



JACK SHREVE
PUBLIC COUNSEL

STATE OF FLORIDA
OFFICE OF THE PUBLIC COUNSEL

c/o The Florida Legislature
111 West Madison Street
Room 812
Tallahassee, Florida 32399-1400
904-488-9330

October 8, 1992

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

Re: Docket No. 910163-TL

Dear Mr. Tribble:

Enclosed for filing in the above-captioned proceeding on behalf of the Citizens of the State of Florida are the original and 15 copies of Citizens' Ninth Motion to Compel and Request for In Camera Inspection of Documents and Expedited Decision.

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

- ACK
- AFA
- APP
- CAF
- CMH
- CRK
- ENC
- LET 1 w/m
- LIN 3
- ORJ
- RCM
- SEC 1
- WAS
- OTH

Sincerely,

Janis Sue Richardson
Associate Public Counsel

Enclosure

DOCUMENT NUMBER-DATE

11788 OCT-8 1992

FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition on behalf of Citizens)
of the State of Florida to Initiate) Docket No. 910163-TL
Investigation into the Integrity of)
Southern Bell Telephone and Telegraph) Filed: October 8, 1992
Company's Repair Service Activities)
and Reports.)
_____)

**CITIZENS' NINTH MOTION TO COMPEL AND REQUEST FOR IN CAMERA
INSPECTION OF DOCUMENTS AND EXPEDITED DECISION**

The Citizens of Florida ("Citizens"), by and through Jack Shreve, Public Counsel, request the Florida Public Service Commission: (1) to compel BellSouth Telecommunications, Inc., ("BellSouth") d/b/a/ Southern Bell Telephone and Telegraph Company to produce the statements of company employees/witnesses and the DLETHs corresponding to manually prepared rebates requested by Citizens on August 10, 1992 and September 2, 1992; (2) to conduct an in camera inspection of these witnesses' statements and portions of documents withheld by BellSouth Telecommunications based on claims of attorney-client and work product privileges; and (3) to render an expedited decision.

A. Background

1. Citizens have diligently attempted to identify and locate persons with knowledge of the facts in this case to depose and prepare its case. This investigation was opened pursuant to a petition by Citizens filed February 18, 1991. On June 6, 1991,

Citizens served on BellSouth its third set of interrogatories seeking the names of employees/witnesses with knowledge of the facts at issue in this case. BellSouth refused to produce the information on the grounds that it was privileged. The Commission determined that the information was not privileged and ordered BellSouth to release the names of the employees/witnesses to Citizens in Order No. PSC-92-0339-FOF-TL, issued on May 13, 1992.¹ This order is now on appeal before the Supreme Court of Florida in Docket 80,004.

2. On March 25, 1992, Citizens served their twenty-second request for documents seeking the names of all employees who had been disciplined for improper handling of customer repair records. On April 29, 1992, BellSouth produced documents prepared by the personnel department, which listed the names of employees/witnesses who had been disciplined for improperly handling customer records or failing to adequately supervise employees who had improperly handled records. Citizens deposed the author of the notes and the key discipline decision-maker on June 17, 1992. Invoking the attorney-client and work product privileges, BellSouth repeatedly directed the two deponents to refuse to answer the questions about the facts supporting disciplinary actions taken.²

¹ This order was a final order issued on reconsideration, which upheld prior Commission Orders Nos. 25054 and 25483.

² See Citizens' Motion to Compel BellSouth Telecommunications Vice President Network-South Area C.J. Sanders and BellSouth Telecommunications General-Manager C.L. Cuthbertson, Jr., to Answer Deposition Questions (filed July 2,

3. Citizens followed up on the information obtained from the documents produced by scheduling the deposition of eighty employees the week of July 27, 1992. BellSouth scheduled the depositions, but stated that twenty-nine employees were unavailable that week.[A] Of the twenty-nine, one was listed as deceased, R.W. Mancusi. Of those employees who appeared for depositions the week of July 27, 1992, four invoked their fifth amendment privilege to remain silent.[B] Citizens requested the company to produce the statements given by these employees/witnesses to company investigators as they were unavailable for deposition.³ BellSouth objected to producing these statements on the grounds of attorney-client and work product privileges. Citizens will continue its depositions of disciplined employees on October 14 and 15, 1992.

4. In its twenty-eighth request for production of documents, item 11(a), Citizens asked the company to produce the DLETHs (customer repair records) that corresponded to manually produced rebate logs for customers whose telephones were out-of-service over 24 hours and who had not received a rebate at the time of the outage. Southern Bell objected to producing these records on the grounds that to do so would be "unduly burdensome, oppressive and would cause unreasonable interference with the

1992).

