

J. Phillip Carver
General Attorney

SCANNED

ORIGINAL
FILE COPY

Southern Bell Telephone
and Telegraph Company
c/o Marshall M. Criser III
Suite 400
150 So. Monroe Street
Tallahassee, Florida 32301
Phone (305) 530-5558

October 26, 1993

Mr. Steve C. Tribble
Director, Division of Records and Reporting
Florida Public Service Commission
101 East Gaines Street
Tallahassee, Florida 32301

Re: Docket No. 910163-TL 920260-TL

Dear Mr. Tribble:

Enclosed please find an original and fifteen copies of Southern Bell Telephone and Telegraph Company's Request for Confidential Classification, which we ask that you file in the captioned docket.

A copy of this letter is enclosed. Please mark it to indicate that the original was filed and return the copy to me. Copies have been served to the parties shown on the attached Certificate of Service.

Sincerely yours,

J. Phillip Carver
J. Phillip Carver (Pw)

Enclosures

cc: All Parties of Record
A. M. Lombardo
Harris R. Anthony
R. Douglas Lackey

DOCUMENT NUMBER-DATE

11535 OCT 26 93

A BELLSOUTH Company

FD-302-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

ORIGINAL
FILE COPY

In re: Petition on behalf of
Citizens of the State of Florida
to initiate investigation into
integrity of Southern Bell
Telephone and Telegraph Company's
repair service activities and
reports.

) Docket No. 910163-TL
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)

) Filed: October 26, 1993

**SOUTHERN BELL TELEPHONE AND TELEGRAPH COMPANY'S
REQUEST FOR CONFIDENTIAL CLASSIFICATION**

COMES NOW BellSouth Telecommunications, Inc., d/b/a Southern Bell Telephone and Telegraph Company ("Southern Bell" or "Company"), pursuant to Rule 25-22.006, Florida Administrative Code, and files its Motion for Confidential Classification and Permanent Protective Order and states as grounds in support thereof the following:

1. The Office of Public Counsel ("Public Counsel") issued a Notice of Deposition in the above-referenced docket in order to take the depositions of numerous Southern Bell employees on July 27, 1992 through July 31, 1992 in Miami, Riviera Beach, Orlando, Gainesville, Jacksonville and Fort Lauderdale, Florida. The depositions of the following Southern Bell employees that were taken pursuant to this notice have been transcribed and were received by Southern Bell on October 4, 1993: Clinton G. Smith, John E. Bulko, James J. Canavan, Theodore C. Kellermann, Robert R. Rupe, Roy A. Buford, Donald L. House, John W. Finnegan, Michael G. Myers, John S. Dean, James D. Griffeth, Richard P. Collamati, T. C. Taylor, and John R. Melton. The Office of Public Counsel also issued a Notice of Deposition in the above-

DOCUMENT NUMBER-DATE

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FILED - RECORDS/REPORTING

referenced docket in order to take the depositions of numerous Southern Bell employees on October 14 and 15, 1992 in Fort Lauderdale and Miami, Florida. The deposition of April Ivy, which was taken pursuant to this notice, has been transcribed and was also received by Southern Bell on October 4, 1993. During these depositions numerous questions were asked and answered that entailed the disclosure of information regarding Southern Bell employees that may relate to the matters at issue in this docket. Some of this employee-related information is entitled to confidential classification.

2. Southern Bell filed on October 5, 1993, its Notice of Intent to Seek Confidential Classification of the information contained in these depositions. Accordingly, Southern Bell's Request for Confidential Classification is due under Rule 25-22.006(3)(a), Florida Administrative Code, on or before October 26, 1993. Upon review of the deposition of James J. Canavan, Southern Bell determined that this deposition contained no confidential material. Therefore, this request for confidentiality is for information that is contained in all of the depositions listed in paragraph 1 above, except the deposition of Mr. Canavan.

3. Southern Bell has filed as Attachment "A" a listing of the specific pages and lines of each deposition that contain proprietary confidential information, which has been correlated so that the page and line are "identified with the specific justification proffered in support of the classification of such

material". Rule 25-22.006(4)(c). Southern Bell has also filed a highlighted version of the depositions in a sealed container, which is marked as Attachment "B." Finally, Southern Bell has filed two redacted copies of the depositions as Attachment "C."

4. Southern Bell seeks confidential treatment of the employee information described below. This information is clearly confidential and proprietary under Florida Statutes, Section 364.183(f), which provides that "proprietary confidential business information" includes "employee personnel information unrelated to compensation, duties, qualifications, or responsibilities."

