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c/o The Florida Legislature
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July 2, 1992

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
Docket No. 910163-TL

Dear Mr. Tribble:

Enclosed for filing in the above-referenced dockets on behalf of the Citizens of the State of Florida are 15 copies of the Citizens' Motion to Compel BellSouth Telecommunications Vice President Network-South Area C. J. Sanders and BellSouth Telecommunications General Manager-Human Resources C. L. Cuthbertson, Jr., to Answer Deposition Questions.

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

Enclosure

DOCUMENT NUMBER-DATE
07104 JUL -2 1992
PSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Investigation into the)
Integrity of Southern Bell's)
Repair Service Activities and)
Reports)
_____)

Docket No. 910163-TL

Comprehensive Review of the)
Revenue Requirements and Rate)
Stabilization Plan of Southern)
Bell Telephone & Telegraph Company)
_____)

Docket No. 920260-TL
Filed: July 2, 1992

**MOTION TO COMPEL BELL SOUTH TELECOMMUNICATIONS VICE PRESIDENT
NETWORK-SOUTH AREA C. J. SANDERS AND BELL SOUTH TELECOMMUNICATIONS
GENERAL MANAGER-HUMAN RESOURCES C. L. CUTHBERTSON, JR.,
TO ANSWER DEPOSITION QUESTIONS**

The Citizens of Florida, by and through Jack Shreve, Public Counsel, move the Commission to issue an order requiring BellSouth Telecommunications Vice President for Network - South Operations C. J. Sanders and BellSouth Telecommunications General Manager - Human Resources C. L. Cuthbertson to answer questions asked during a deposition held on June 17, 1992.

1. The Citizens conducted a panel deposition of BellSouth Telecommunications Vice President for Network - South Operations C. J. Sanders and BellSouth Telecommunications General Manager - Human Resources C. L. Cuthbertson on June 17, 1992. During those depositions counsel for BellSouth Telecommunications repeatedly directed the two deponents to refuse to answer questions. The questions generally asked about the facts supporting disciplinary actions taken by the company

concerning repair service activities of its employees. A single copy of the deposition accompanies this motion as exhibit 1. Since the deposition extensively discussed documents claimed by BellSouth Telecommunications to contain confidential information, only one copy of the deposition is provided the Commission's division of records and reporting. The Citizens expect BellSouth Telecommunications to soon file a line-by-line request for confidential treatment of the deposition, at which time we will respond to that specific request.

2. BellSouth Telecommunications claims that attorney-client and work product privilege allow it to conceal the acts or omissions of employees forming the basis for disciplinary actions taken against its employees. This takes BellSouth Telecommunications' claim of privilege to a new extreme.

3. BellSouth Telecommunications now claims it can actually hide facts -- acts or omissions by its employees -- if it learned about the facts during an investigation conducted by its legal department. This is a step beyond the position three times rejected by this Commission¹ that BellSouth Telecommunications may refuse to provide the names of persons known by BellSouth Telecommunications to have knowledge about the types of activities under investigation in docket 910163-TL. Now, according to BellSouth Telecommunications, not only may it conceal the names of

¹ See Commission order no. 25054 issued September 12, 1991; Commission order no. 25483 issued December 17, 1991; and Commission order no. PSC-92-0339-FOF-TL issued May 13, 1992. On June 11, 1992 BellSouth Telecommunications petitioned the Florida Supreme Court to review Commission order no. PSC-92-0339-FOF-TL.

persons with knowledge about the activities, but it also may conceal the activities themselves.

4. The case of Surf Drugs, Inc., v. Vermette, 236 So.2d 108 (Fla. 1970) is a leading case on privilege and work product in Florida. In Surf Drugs the plaintiff refused to answer a number of interrogatories based upon an assertion of privilege and work product. The court described work product as personal views of the attorney as to how and when to present evidence, evaluations of its relative importance, knowledge of which witnesses will give certain testimony, personal notes and records as to witnesses, jurors, legal citations, proposed arguments, jury instructions, and diagrams and charts the attorney may refer to at trial for convenience, but not to be used as evidence. Surf Drugs at 112. However, the Florida Supreme Court firmly rejected the notion that all things known to an attorney for a litigant constitute work product immune from discovery procedures. Surf Drugs at 113. The court held that a party may be required to respond on behalf of himself, his attorney, agent, or employee and to divulge names and addresses of any person having relevant information, as well as indicate generally the type of information held by the person listed. Surf Drugs at 113.

5. Thus, while an investigation conducted by a party's attorney may be work product, actions or omissions forming the basis for employee discipline conducted by an officer of BellSouth Telecommunications

cannot be concealed based upon a claim of attorney work product or privilege. In the deposition of Mr. Cuthbertson and Mr. Sanders, the Citizens asked nothing about the views of BellSouth Telecommunications' attorney. The deposition questions asked about the facts forming the basis for discipline imposed by an officer of BellSouth Telecommunications and the identity of persons with knowledge of the underlying facts.

6. The party asserting a privilege has the burden of establishing the existence of a privilege. International Telephone and Telegraph Company v. United Telephone Company of Florida, 60 F.R.D. 177, 184 (M.D. Fla. 1973); Consolidated Gas Supply Corporation, 17 F.E.R.C. 63,084 (Dec. 2, 1981) (the burden is upon the party resisting discovery to show necessity by a particular and specific demonstration of fact, as distinguished from stereotyped and conclusory statements.

7. The Citizens request the Commission to order BellSouth Telecommunications Vice President for Network - South Operations C. J. Sanders and BellSouth Telecommunications General Manager - Human Resources C. L. Cuthbertson to answer the questions beginning on the following pages and lines of the deposition transcript:

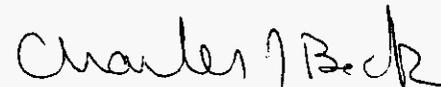
<u>Page</u>	<u>Line</u>	<u>Page</u>	<u>Line</u>
10	21	12	21
30	10	34	16
46	21	47	19
48	7	58	5
58	25	59	14
63	14	83	16
91	2	91	22
92	24	93	8
94	19	98	25
113	19	114	5
114	17	114	24
115	22	116	5
116	14	116	21
117	5	117	13
118	3	118	13
118	25	119	17
120	14	120	23
121	7	121	14
123	11	123	21

<u>Page</u>	<u>Line</u>	<u>Page</u>	<u>Line</u>
126	12	126	17
135	3	136	6
137	2	137	11
138	19	139	7
139	17	140	1
140	12	140	22
141	11	142	1
142	19	143	13
146	8	148	10
148	24	153	4

WHEREFORE, the Citizens respectfully request the Commission to order BellSouth Telecommunications Vice President for Network - South Operations C. J. Sanders and BellSouth Telecommunications General Manager - Human Resources C. L. Cuthbertson to answer the questions set forth in this motion.

Respectfully submitted,

JACK SHREVE
Public Counsel



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Attorney for the Citizens
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CERTIFICATE OF SERVICE
DOCKET NO. 910163-TL

I HEREBY CERTIFY that a correct copy of the foregoing has been furnished by U.S. Mail or hand-delivery to the following persons on this 2nd day of July, 1992.

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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 2nd day of July, 1992.

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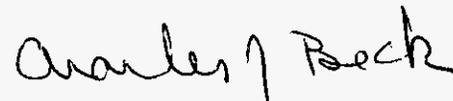
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