³ Citizens' twenty-seventh request for production of documents, item 6, requested the statements of Mr. Paul White, Ms. Crystal Smith, and Mr. James Ramsey. Citizens' twenty-eighth request for production of documents, items 8 and 9, requested the statements of Mr. Gary Maser and Mr. R.W. Mancusi.

Company's business operations." Southern Bell's response 5 (filed Sept. 14, 1992).

B. Relief Requested

5. Pursuant to section 350.0611, Florida Statutes (1991), and Florida Rule of Civil Procedure 1.280, the Citizens move this Commission to compel BellSouth to produce all documents being withheld under a claim of attorney-client/work product privilege and overburdensome production. The Citizens request the Commission to conduct an in camera inspection of the 'privileged' documents under Florida Rule of Civil Procedure 1.280(c). The Citizens believe that the substantial, unwarranted and impermissible withholding of relevant documents and information, if sanctioned by the Commission, will constitute a denial of due process by preventing the adequate preparation of our case. Shevin, Expediting Litigation, 51 Fla. B.J. 529, 531 (Oct. 1977) ("The Administrative Procedure Act, which is predicated upon due process and expediency, has built-in time limitations which serve to protect both the public's and an individual's right to notice and expeditious determination."); see Southern Bell Tel. & Tel. Co. v. Kaminester, 400 So. 2d 804 (Fla. 3d DCA 1981) (finding that trial court abused its discretion by denying Southern Bell's document production request until after the first day of trial, thereby, denying Southern Bell sufficient time to prepare its case). Therefore, Citizens request the Commission to render a "just, speedy and inexpensive determination" on Citizens' motion.

Fla. R. Civ. P. 1.010; Fla. Admin. Code R. 25-22.035(3)
(generally adopting the Florida Rules of Civil Procedure as
governing Commission proceedings).

C. Privilege Claim

6. BellSouth has the burden of showing that the attorney-client privilege attaches to these statements. Hartford Accident & Indemnity Co. v. McGann, 402 So. 2d 1361 (Fla. 4th DCA 1981); International Tel. & Tel. Corp. v. United Tel. Co. of Fla., 60 F.R.D. 177, 184 (M.D. Fla. 1973).⁴ The Florida Legislature has extended the attorney-client privilege to corporations. Fla. Stat. § 90.502; but see Ehrhardt, Florida Evidence § 502.3 (1992 ed.) (stating that neither Florida case law nor statute clearly define the extent of the corporate privilege). BellSouth has failed to demonstrate that employee/witness statements meet the test of privilege. Specifically, BellSouth has failed to show that the employee/witness statements were made by a "client" and not a witness. The Florida Legislature has expressly stated that no person may refuse to be a witness or disclose any matter, unless privileged, in a legal proceeding. Fla. Stat. § 90.501. Because privileges hinder the search for truth, all privileges

⁴ The elements of the attorney-client privilege are: "(1) Where legal advice of any kind is sought (2) from a professional legal adviser in his capacity as such, (3) the communications relating to that purpose, (4) made in confidence (5) by the client, (6) are at his instance permanently protected (7) from disclosure by himself or by the legal adviser, (8) except the protection be waived." International Tel. & Tel. Corp., 60 F.R.D. at 184-85 n.6, quoting 8 Wigmore, Evidence § 2292 at 554 (McNaughton rev. 1961).

are strictly construed. See United States v. American Tel. & Tel. Co., 86 F.R.D. 603, 604 & n.1 (D.C. 1979).

7. The attorney-client privilege under federal law, unlike Florida, is governed by common-law. Fed. R. Evid. 501. State courts may turn to federal decisions as persuasive. City of Williston v. Roadlander, 425 So. 2d 1175 (Fla. 1st DCA 1983). However, state courts, cognizant of this critical difference in the derivation of the privilege between state and federal courts, have declined to broaden statutory privileges. See e.g., Southern Bell Tel. & Tel. Co. v. Beard, et. al, 597 So. 2d 873, 876 n.4 (Fla. 1st DCA 1992). Both Florida and federal laws recognize that corporations may claim the attorney-client privilege based on the principle that a corporate client can only communicate with its attorney through its employees. Ehrhardt, Florida Evidence, § 502.3 (1992 ed.); Upjohn Co. v. United States, 449 U.S. 383 (1981). The question then is: Which corporate employees fall within the statutory definition of "client" so that their statements are encompassed within the attorney-client privilege?"