5. Specifically, this employee-related information arose in four different contexts: One, in the deposition of April Ivy, Public Counsel requested that Ms. Ivy list her home address. This information was provided in response to Public Counsel's request. This information should be treated as confidential because it is employee information that is obviously unrelated to "compensation, duties, qualifications or responsibilities".

6. Two, in the deposition of Theodore C. Kellermann, there is a reference to certain personal information concerning an employee. The information appeared in relation to a question to Mr. Kellermann as to why that employee left the company. This information also should be treated as confidential because it is employee information that is obviously unrelated to "compensation, duties, qualifications or responsibilities".

7. Three, in several of the above-referenced depositions, the deponent identifies specific Southern Bell employees by name and alleges that these employees may have engaged in some improper activity. In other instances, questions asked by Public Counsel appear to incorporate into the question the assumption that certain named employees have engaged in some improper activity. Both of these types of unsupported allegations as to specific employees should also be treated as confidential pursuant to Section 364.183(f).

8. Four, in several of the above-referenced depositions, numerous questions were asked and answered that either required the disclosure of the names of certain Southern Bell employees who received some form of discipline or included facts that would allow the identification of disciplined employees. Southern Bell seeks confidential treatment only of the specific identities of the employees disciplined. This information is clearly confidential and proprietary under Florida Statutes, § 364.183(f).

9. The four areas of employee personnel information that are not, per se, confidential pursuant to § 364.183(f), Florida Statutes, are compensation, duties, qualifications, and responsibilities of an employee. A common sense reading of this list, as well as a review of the definitions of these items as contained in Webster's Seventh New Collegiate Dictionary demonstrate that both the names of employees who were disciplined and the names of employees who allegedly acted improperly do not

fit any of these exceptions and are, therefore, entitled to confidential classification under § 364.183(f), Florida Statutes.

10. A review of these terms, in the context of § 364.183(f), Florida Statutes, reveals their meaning.

"Compensation" is the amount of money or other value that an employee is paid to perform his or her job duties. "Duties" are the particular acts an employee is expected to perform as a part of his or her job. "Qualifications" are the skills, knowledge, and abilities needed to perform a particular job. Finally, "responsibilities" are those things that an employee is obliged to do as part of his or her job. These meanings are confirmed by the dictionary definition of these words. Webster's definitions of these terms are as follow:

- A. Compensation - payment, wages.
- B. Duty - the action required by one's position or occupation.
- C. Qualification - something that qualifies; a condition that must be complied with.
- D. Responsibility - the quality or state of being responsible.

11. Obviously, the allegation that a particular employee engaged in improper acts has nothing to do with the employee's qualifications or compensation. Likewise, these allegations are not related in a strict sense to the employee's responsibilities or with the particular employee's duties. Conceivably, these allegations of wrongdoing could relate to a very broad definition of the employee's responsibilities or duties. This interpretation, however, would require that "duties" or

"responsibilities" be taken to describe not only the specific parameters of the employee's job, but also any act, whether authorized or not, that the employee does while on the job. Southern Bell asserts that this broad construction is inconsistent with both the exemption from public disclosure that is contained in § 364.183(f) and the legislature's intended application of the public disclosure requirements of Chapter 119.

12. If this Commission were to interpret § 364.183, Florida Statutes, to require public disclosure of any employee information that bears a relationship, even of an indirect or tangential nature, to an employee's job responsibilities, or duties, then there would be literally nothing protected from disclosure. Put another way, a broad reading of the exceptions to 364.183(f), Florida Statutes, would reduce the public disclosure exemption for employee information to the point of nonexistence. Obviously, if the legislature had intended for this statute to be read in a way that would make the employee information exemption uniformly unavailable and essentially pointless, then it would simply not have bothered to create the exemption in the first place. Therefore, the exceptions to § 364.183(f) must be narrowly construed and applied. Consistent with this narrow application, these unproven allegations of wrongdoing must be viewed as outside of the scope of these employees' responsibilities and duties.

