ANALYSIS: Southern Bell has not identified in the Order error of fact or law that would meet the appropriate standard for reconsideration or review. Diamond Cab Co. of Miami v. King, 146 So.2d 889 (Fla. 1962); Pingree v. Quaintence, 399 So.2d 161 (Fla. 1st DCA 1981); Order No. PSC-92-0339-FOF-TL (5/13/92).

During a deposition of C. J. Sanders and C. L. Cuthbertson, Jr., BellSouth Telecommunications' Vice President Network - Southern Area and General Manager - Human Resources, respectively, Southern Bell objected to questions asked by Public Counsel concerning employee discipline matters. The objections were based on a claim that information about these matters was privileged from discovery under the attorney-client and work-product doctrines.

This Commission has already held that the underlying documents comprising witness statements and summaries were not privileged from discovery. Order Nos. PSC-93-0292-FOF-TL (2/23/93); PSC-93-0517-FOF-TL (4/6/93). Accordingly, Southern Bell's reiteration here of its disagreement with Order Nos. PSC-93-0151-CFO-TL and PSC-93-0294-PCO-TL (2/23/93), review of which was denied in the April 6, 1993 order, does not identify an issue of fact or law that the Prehearing Officer overlooked or an error requiring review. Though Southern Bell further argues that the deposition questions represented an attempt by Public Counsel to force the deponents to divulge privileged information, that argument is inconsistent with the Commission's previous holding that the documents were not privileged.

Finally, as noted in Upjohn Co. v. United States, 449 U.S. 383, 395, the attorney-client privilege "extends only to communications and not to facts." Therefore, even were the documents privileged communications, the deposition questions would not be precluded by the attorney-client privilege. Upjohn, supra. Similarly, even had the documents been found to be privileged work-product, the deposition questions would not have been precluded. United States v. Pepper's Steel and Alloys, Inc., 132 F.R.D., 695, 699 (S.D. Fla. 1990); Surf Drugs, Inc. v. Vermette, 236 So.2d, 108, 113 & n. 15 (Fla. 1970).

ISSUE 2: Should this docket remain open?

STAFF RECOMMENDATION: Yes.

RCB