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June 4, 1993

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

Re: Docket No. 920260-TL

Dear Mr. Tribble:

Enclosed for filing in the above-referenced docket on behalf of the Citizens of the State of Florida are the original and 15 copies of the Citizens' 5th Motion to Compel.

Please indicate the time and date of receipt on the enclosed duplicate of this letter and return it to our office.

Sincerely,

Charles J. Beck
Deputy Public Counsel

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OFFICE OF RECORDS & REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

Comprehensive Review of the)
Revenue Requirements and Rate) Docket No. 920260-TL
Stabilization Plan of Southern) Filed: June 4, 1993
Bell Telephone & Telegraph Company)
_____)

CITIZENS' FIFTH MOTION TO COMPEL

The Citizens of Florida ("Citizens"), by and through Jack Shreve, Public Counsel, request the Florida Public Service Commission to compel BellSouth Telecommunications, Inc., to produce each of the documents responsive to requests for production of documents number 478, 479, 480 and 481 contained in the Citizens' thirty-fourth set of requests for production of documents dated April 21, 1993.

Background

1. On April 21, 1993 we served our thirty-fourth set of requests for production of documents to BellSouth Telecommunications, Inc. BellSouth Telecommunications, Inc., filed its response and objections on May 24, 1993.

2. The four requests for production of documents at issue are as follows:

478. Please provide each document in your possession, custody or control logging, containing, evaluating, commenting on, or responding to communications or complaints by employees to the vice president - corporate responsibility and compliance, to the office of vice president - corporate responsibility and compliance, to the office of corporate responsibility and compliance, or to any similar individuals, departments or offices.

479. Please provide each document in your possession, custody or control logging, containing, evaluating, commenting on, or responding to communications or complaints by employees to your ethics hotline or any similar hotline or other telephone number.

480. Please provide each document in your possession, custody or control logging, containing, evaluating, commenting on, or responding to communications or complaints by employees to your employee hotline 1-800-554-9920 or any similar hotline.

481. Please provide each document in your possession, custody or control logging, containing, evaluating, commenting on, or responding to communications or complaints by employees to your former employee hotline 1-800-543-3529 or any similar hotline.

BellSouth Telecommunications' objection to the definition of "document" or "documents"

3. BellSouth Telecommunications complains about the definition of the terms "document" and "documents," claiming the

definition used by the Citizens is overbroad and objectionable pursuant to the standards it claims were adopted by the case of Caribbean Security Systems v. Security Control Systems, Inc., 486 So.2d 654 (Fla 3d DCA 1986). That case, however, makes no findings about a broad definition of the term "documents." The Court found that the specific requests, not the definition of the term "documents," would cause the company to bring its business activities to a halt if it were required to respond to the requests. Caribbean Security Systems at 656.

4. The term "documents" is commonly written broadly so that a respondent couldn't claim, for example, that a document kept as a computer file or as electronic mail on a corporate E-mail system isn't a "document." Florida Rule of Civil Procedure 1.350(a) itself contains a rather broad definition of the term "document."

5. Moreover, it is particularly incongruous for BellSouth Telecommunications to object to this definition of the term "documents" because it uses virtually the same definition itself in discovery requests it sends to the Office of Public Counsel. See, e.g. Southern Bell's third request for production of documents to the Office of Public Counsel, docket 890256-TL, dated January 29, 1990.

6. In fact, a request for production of documents dated June 2, 1992 served by BellSouth Telecommunications, Inc., on the Florida Pay Phone Association virtually duplicates word for word the Citizens' definition of the term "document." Apparently BellSouth Telecommunications believes the definition of the term "document" used by the Citizens is perfectly acceptable for requests served by BellSouth Telecommunications, but is objectionable when served on BellSouth Telecommunications.

7. The prehearing officer has already ruled on this objection. See order no. PSC-93-0071-PCO-TL issued January 15, 1993. BellSouth Telecommunications, Inc., simply ignores the Prehearing Officer's ruling and persists in the same meritless objection. The Prehearing Officer should once again reject this objection.

BellSouth Telecommunications' objection to the Citizens' instruction related to claims of privilege

8. BellSouth Telecommunications also generally objected to Citizens' instructions to provide identifying information on each document withheld under a claim of privilege. BellSouth Telecommunications raised a general objection that to the extent a document responsive to any of the requests is subject to applicable privilege, "some" of the information requested by Public Counsel would be similarly privileged. The objection,

however, does not state which requested information would be privileged; it simply states that "some" of the information would be privileged.

9. Generally under federal rules, the party asserting a privilege provides proof by sworn affidavit in which each of the documents are listed and described showing information similar to that requested by Public Counsel. E.g., Internat'l Paper Co. v. Fibreboard Corp., 63 F.R.D. 88, 93 (D. Del. 1974) ("An improperly asserted claim of privilege is no claim of privilege at all."). Without this information, Public Counsel cannot adequately challenge the company's withholding of these reports.

10. The request for certain identifying information about documents withheld on a claim of privilege merely asks for information that would provide some basis for the objection. As it stands, BellSouth Telecommunications, Inc., has refused to produce certain unidentified documents based on a claim without any stated basis other than BellSouth Telecommunications' conclusion that documents are privileged. The Prehearing Officer should reject this objection and require BellSouth Telecommunications, Inc., to fully identify any documents withheld based on a claim of privilege.

BellSouth Telecommunications' "Specific" Objections

11. BellSouth Telecommunications claims that the requests are overly broad and burdensome, call for information neither relevant nor reasonably calculated to lead to relevant information in this general rate case proceeding, and would breach the confidentiality assured to each employee in connection with its communications.

12. The requested documents generally seek information about calls to the company's ethics hotline. The requests are reasonably likely to lead to the discovery of information about the company's quality of service -- an issue already identified in this docket and one which the Commission considers in all general rate cases.

13. The requests are not overly broad. The requests are specific about the phone numbers called and the departments at BellSouth Telecommunications, Inc., with responsive documents. If the amount of information requested is burdensome, the relevance of the requests becomes all the more obvious. If there is so much information about ethics concerns and violations by company employees, that information would likely affect quality of service. However, the company has made no showing whatsoever that the production would be burdensome. The company merely

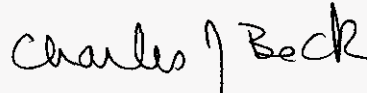
states a conclusion without any supporting information or argument.

14. Finally, the company objection about confidentiality has no basis. BellSouth Telecommunications is fully familiar with the Commission's rule 25-22.006 concerning such claims. The rule requires the company to produce such documents even if it should claim confidentiality.

WHEREFORE, the Citizens respectfully request the Commission to compel BellSouth Telecommunications, Inc., to produce each of the documents responsive to the Citizens' requests for production of documents number 478, 479, 480 and 481.

Respectfully submitted,

Jack Shreve
Public Counsel



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Attorneys for the Citizens of
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**CERTIFICATE OF SERVICE
DOCKET NO. 920260-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 June, 1993.

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