13. This narrow application of the exceptions to § 364.183 is not only consistent with the normal rules of statutory

construction, it is supported by the express provisions of Chapter 119. Within the context of Section 119.14, (which is entitled "Periodic Legislative Review of Exemptions from Public Meetings and Public Records Requirements") there are listed particular factors that are to be considered by the legislature in determining whether the creation or maintenance of an exemption from public disclosure is appropriate. Subsection (4)(d)2 states specifically that an identifiable public purpose that will justify the creation of an exemption exists when, among other things, the exemption in question, "protects information of a sensitive personal nature concerning individuals, the release of which information would be defamatory to such individuals or cause unwarranted damage to the good name or reputation to such individuals...." Section 119.14(4)(b)2, Florida Statutes.¹

14. Inasmuch as this docket has already resulted in widespread publicity as to Southern Bell, it is probable that the public disclosure of the identities of these employees would also be widely published. This disclosure is unnecessary where, as here, the public will have access to all information relating to these allegedly improper acts, except for the names of the employees allegedly involved.

15. At the same time, the unnecessary public disclosure of the names of employees who allegedly engaged in misconduct would

¹ Although this subsection does not create an exemption from public disclosure, per se, it certainly provides insight into the legislative intent as to the proper application of existing exemptions, including § 364.183(f).

have the potential effect of subjecting them to public opprobrium and scorn at a point in this docket at which there has been no finding that any wrongful conduct actually occurred. In other words, on the basis of nothing more than unproven allegations, these particular employees would be publicly identified and subjected to public ridicule even though it may be subsequently determined that they did nothing wrong. Clearly, the public disclosure of the identities of these employees at this juncture and under these circumstances is antithetical to the legislative intent to apply Chapter 119 in a way that will avoid the unwarranted disclosure of defamatory and damaging information of a personal nature.

16. The same factors apply to require the conclusion that the identities of disciplined employees should be treated confidentially pursuant to § 364.183(f), Florida Statutes. Further, in the case of information relating to employee discipline, there is an equally compelling reason that this information should be treated as confidential. Section 364.183, Florida Statutes, provides that in addition to the specifically identified types of documents that are confidential, such as those enumerated in subsection (f), any document that, if disclosed, "would cause harm to the ratepayers or the person's or company's business operations ... is also entitled to protection." The potential for harm to Southern Bell's business operations that would result from disclosure of the subject information is great.

17. The public disclosure of the names of disciplined employees would have a significantly deleterious effect on morale that, in turn, would serve as a practical impediment to the functioning of the Company. Those who have cooperated with the efforts of the company to police itself have done so on the well-founded assumption that the information would be handled discreetly, appropriately, and that it would result in discipline that was warranted. If Southern Bell is now forced to reveal publicly the names of the employees disciplined, then the employees who have cooperated will no doubt feel that their good faith efforts to address any problems that may have occurred have been betrayed. It is easy to see how this sense of betrayal could result in morale problems that would be both widespread and severe.

18. Moreover, public disclosure could well result not only in general morale problems, but also in a general employee wariness and concern that would make future attempts to remedy problems far more difficult. Southern Bell can only effectively investigate an internal problem with the cooperation of its employees. If the lesson to be learned by employees in this particular instance is that any cooperation may result in exposure of disciplined employees to the additional ordeal of public ridicule, then the prospect of obtaining adequate employee cooperation to address effectively any future problems diminishes significantly.

19. Further, the managers of Southern Bell who are charged with the duty of administering employee discipline will unquestionably be hesitant to do so if they know that any employee disciplined for even the most minor infraction may later have that discipline disclosed and widely published.

20. Finally, to reveal this information publicly would serve no purpose whatsoever. Arguably, if disclosure of the identities of these employees served some public purpose, or if this disclosure were necessary for this Commission to deal thoroughly with the issues of this docket, then a balancing test might be necessary. That is, the Commission would need to balance the benefits to be derived from public disclosure against the detriment to the Company and the employees. In this case, however, public disclosure will result in no benefit whatsoever.

21. This Commission can fully consider all issues pertinent to this docket, based on the information that Southern Bell has provided, which includes the names of employees disciplined. It is only the public disclosure of these employees' names that Southern Bell seeks to prevent. Southern Bell has stated that it does not object to public disclosure of the extent of the employee discipline, the type of discipline, and the number of persons disciplined. There simply is nothing to be gained by the additional, public disclosure of the identities of the particular persons disciplined. Florida Statutes § 364.183(f) clearly provides that the names of these employees should be kept confidential. To hold otherwise will do nothing more than

damage, perhaps irreparably, the reputations of individual Southern Bell employees and expose them personally to public ridicule.

22. This Commission should rule that the names of these employees shall not be publicly disclosed because this disclosure would require an inappropriately broad construction of the four exceptions to the grant of confidentiality for personnel information that is set forth in § 364.183(f).

