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ORIGINAL
FILE COPY

August 9, 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' 16th Motion to Compel and Request for In Camera Inspection of Documents.

ACK

AFA 1 please indicate the time and date of receipt on the enclosed
APP duplicate of this letter and return it to our office.

CAF _____

CMD _____

CTR _____

EAG _____

LEG 1 w/m

LIN 6

Enclosures

Sincerely,

Charles J. Beck
Deputy Public Counsel

OPC _____

RCH _____

SEC 1

WAS _____

OTH _____

RECEIVED & FILED

DOCUMENT NUMBER-DATE

08592 AUG-93

FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

Docket No. 920260-TL
Filed: August 9, 1993

**CITIZENS' SIXTEENTH MOTION TO COMPEL AND REQUEST
FOR IN CAMERA INSPECTION OF DOCUMENTS**

The Citizens of Florida ("Citizens"), by and through Jack Shreve, Public Counsel, request the Florida Public Service Commission ("Commission") to compel BellSouth Telecommunications, Inc., ("BellSouth") d/b/a/ Southern Bell Telephone and Telegraph Company to produce each of the documents responsive to the Citizens' thirty-fourth set of requests for production of documents dated April 21, 1993, and to conduct an in camera inspection of all documents and portions of documents withheld by BellSouth based on claims of attorney-client and work product privileges.

1. Citizens' Thirty-fourth Set of Requests for Production of Documents to BellSouth Telecommunications, Inc., 6, Docket No. 920260-TL (Apr. 21, 1993) [hereinafter Citizens' 34th Request] asked BellSouth to:

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.

BellSouth raised the following specific objection to producing the requested information:

9. With respect to Request No. 478, Southern Bell objects to this request on the basis that it is overly broad and burdensome and calls for information which is neither relevant to nor reasonably calculated to lead to relevant information related to the issues contained in this docket. In addition, Southern Bell objects to this request on the basis that to respond to same would breach the confidentiality assured to each employee in connection with such communications.

Southern Bell Telephone and Telegraph Company's Response and Objections to Public Counsel's Thirty-Fourth Request for Production of Documents and Motion for Temporary Protective Order, 3-4, Docket No.920260-TL (May 24, 1993) [hereinafter BellSouth's Response].

2. Citizens' also requested the company to:

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.

Citizens' 34th Request, at 7. BellSouth reiterated its response to Public Counsel's request number 478. BellSouth's Response, at 4, ¶ 10.

3. Citizens' requested the company to:

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.

Citizens' 34th Request, at 7. BellSouth raised the same objection as to relevance and overburdensomeness of production. BellSouth's Response, at 4, ¶ 11.

4. Citizens requested the company to:

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 employee hotline 1-800-554-3529 or any similar hotline.

Citizens' 34th Request, at 7. BellSouth repeated its prior response as to relevance and overburdensomeness of production. BellSouth's Response, at 4, ¶ 12.

5. BellSouth did not state in its objections that it was withholding documents under a claim of attorney-client or work product privileges. However, in its cover letter delivering responsive documents to Public Counsel, BellSouth stated:

Please note that the investigations concerning the complaint alleging improper use of codes on time reports and the complaint alleging the improper closure of service orders were conducted by the Florida Legal department. Accordingly, those investigations are subject to the attorney-client privilege and the work product doctrine and are not included in the material enclosed herein.

Letter from Nancy B. White to Charles J. Beck (Aug. 3, 1993)
(responding to Public Counsel's 34th document request) [Att. A]

6. In addition to the specific above objections, BellSouth repeated its general objections to Citizens' instructions to provide a "list identifying each document for which privilege is claimed, together with the following information: date, sender, recipients, recipients of copies, subject matter of the document, and the basis upon which such privilege is claimed." Citizens' 34th Request, 2, ¶ 1. BellSouth stated that "[to] the extent a document responsive to any of the requests is subject to an applicable privilege, some of the information requested by Public Counsel would be similarly privileged and therefore not subject to discovery." BellSouth's Response, 2, ¶ 1.