8. Under federal law, the search for a test that would clearly delineate which employees were so closely identified with the corporation so as to fall within the "client" definition began with an observation by the U.S. Supreme Court in Hickman v. Taylor, 329 U.S. 495 (1947). The Court remarked that the statements made by employees to company counsel fell outside the scope of the attorney-client privilege as the employees were mere "witnesses" to the accident. Hickman, 329 U.S. at 508. After

Hickman, Federal courts constructed a "control group" test to determine which employees fell within the scope of the attorney-client privilege. See City of Philadelphia v. Westinghouse Elec. Corp., 210 F.Supp. 483 (E.D. Penn. 1962). Those top level employees entrusted with the decision-making authority for the corporation fell within the privilege, but lower-level employees did not. Id. at 485-86.

9. A second test, the "subject matter test," was proposed in Harper & Row Publishers, Inc. v. Decker, 423 F.2d 487 (7th Cir. 1970), aff'd by a divided court, 400 U.S. 348. A corporate employee of whatever rank fell within the privilege "if the employee makes the communication at the direction of his superiors in the corporation and where the subject matter upon which the attorney's advice is sought by the corporation and dealt with in the communication is the performance by the employee of the duties of his employment." Id. at 491-92. The U.S. District Court, District of Columbia narrowed the subject matter test to those employee statements that were "reasonably believed to be necessary to the decision-making process concerning a legal problem on which legal advice was sought." In re Ampicillin Antitrust Litigation, [1978-1] Trade Reg. Rpt. (CCH) ¶ 62,043, 74,510 (D.D.C. 1978) (emphasis in original). Other tests and modifications were developed by federal courts. Sexton, A Post-Upjohn Consideration of the Corporate Attorney-Client Privilege, 57 N.Y.U. L. Rev. 443, 454-456 (1982).

10. The U.S. Supreme Court rejected the "control group" test as too narrow in Upjohn Co. v. United States, 449 U.S. 391 (1981). The Court opted for a case-by-case approach to determining which employees would fall within the attorney-client privilege. Id. at 396. The Court expressly declined to rule on whether statements by former employees were covered by the privilege. Id. at 395 n.3.

11. The employees whose statements are being withheld under a claim of privilege are not members of BellSouth's control group. They are middle-level managers and/or craft employees. If Florida adopted the more narrow control-group test, these employee statements would not be covered. Even if Florida adopted the broader subject matter test, these employee statements would not be covered. BellSouth has itself stated that this "information deals with employee information unrelated to the employees' defined duties and responsibilities." Southern Bell Tel. & Tel. Co. Request for Confidential Classification 2 (Docket no. 910163-TL Sept. 9, 1992). Hence, Southern Bell has failed to demonstrate that the requested statements are privileged.

12. Legislative policy dictates the application of a very narrow definition of "client" for the attorney-client privilege in the regulation of corporate monopolies. In declaring the regulation of utilities to be in the public interest, the Legislature guaranteed continued existence to BellSouth and other telecommunications utilities and an opportunity to earn a profit.

It then charged the Commission with ensuring the protection of the public health, safety and welfare. Fla. Stat. § 364.01 (1991). With increasing competition in the telecommunications area, the Legislature granted the Commission the authority to implement alternative regulatory methods, but charged the Commission with the responsibility of ensuring that "effective safeguards to consumers of telecommunications services" were in place. Id. § 364.036(2)(d). 13. In order to carry out its oversight function, the Legislature endowed the Commission with extensive investigative powers: (1) the right to "inspect all accounts, books, records, and papers";⁵ (2) the power to require "the filing of reports and other data" by not only the company but its parent and affiliated companies as well;⁶ (3) the right to physically inspect any company facility and conduct on-site "investigations, inspections, examinations, and tests";⁷ (4) the authority to perform "management and operation audits" to assess the adequacy of a utility's operating controls and procedures, and relations with the public;⁸ (5) the power to administer oaths, take depositions, issue protective orders and subpoenas, and compel the production of documents and attendance of witnesses;⁹ (6) the authority to seek immunity for a witness

⁵ Fla. Stat. § 364.18(1) (1991).

⁶ Id. § 364.18(2).

⁷ Id. § 364.185.

⁸ Id. § 350.121.

⁹ Id. § 350.123.

to compel his testimony;¹⁰ (7) the power to impose penalties of up to \$5,000 a day for willful violations of a Commission rule or order;¹¹ and the power to issue protective orders for proprietary business information, e.g. internal audits, security investigations.¹² These broad powers were given to the Commission to enable it to effectively monitor utility activities to ensure that it would have the authority it needed to protect the public welfare. If a utility is permitted by judicial decision to hide evidence of its defrauding the public under a common-law claim of attorney-client privilege, the Legislature's intent to provide the Commission all necessary power to protect the public will be defeated.