WHEREFORE, Southern Bell requests that this Commission grant its Motion for Confidential Treatment and Permanent Protective Order.

Respectfully submitted,

ATTORNEYS FOR SOUTHERN BELL
TELEPHONE AND TELEGRAPH COMPANY

Harris R. Anthony (hw)

HARRIS R. ANTHONY
J. PHILLIP CARVER
c/o Marshall M. Criser III
150 So. Monroe Street
Suite 400
Tallahassee, Florida 32301
(305) 530-5555

R. Douglas Lackey (hw)

R. DOUGLAS LACKEY
NANCY B. WHITE
4300 Southern Bell Center
675 W. Peachtree St., NE
Atlanta, Georgia 30375
(404) 529-3862

FPSC Docket 910163-TL
Southern Bell Telephone and Telegraph Company
Request for Confidential Classification
TRANSCRIPTS OF JULY 27-30 1992 DEPOSITIONS OF

SMITH, BULKO, KELLERMANN, RUPE, BUFORD,
HOUSE, FINNEGAN, MYERS, DEAN, GRIFFETH,
COLLAMATI, TAYLOR, MELTON, IVY

JUSTIFICATION FOR CONFIDENTIALITY REQUEST

1. This information is employee personnel information unrelated to compensation, duties, qualifications or responsibilities. As such, this information is confidential business information pursuant to Section 364.183, Florida Statutes, and is exempt from the requirement of public disclosure of Section 119.07, Florida Statutes.

The following information identified by page and line numbers is considered proprietary:

<u>DEPONENT</u>	<u>PAGE NO.</u>	<u>LINE NOS.</u>	<u>REASON PROPRIETARY</u>
SMITH	11	20-22	1
	12	5-25	1
	13	1-24	1
	14	1-18, 23-25	1
	15	18, 19, 21-24	1
	16	1-25	1
	17	1	1
BULKO	13	1-25	1
	14	1-25	1
	15	1-25	1
	16	1-25	1
	17	1-25	1
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KELLERMAN	12	17-19, 22-25	1
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	16	2, 6, 8-19, 21, 23	1
	17	2, 7-11	1
	18	12, 22	1
	19	4, 5, 9, 21, 22	1
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SMITH, BULKO, KELLERMANN, RUPE, BUFORD,
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<u>DEPONENT</u>	<u>PAGE NO.</u>	<u>LINE NOS.</u>	<u>REASON PROPRIETARY</u>
RUPE	11	25	1
	12	1-4, 8-25	1
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	14	1-8	1
BUFORD	13	5-7, 20-25	1
	14	1, 2, 12-21	1
	15	20, 21	1
	16	3-5	1
	17	14-16	1
	18	8, 9, 13, 14	1
HOUSE	10	22-24	1
	11	6-8, 14-25	1
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	13	1-25	1
	14	1-25	1
	15	2-25	1
	16	1-13	1
FINNEGAN	12	3, 4, 7, 9, 12, 15-24	1
	13	1, 2-11, 15, 16, 18-25	1
	14	1-3, 6-9	1
	16	1, 2	1
MYERS	12	24	1
	13	13	1
	14	11	1
	15	16	1
	16	12, 20	1
	19	6, 12	1
DEAN	10	24, 25	1
	11	4-25	1
	12	1-25	1
	13	1-25	1
	14	1-24	1

FPSC Docket 910163-TL
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<u>DEPONENT</u>	<u>PAGE NO.</u>	<u>LINE NOS.</u>	<u>REASON PROPRIETARY</u>
GRIFFETH	12	8-10, 12, 14, 15, 17, 23, 24	1
	13	1-25	1
	14	1-3, 5-16, 19-21	1
	15	8, 9, 20-25	1
	16	1-9	1
	COLLAMATI	10	20, 21, 23
11		1-25	1
12		1-25	1
13		2-9	1
22		20	1
TAYLOR		17	12, 13, 14, 17-25
	18	1, 3-9, 11-18, 21-25	1
	19	1-4	1
	21	11-17, 19, 21-24	1
	22	1, 2, 3, 4, 5, 6	1
	MELTON	13	12, 13-23
14		4-9, 11-25	1
15		1, 11-13, 15, 16	1
17		4, 5, 8-10, 12, 14, 15, 17	1
IVY		6	5, 7, 11-25
	7	3-14, 16, 25	1
	8	1, 4-15, 17, 18	1
	10	9, 10, 12, 13, 20-25	1
	11	1-8, 15, 17-21	1
	15	15-19	1
	17	22-25	1
	18	1, 4-7, 13	1
	23	23-25	1
	24	1	1
	27	6, 7	1
	30	4	1