7. BellSouth generally objected to Public Counsel's definition of "document(s)" and "you" and "your" and relevance of affiliate information. Public Counsel has responded to these general objections in prior motions and adopts its response by reference herein. Citizens' Motion to Compel and Request for In Camera Inspection of Documents, (Docket No. 910163-TL, May 21, 1992). Prehearing Officer, Commissioner Clark, has ruled on these general objections; therefore, these objections are moot. In re: Comprehensive Review of the Revenue Requirements and Rate Stabilization Plan of Southern Bell Telephone and Telegraph Company, Order No. PSC-93-0071-PCO-TL, Docket No. 920260-TL (Jan. 15, 1993) [hereinafter Order No. PSC-93-0071-PCO-TL].

8. In conversations with BellSouth, Public Counsel resolved the company's objections as to burdensomeness and relevance by narrowing

its request to only those responsive documents that were related to the company's sales and repair activities. Based upon those conversations, BellSouth produced 85 document pages. These documents include ethics hotline reports, hand written notes of intercompany conversations regarding these reports, written employee statements, copies of craft access terminal screens of actual customer repair records, memos, investigation indices, and miscellaneous notation pages.

9. On January 28, 1993, Commissioner Clark issued a prehearing order finding that the company's internal audits and panel discipline recommendations were not privileged under either the work product doctrine or the attorney-client privilege. Order Granting Public Counsel's Motions for in Camera Inspection of Documents and Motions to Compel, Dockets Nos. 910163-TL, 920260-TL, 9101727-TL, 900960-TL; Order No. PSC-93-0151-CFO-TL (Jan. 28, 1993); aff'd by full comm'n, Order No. PSC-93-0292-FOF-TL (Feb. 23, 1993). Commissioner Clark found that the company's need to continuously monitor its monopoly operations to ensure compliance with Commission rules required it to perform such audits as a business necessity. Id. She found that decisions on whether to discipline employees was a business function, which precluded these documents from either the attorney-client privilege or the work product doctrine. Id. Commissioner Clark also determined that employee statements, which were related to the company's internal investigation into improper repair activities, were discoverable. Order Granting Public Counsel's Motions for in

Camera Inspection of Documents and Granting Public Counsel's Motions to Compel, Dockets Nos. 910163-TL, 920260-TL, 900960-TL; Order No. PSC-93-0294-PCO-TL (Feb. 23, 1993); aff'd by full comm'n, Order No. PSC-93-0517-FOF-TL (Apr. 6, 1993). Commissioner Clark found that the company had not proven that the statements were taken solely for the purpose of seeking legal advice. Id. at 3. She found that the documents were not protected under either the attorney-client privilege or work product doctrine. Id. She further found that Public Counsel had demonstrated sufficient need to overcome any applicable claim of work product for the statements. Id. at 5. For the same reasons, none of the withheld documents are privileged.

10. Citizens assert that their requests, items 478 through 481, seek essentially the same information. The company's ethics hotline is provided as a means whereby employees may confidentially report on activities that they feel may be a breach of company ethics, or violations of Commission regulations, or criminal activities. The withheld documents relate to sales and repair activities, which are issues addressed in this docket. The documents withheld are similar to those already found to be discoverable in prior Commission orders. The employee statements concerning improper repair activities were found to be prepared for a business purpose and, therefore, discoverable. These documents are comparable. Indeed, the company's privilege claim to these documents is even more tenuous than for the employee statements. The company has presented no evidence that these hotline reports were taken by an attorney at the request of higher

management solely for the purpose of obtaining legal advice. Hotline reports can be on a number of different matters. Hotline reports are routinely investigated. The investigations serve a business purpose of ensuring compliance with company standards. Clearly these reports and any subsequent statements or security investigations conducted based on these reports are not privileged. See Soeder v. General Dynamics, 90 F.R.D. 253 (1980); see e.g., Order Granting Public Counsel's Motions for In Camera Inspection of Documents and Motions to Compel, Dockets Nos. 910163-TL, 920260-TL, 900960-TL, 910727-TL (Jan. 28, 1993); aff'd on recon., Order No. PSC-93-0292-FOF-TL (Feb. 23, 1993). This is a concrete example of the company's using its legal department as a means of hiding business documents behind its privilege claim. E.g., SCM Corp. v. Xerox Corp., 70 F.R.D. 508 (D. Conn.), appeal dismissed, 534 F. 2d 1031 (2d Cir. 1976). The Commission has not permitted this in prior orders and should not countenance it now.