14. In order to maintain this legislative balance, the attorney-client privilege must be narrowly construed in the regulatory context. Cf. Commodity Futures Trading Comm'n v. Weintraub, 471 U.S. 343, 357 (1985) (holding that corporation trustee has right to waive privilege based on the legal distinction between solvent corporation and bankrupt corporation). Corporate "clients" should be identified as corporate decision-makers, not all employees within the company. This would enable the Commission, and the consumer's statutory representative, to fulfill the watchdog role assigned them by the

¹⁰ Id. § 350.124.

¹¹ Id. § 350.127.

¹² Id. § 364.183.

Legislature, while allowing a utility to retain its privilege to hear and act upon its counsel's advice.

15. The Federal Communications Commission [FCC] has addressed the balancing of a utility's attorney-client privilege with its oversight function. Lecturing Columbia Broadcasting System, the FCC stated that its duty to protect the public from "staged" news events demanded it have access to a utilities investigatory files to determine whether a utility has conducted a complete investigation. In re: Notification to Columbia Broadcasting System, Inc. Concerning Investigations by CBS of Incidents of "Staging" by its Employees of Television News Programs, 45 F.C.C.2d 119 (Nov. 1973)[hereinafter CBS]. Expressing doubt as to the existence of the privilege for regulated companies, the FCC stated that "the reliance by a licensee upon either the qualified work product privilege or the attorney-client privilege, is not, in our view, a satisfactory response to a Commission request for a full report of a licensee's investigation of alleged improper staging." CBS, 45 F.C.C. at 123.

16. Employees, as individuals, cannot claim the attorney-client privilege for statements they make to corporate counsel. Tail of the Pup, Inc. v. Webb, 528 So. 2d 506 (Fla. 2d DCA 1988) ("The power to exercise the lawyer-client privilege rests with the corporation's management. Commodity Futures Trading Commission v. Weintraub, 471 U.S. 343, S.Ct. 1986, 85 L.Ed.2d 372 (1985).") Hence, employees have no control over waiver of any

privilege for their individual statements. Any notion that an employee in these circumstances should feel freer to communicate with corporate counsel is not credible. Cf. Commodity Futures Trading Comm'n v. Weintraub, 471 U.S. 343, 357 (1985) (chilling effect no greater when corporate officers run the risk of successor officers waiving privilege); Sexton, 57 N.Y.U. L. Rev. at 465-67 (raising the argument that employees may be unwilling to communicate with corporate attorneys from fear of waiver resulting in liability and possible disciplinary action). A company may determine that it's in its best interest to release employee statements or other documents for which a claim of privilege has been asserted. BellSouth has voluntarily released personnel department notes containing incriminating evidence against named employees. See Southern Bell's response to Citizens 22d production of documents request (April 29, 1992). BellSouth may determine that it's in its best interest to release the employee statements made to company investigators to the Commission. The employees have no control over these decisions and will individually run the risk of liability for statements they made to corporate counsel. The attorney-client privilege does not promote full, frank disclosure by employees under these circumstances.

17. BellSouth claims that these employees/witnesses' statements are protected by its work product privilege. The Supreme Court of Florida has adopted the work product privilege developed by the U.S. Supreme Court in Hickman v. Taylor, 329

U.S. 495 (1847). Dodson v. Persell, 390 So. 2d 704, 706-707 & n.3 (Fla. 1980). The supreme court recognized that the privilege could be overcome by a showing of need and inability to obtain substantially similar evidence through independent means. Id. The policy supporting the limitation rests upon the courts need to know all of the relevant facts in order to arrive at a just decision. Id. Quoting Hickman v. Taylor, the supreme court noted the exceptions to the privilege:

We do not mean to say that all written materials obtained or prepared by an adversary's counsel with an eye toward litigation are necessarily free from discovery in all cases. Where relevant and non-privileged facts remain hidden in an attorney's file and where production of those facts is essential to the preparation of one's case, discovery may properly be had. Such written statements and documents might, under certain circumstances, be admissible in evidence or give clues as to the existence or location of relevant facts. Or they might be useful for purposes of impeachment or corroboration. And production might be justified where the witnesses are no longer available or can be reached only with difficulty. 329 U.S. at 511, 67 S.Ct. at 394.

Dodson, 390 So. 2d at 708. Since these witnesses are unavailable and their statements as to the facts known to them are essential to our case, Citizens' asserts that it has demonstrated good cause to overcome the company's work product privilege, if one exists. See 4 Moore's Federal Practice, ¶ 26.64, 26-369 & n.8; United States v. American Tel. & Tel. Co., 86 F.R.D. 603, 631 & n.1 (D.C. 1979); Xerox Corp. v. International Bus. Machines Corp., 64 F.R.D. 367 (S.D. N.Y. 1974) (finding sufficient need where employees/witnesses were unable to recall facts in deposition).