CERTIFICATE OF SERVICE

Docket No. 920260-TL

Docket No. 910163-TL

Docket No. 910727-TL

Docket No. 900960-TL

I HEREBY CERTIFY that a copy of the foregoing has been
furnished by United States Mail this **26th** day of **Oct.**, 1993
to:

Robin Norton
Division of Communications
Florida Public Service
Commission
101 East Gaines Street
Tallahassee, FL 32399-0866

Tracy Hatch
Division of Legal Services
Florida Public Svc. Commission
101 East Gaines Street
Tallahassee, FL 32399-0863

Joseph A. McGlothlin
Vicki Gordon Kaufman
McWhirter, Grandoff & Reeves
315 South Calhoun Street
Suite 716
Tallahassee, FL 32301-1838
atty for FIXCA

Patrick K. Wiggins
Wiggins & Villacorta, P.A.
Post Office Drawer 1657
Tallahassee, Florida 32302
atty for Intermedia and Cox

Kenneth A. Hoffman
Messer, Vickers, Caparello,
Madsen, Lewis & Metz, PA
Post Office Box 1876
Tallahassee, FL 32302
atty for FPTA

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

Michael J. Henry
MCI Telecommunications Corp.
MCI Center
Three Ravinia Drive
Atlanta, Georgia 30346-2102

Richard D. Melson
Hopping Boyd Green & Sams
Post Office Box 6526
Tallahassee, Florida 32314
atty for MCI

Rick Wright
Regulatory Analyst
Division of Audit and Finance
Florida Public Svc. Commission
101 East Gaines Street
Tallahassee, FL 32399-0865

Laura L. Wilson, Esq.
c/o Florida Cable Television
Assoc. Inc.
Post Office Box 10383
310 North Monroe Street
Tallahassee, FL 32302
atty for FCTA

Chanthina R. Bryant
Sprint Communications Co.
Limited Partnership
3065 Cumberland Circle
Atlanta, GA 30339

Michael W. Tye
AT&T Communications of the
Southern States, Inc.
106 East College Avenue
Suite 1410
Tallahassee, Florida 32301

Dan B. Hendrickson
Post Office Box 1201
Tallahassee, FL 32302
atty for FCAN

Benjamin H. Dickens, Jr.
Blooston, Mordkofsky,
Jackson & Dickens
2120 L Street, N.W.
Washington, DC 20037
Atty for Fla Ad Hoc

C. Everett Boyd, Jr.
Ervin, Varn, Jacobs, Odom
& Ervin
305 South Gadsen Street
Post Office Drawer 1170
Tallahassee, Florida 32302
atty for Sprint

Florida Pay Telephone
Association, Inc.
c/o Mr. Lance C. Norris
President
Suite 202
8130 Baymeadows Circle, West
Jacksonville, FL 32256

Monte Belote
Florida Consumer Action Network
4100 W. Kennedy Blvd., #128
Tampa, FL 33609

Bill L. Bryant, Jr., Esq.
Foley & Lardner
Suite 450
215 South Monroe Street
Tallahassee, FL 32302-0508
Atty for AARP

Michael B. Twomey
Gerald B. Curington
Department of Legal Affairs
Room 1603, The Capitol
Tallahassee, FL 32399-1050

Mr. Douglas S. Metcalf
Communications Consultants,
Inc.
631 S. Orlando Ave., Suite 250
P. O. Box 1148
Winter Park, FL 32790-1148

Mr. Cecil O. Simpson, Jr.
General Attorney
Mr. Peter Q. Nyce, Jr.
General Attorney
Regulatory Law Office
Office of the Judge
Advocate General
Department of the Army
901 North Stuart Street
Arlington, VA 22203-1837

Mr. Michael Fannon
Cellular One
2735 Capital Circle, NE
Tallahassee, FL 32308

Floyd R. Self, Esq.
Messer, Vickers, Caparello,
Madsen, Lewis, Goldman & Metz
Post Office Box 1876
Tallahassee, FL 32302-1876
Attys for McCaw Cellular

Angela Green
Division of Legal Services
Florida Public Svc. Commission
101 East Gaines Street
Tallahassee, FL 32399-0863

Stan Greer
Division of Communications
Florida Public Svc. Commission
101 East Gaines Street
Tallahassee, FL 32399-0863

J. Phillip Carver (Bw)