11. BellSouth raised no privilege objection to producing these documents in its pleading; nor has it demonstrated that the documents being withheld are privileged. See Hartford Accident & Indem. Co. v. McGann, 402 So. 2d 1361 (Fla. 4th DCA 1981). Nevertheless, the Commission can only determine the existence of a privilege after a careful examination and narrow application of the law to the specific documents in an in camera inspection. Eastern Air Lines v. Gellert, 431 So. 2d 329 (Fla. 3d DCA 1983).

12. BellSouth has asserted that documents responsive to these requests are proprietary, confidential business information. BellSouth Response, 1-2 (employee personnel information). The information related in these hotline reports concerns the performance of sales and repair activities by employees for the company. These reports do not contain information unrelated to employees' job duties. BellSouth's motion fails to recognize that the Commission ruled against it in a number of similar circumstances. See Order Denying Southern Bell's Request for Confidential Classification for Portions of Document Nos. 2485-93 and 3339-93 (Docket No. 910163-TL), Order No. PSC-93-1045-CFO-TL (July 19, 1993); Order Granting in Part and Denying in Part Southern Bell's Motion for Confidential Classification for Portions of Document No. 4160-93 (Docket No. 910163-TL), Order No. PSC-93-1046-CFO-TL (July 19, 1993); Order Denying Southern Bell Telephone and Telegraph Company's Motion for Confidential Treatment of Document No. 3878-91, 91 F.P.S.C. 10:356 (Oct. 1991) (Docket No. 900960-TL; Order No. 25238); Order Denying Southern Bell Telephone and Telegraph's Request for Confidential Classification of Document No. 0372-91, 91 F.P.S.C. 10:353 (Oct. 1991) (Docket No. 900960-TL; Order No. 25237); and Order Denying Request for Confidentiality, 91 F.P.S.C. 3:334 (Mar. 1991) (Docket No. 900960-TL; Order No. 24226). Public Counsel has fully briefed its position on this issue in prior motions and adopts its arguments by reference herein. Citizens' Response to Southern Bell's Request for Confidential Classification and Motion for Permanent Protective Order, Docket No. 910163-TL (Sept. 17, 1993).

WHEREFORE Citizens respectfully request this Commission to conduct an in camera inspection of the withheld documents and to compel BellSouth to produce the documents to Public Counsel.

Respectfully submitted,

JACK SHREVE
Public Counsel



CHARLES J. BECK
Deputy Public Counsel
JANIS SUE RICHARDSON
Associate Public Counsel

Office of Public Counsel
c/o The Florida Legislature
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(904) 488-9330

Attorneys for the Citizens
of the State of Florida

**ATTACHMENT A:
LETTER FROM N. WHITE TO C. BECK**

NANCY B. WHITE
General Attorney

Southern Bell Telephone
and Telegraph Company
Suite 400
150 South Monroe Street
Tallahassee, Florida 32301
(404) 529-5387

FILE COPY

August 3, 1993

Mr. Charles J. Beck
Deputy Public Counsel
Office of the Public Counsel
Room 812, 111 W. Madison Street
Tallahassee, FL 32399-1400

RECEIVED
AUG 04 1993
Office of
Public Counsel

Re: Docket No. 920260-TL

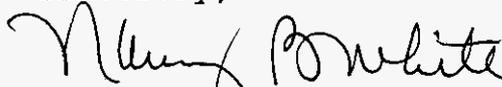
Dear Mr. Beck:

Enclosed please find Southern Bell's response to Item Numbers 478-481 of Public Counsel's Thirty-Fourth Request for Production of Documents. The enclosed material is in complete satisfaction of Public Counsel's Fifth Motion to Compel.

The material supplied herein is considered proprietary and confidential by Southern Bell and should be treated accordingly, as subject to the original Motion for Temporary Protective Order filed on May 24, 1993.

Please note that the investigations concerning the complaint alleging improper use of codes on time reports and the complaint alleging the improper closure of service orders were conducted by the Florida Legal department. Accordingly, those investigations are subject to the attorney-client privilege and the work product doctrine and are not included in the material enclosed herein.

Sincerely,



Nancy B. White

Enclosures

cc: A. M. Lombardo
H. R. Anthony
R. D. Lackey

**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 9th day of August, 1993.

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& Telegraph Company)
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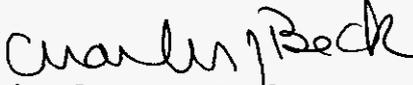
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