18. Any work product privilege that may have attached to these statements must be set aside in light of Citizens' substantial need for the information to prepare its case and the their inability to obtain the information from any other source. As noted earlier, BellSouth has impeded Citizens' investigation by its refusal to disclose the name of employees who have relevant information so that Citizens could depose them. When BellSouth did release the names of employees who had been disciplined by the company as a result of its own investigation, Citizens immediately began deposing company employees identified in the documents. BellSouth instructed each employee not to respond to Citizens' questions concerning any information revealed during the company investigation as this information was privileged. See e.g., Citizens' pending 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 (filed July 2, 1992). Thus, even the depositions were curtailed. Now that the company has effectively delayed Citizens' investigation for over a year, one of the employees/witnesses is deceased and beyond the reach of a deposition. The others named have refused to testify. Only these employees know the extent of their involvement in the falsification of customer records. Only these witnesses can relate facts they observed. See McNulty v. Bally's Park Place, Inc., 120 F.R.D. 27 (E.D. Pa. 1988) (substantial need shown when

only eyewitness to slip and fall was unavailable for deposition).

19. The events being investigated are numerous instances of mishandling customer records. No single incident is at issue. Rather, it is the accumulation of widespread falsification of customer records that is at issue. So, each witness's evidence is necessary to support Citizens' case. Each witness's corroboration of other witnesses' statements is needed to support Citizens' claim.

20. BellSouth refused to produce individual customer repair records that corresponded to manually prepared rebate log sheets on the grounds that to do so would be overburdensome. BellSouth has chided Public Counsel for seeking to compel discovery of its third quarter 1991 internal audits on the repair and rebate processes stating that Public Counsel should obtain copies of customer records and do its own audit. Yet, when Public Counsel asked for the customer records (DLETHs), BellSouth refused to produce them. See Alliance to End Repression v. Rochford, 75 F.R.D. 441, 447 (N.D. Ill. 1977) (allowing defendant, whose business generates massive records to frustrate discovery by creating inadequate filing system and then claiming undue burden would defeat the purpose of discovery). BellSouth should not be allowed to frustrate the purpose of discovery by releasing only portions of information and withholding the supporting documents. Releasing the rebate log without the initiating customer report is equivalent to giving an accountant the ledger book without the corresponding receipts and vouchers. No validation of the

rebates or the cause for them is possible without the underlying customer records. The Commission should order BellSouth to produce these documents in sequence with the manual rebate logs already produced. If the Commission should find that production of the customer records is unduly burdensome, Public Counsel asks, at a minimum, that those records for which BellSouth manually produced historical rebates¹³ be produced.

21. A final determination of privilege for the documents withheld must be made by the Commission, not by the party asserting the privilege. 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, Inc. v. Gellert, 431 So. 2d 329 (Fla. 3d DCA 1983) (directing the trial court to conduct an in camera inspection of documents it had decided, without inspection, were not privileged as a matter of law). "The purpose of this examination is not to determine whether there is good cause to overcome the privilege, but rather to determine whether the items are, as a matter of law and fact, entitled to the privilege at all." International Tel. & Tel. Corp. v. United Tel. Co. of Fla., 60 F.R.D. 177, 185 (M.D. Fla. 1973) (emphasis in original). The Commission can protect against disclosure of

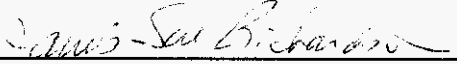
¹³ See Southern Bell's response to Citizens' Third Interrogatories, Item no. 15 (Docket 910727-TL, filed Aug. 14, 1992): "The revenue in February of 1992 reflects the activity that took place in January 1992 (see graph 010), when several prior situations that were not originally rebated were rebated."

any opinion work product by ordering redacted copies to be produced, which contain only factual data.

WHEREFORE, Citizens respectfully request the Commission to conduct an in camera inspection of the employee statements and compel the production of the documents requested.

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
111 West Madison Street
Room 812
Tallahassee, Florida 32399-1400

(904) 488-9330

Attorneys for the Citizens
of the State of Florida

ATTACHMENT A

BellSouth listing of employees unavailable for deposition.

ATTACHMENT B
Deposition transcript pages

BELLSOUTH TELECOMMUNICATIONS, INC.
d/b/a SOUTHERN BELL TELEPHONE AND TELEGRAPH COMPANY
LEGAL DEPARTMENT
SUITE 1910 - 150 WEST FLAGLER STREET
MIAMI, FLORIDA 33130
FAX NUMBER (305) 577-4491

FAX TRANSMITTAL SHEET

DATE _____ TIME _____

DELIVER TO Janis Sue Richardson

FROM Jo Barry

FAX # OR ONE TOUCH # OF RECIPIENTS(S) _____

NUMBER OF PAGES INCLUDING COVER SHEET 3

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REMARKS _____

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NOTE: PLEASE CALL IMMEDIATELY IF ALL PAGES ARE NOT RECEIVED

EMPLOYEES AVAILABLE FOR DEPOSITION BY SPECIFIC DEPOSITION SITE

GAINESVILLE (12)

Griffeth, J. D.
Myers, Michael
Ramsey, James
House, D. L.
Finnegan, John
Dean, John
Collamati, R. P.
Canavan, James
Bulko, John
Adams, Howard
Smith, Clinton
Swilley, Gary

ORLANDO (10)

Gray, L. N.
Robak, Nancy
Morse, Geneva
McGowan, Wendy
Higgins, Bruce
Haltiwanger, R. H.
Dufresne, Linda
Batchelor, L. E.
Land, R. L.

JACKSONVILLE (5)

Taylor, T. C.
Melton, J. R.
Kellermann, T. C.
Rupe, R. R.
Buford, Roy

PENSACOLA (3)

St. Amant, J. G.
Hunter, F. W.
Davis, Joyce

EMPLOYEES NOT AVAILABLE FOR DEPOSITION

IN STATE, BUT NOT AVAILABLE (15)

Perera, Ismael
Klipp, Mary C.
Hurt, Janis L.
Lockerd, C.
Klink, Jeffrey
Anderson, Roger
Littles, Geraldine
Ketchum, Dorothy
Ivy, April
Mills, J. S.
Kearse, Margaret
Goode, C. H.
Maxfield, Nicole
Schena, Donald
Newmaster, Lynn

DECEASED (1)

Mancusi, R. W.

RETIRED

Morrison, Bill

NO LONGER EMPLOYEED WITH COMPANY

Herrera, Eddy

OUT OF STATE

Benedict, J.
Nance, J.
Stewart, J. W.
Wright, Felton
Wood, Leo
Woodruff, D. T.
McCollough, L.
Smith, J. D.

EMPLOYEES WHO COULD NOT BE LOCATED (3)

Sota, Juan
Bartone, Lou
Sontas

EXTRA COPY

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 910163-TL

FILED: July 21, 1992

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2
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4
5 In re: Petition on behalf of CITIZENS)
6 OF THE STATE OF FLORIDA to initiate)
7 investigation into integrity of SOUTHERN)
8 BELL TELEPHONE & TELEGRAPH COMPANY'S)
9 repair service activities and reports.)
10
11

12 STATE OF FLORIDA)
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14 COUNTY OF ALACHUA)
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Deposition of JAMES H. RAMSEY, taken on behalf of
the Public Counsel's Office, pursuant to Notice of Taking
Deposition Upon Oral Examination, at 903 West University
Avenue, Gainesville, Alachua County, Florida, on Thursday,
July 30, 1992, at 4:30 o'clock p.m., before Marie C. Gentry,
Court Reporter and Notary Public in and for the State of
Florida at Large.

- - -

MARIE C. GENTRY
Court Reporter
1329-A Kingsley Avenue
Orange Park, Florida 32073
(904) 264-2943

1 MR. FINK: Go ahead.

(OMITTED lines 2-5 as a motion for confidentiality is pending,
filed by Southern Bell on September 9, 1992).

6 Q Did they provide you any more specific information
7 than that?

8 A No.

9 Q Did you ask them to?

10 MR. FINK: Okay. At this point we would assert --
11 as to that question we would assert Mr. Ramsey's Fifth
12 Amendment privilege and like privilege under Florida law
13 against self-incrimination and respectfully decline to
14 respond to the question.

15 And, by the way, from now on, for the convenience
16 of everybody, if it's okay, I'm just going to say
17 "assert the privilege," and that's what I mean.

18 MR. BECK: All right.

19 BY MR. BECK:

20 Q Is there anything else that you can recall either
21 Mr. Christian or Mower telling you during that meeting?

22 A Not specifically.

23 Q Have you ever suggested or told anybody to back up
24 times on repair service records to a time other than when the
25 report was cleared?

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

IN RE: Petition on behalf of)
CITIZENS OF THE STATE OF FLORIDA)
to Initiate Investigation into)
Integrity of SOUTHERN BELL)
TELEPHONE & TELEGRAPH COMPANY'S)
Repair Service Activities and)
Reports.)

DOCKET NO. 910163-TL



DEPOSITION OF: GARY MASER

TAKEN AT THE INSTANCE OF: The Citizens of the State of Florida, by and through Jack Shreve, Public Counsel

DATE: Thursday, July 30, 1992

TIME: Commenced at 11:00 a.m.
Concluded at 11:45 a.m.

LOCATION: 6451 North Federal Highway
Room 1015A
Fort Lauderdale, Florida

REPORTED BY: JANE FAUROT
Notary Public in and for the State of Florida at Large

ACCURATE STENOGRAPHY REPORTERS, INC.
100 SALEM COURT
TALLAHASSEE, FLORIDA 32301
(904) 878-2221

S T I P U L A T I O N S

1
2 The following deposition of GARY MASER was taken on
3 oral examination, pursuant to notice, for purposes of
4 discovery, for use in evidence, and for such other uses and
5 purposes as may be permitted by the Florida Rules of Civil
6 Procedure and other applicable law. Reading and signing of
7 said deposition by the witness is not waived. All
8 objections, except as to the form of the question, are
9 reserved until final hearing in this cause; and notice of
10 filing is waived.

11 * * * * *

12 Thereupon,

13 GARY MASER

14 was called as a witness and, after being first duly sworn,
15 was examined and testified as follows:

16 MR. ANTHONY: Before we begin, the same
17 stipulations as before.

18 MR. HILDEBRANDT: Correct. Fine.

19 MS. RICHARDSON: Mr. Hildebrandt, would you like
20 to put in an appearance for the record?

21 MR. HILDEBRANT: Sure. My name is Mark
22 Hildebrant, and I am here on behalf of the witness,
23 Mr. Maser.

24 MR. ANTHONY: Mr. Maser, just one thing before we
25 get started. As you may be aware, these depositions

1 Q And what did you do prior to that?

2 A I was an outside service tech supervisor in charge
3 of installation and repair.

4 Q And so you supervised the employees who actually
5 went out and did the actual repair, the hands-on stuff?

6 A Correct.

7 Q And did that require some technical expertise on
8 your part to do that?

9 A Yes. I was a service tech prior to that.

10 Q How long have you been with the Company?

11 A Since 1973.

12 Q And what did you start out as?

13 A Service tech.

14 Q You were a service tech at that point, okay. What
15 is the scope of your present duties, what exactly are you
16 all involved in at the IMC?

17 A Primarily dispatching service techs on the job
18 that they are going to be performing for that day.

19 Q Then in terms of the customer trouble reporting
20 process as it kind of flows through this system, would you
21 have any responsibilities for actually receiving the
22 customer trouble report?

23 MR. HILDEBRANDT: Based upon the advice of Counsel
24 at this time the witness is respectfully going to
25 invoke his Fifth Amendment rights, against

1 self-incrimination guaranteed to him under the
2 Constitution of the United States.

3 MS. RICHARDSON: For that question?

4 MR. HILDEBRANDT: Well, we'll see what else
5 follows.

6 MS. RICHARDSON: Well, you will interject each
7 time?

8 MR. HILDEBRANDT: Right.

9 MS. RICHARDSON: Okay, Mr. Hildebrandt, thank you.

10 BY MR. RICHARDSON:

11 Q In your present position, then, supervising the
12 STs, do you have any responsibility for taking the report
13 after it has been received and working on the repair section
14 of that report, the timing of the repair part?

15 MR. HILDEBRANDT: Same objection, same advice to
16 the witness.

17 MS. RICHARDSON: Okay.

18 BY MS. RICHARDSON:

19 Q Mr. Maser, in terms of your present scope of
20 responsibilities and your supervising of employees, do you
21 have any responsibility for handling a trouble report from
22 the point of time it is dispatched to the field to the time
23 it is cleared and closed?

24 MR. HILDEBRANDT: Same objection, same advice to
25 the witness.

1 MS. RICHARDSON: Okay.

2 MR. HILDEBRANDT: If you want to expedite this
3 thing, you know, you want to go question by question,
4 fine. I believe from now on out he will be invoking
5 his Fifth Amendment rights guaranteed to him by the
6 Constitution. If you want to go question by question,
7 you can do that, but I think that he has given you all
8 that he will at this point in time. You know, you're
9 asking the questions, so however you want to do it.

10 MS. RICHARDSON: Okay. We will continue on, if we
11 may, please.

12 MR. HILDEBRANDT: Fine, anyway you would like.

13 MS. RICHARDSON: Thanks, Mr. Hildebrandt.

14 BY MR. RICHARDSON:

15 Q Within the Company's structure, do employees,
16 management employees, receive a written job description for
17 their duties and responsibilities?

18 MR. HILDEBRANT: Same objection, same advice to
19 the witness.

20 BY MS. RICHARDSON:

21 Q Mr. Maser, have you been disciplined recently by
22 the Company?

23 MR. HILDEBRANDT: Same -- were you through? I'm
24 sorry. Same objection same advice to the witness.

25 MS. RICHARDSON: Okay.

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 910163-TL

FILED: July 21, 1992

In re: Petition on behalf of CITIZENS)
OF THE STATE OF FLORIDA to initiate)
investigation into integrity of SOUTHERN)
BELL TELEPHONE & TELEGRAPH COMPANY'S)
repair service activities and reports)

**CERTIFIED
COPY**

DEPOSITION OF THE WITNESS, CRYSTAL SMITH,
TAKEN BY OFFICE OF THE PUBLIC COUNSEL,
ON MONDAY, JULY 27TH, 1992.

Riviera Beach, Florida
1:00 p.m. - 1:06 p.m.

APPEARANCES:

CHARLES J. BECK, ESQUIRE
Assistant Public Counsel
Office of the Public Counsel
111 West Madison Street, Room 812
Tallahassee, Florida, 32399-1400
on behalf of the Citizens of the
State of Florida.

TRACY HATCH, ESQUIRE
Florida Public Service Commission
Chief Bureau of Communications
Division of Legal Services
101 East Gaines Street
Tallahassee, Florida, 32301
on behalf of the Florida Public
Service Commission.

(APPEARANCES CONT. ON PAGE TWO)

1 maintenance administrators in Fort Pierce have ever been
2 told to back up times on a repair record when it wasn't
3 otherwise called for backing up the times?

4 MS. PIKE: I'm going to object to that
5 question, Mr. Beck, and I'm going to have her
6 invoke her Fifth Amendment privilege.

7 MR. BECK: I'm sorry. Could you read back the
8 question for me, please?

9 (The pending question was read back by the
10 stenographer.)

11 Q. (BY MR. BECK) Do you have any personal
12 knowledge of any maintenance administrator backing up
13 repair times on repair records?

14 MS. PIKE: Same objection.

15 Q. Are you familiar with any procedures of the
16 maintenance administrators being required to obtain or
17 get permission from a manager in order to get a
18 close-out code to put on the repair record?

19 MS. PIKE: I'm going to object to the question
20 and invoke the Fifth.

21 Q. Okay. Do you have any knowledge of no access
22 codes being used to stop the clock on out of service
23 reports?

24 MS. PIKE: Same objection. Invoking her Fifth
25 Amendment privilege.

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 910163-TL

FILED: July 21, 1992

In re: Petition on behalf of CITIZENS)
OF THE STATE OF FLORIDA to initiate)
investigation into integrity of SOUTHERN)
BELL TELEPHONE & TELEGRAPH COMPANY'S)
repair service activities and reports)

**CERTIFIED
COPY**

DEPOSITION OF THE WITNESS, PAUL WHITE,
TAKEN BY OFFICE OF THE PUBLIC COUNSEL,
ON MONDAY, JULY 27TH, 1992.

Riviera Beach, Florida
9:40 a.m. - 9:53 a.m.

APPEARANCES:

CHARLES J. BECK, ESQUIRE
Assistant Public Counsel
Office of the Public Counsel
111 West Madison Street, Room 812
Tallahassee, Florida, 32399-1400
on behalf of the Citizens of the
State of Florida.

TRACY HATCH, ESQUIRE
Florida Public Service Commission
Chief Bureau of Communications
Division of Legal Services
101 East Gaines Street
Tallahassee, Florida, 32301
on behalf of the Florida Public
Service Commission.

(APPEARANCES CONT. ON PAGE TWO)

1 directly to the area of discipline.

2 Mr. White gave a statement for approximately
3 eight hours to the Statewide Prosecutor's Office
4 and the Attorney General's Office, which was taken
5 at one time. Given the focus of the criminal
6 investigation and also given the focus that I
7 understand this deposition is to take, Mr. White
8 unfortunately and contrary to, to at least his
9 personal desires, but Mr. White unfortunately has
10 to assert his Fifth Amendment right, Fifth
11 Amendment privilege against self-incrimination.

12 MR. BECK: Okay.

13 MR. FINK: The best response that we can give
14 here today, although Mr. White would certainly,
15 from a personal standpoint, would like to assist
16 and cooperate with the Public Service Commission,
17 is that we would direct you to the Statewide
18 Prosecutor and Attorney General's Office, and you
19 can make whatever requests you can for that eight
20 hours of testimony which would probably more than
21 answer your questions.

22 I don't know whether they would be willing to
23 turn it over to you, but I anticipate that
24 virtually all of the questions that you would ask
25 from this point forward would fall within the area

**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 8th day of October, 1992.

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