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November 20, 1992

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 - Repair Service Investigation

Dear Mr. Tribble:

Enclosed please find an original and fifteen copies of Southern Bell Telephone and Telegraph Company's Motion for Confidential Treatment and Permanent Protective Order, 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 *02*

Enclosures

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

DOCUMENT NUMBER-DATE

13695 NOV 20 1992

FPSC-RECORDS/REPORTING

CERTIFICATE OF SERVICE
Docket No. 910163-TL

I HEREBY CERTIFY that a copy of the foregoing has been
furnished by United States Mail this 20th day of November, 1992,
to:

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

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

J. Phillip Carver D2

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition on behalf of Citizens) Docket No. 910163-TL
of the State of Florida to initiate)
investigation into integrity of) Filed: November 20, 1992
Southern Bell Telephone and Telegraph)
Company's repair service activities)
and reports.)
_____)

**SOUTHERN BELL TELEPHONE AND TELEGRAPH COMPANY'S
MOTION FOR CONFIDENTIAL TREATMENT
AND PERMANENT PROTECTIVE ORDER**

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 Treatment and Permanent Protective Order.

1. On October 14 and 15, 1992, the Office of Public Counsel ("Public Counsel") took the depositions of approximately fifteen employees, some of which have subsequently been transcribed. During the depositions of Kathleen Garguilo, Scott Mulcahy, Gary Wilson, Shirley Johnson and Dwane Ward numerous questions were asked that called for the disclosure of the names of employees disciplined for matters that may relate to this docket as well as disclosure of the nature of the discipline. The requested information was provided in each respective response.

2. At the time of these depositions, counsel for Southern Bell requested a procedure whereby Southern Bell would have ten

days after receiving the transcript of any given deposition to request confidential classification. Public Counsel agreed to this procedure. Southern Bell received the transcripts of the depositions of the above-named employees within the past ten days and determined that these depositions contain confidential information regarding the names of the disciplined employees. Public Counsel had previously announced in a different context its intention to utilize this type of information during the hearing on this matter. Accordingly, pursuant to Rule 25.22.006, Florida Administrative Code, Southern Bell files the instant Motion for Confidential Treatment and Permanent Protective Order.

3. The depositions also contain in some instances home addresses and telephone numbers of the deposed employees named above. Southern Bell has requested confidential treatment of this information as well.

4. Southern Bell has filed a highlighted version of the depositions in a sealed container, which is marked as Attachment "A." Southern Bell has also filed two redacted copies of the depositions as Attachment "B." Finally, Southern Bell has filed as Attachment "C" a listing of specific pages and lines of each deposition that contain proprietary confidential information, all of which are confidential for the reasons set forth below.

5. Southern Bell seeks confidential treatment of the specific identities of the employees disciplined. This information is clearly confidential and proprietary under Florida Statutes, § 364.183(f), which provides that "proprietary confidential business information" includes "employee personnel information unrelated to compensation, duties, qualifications, or responsibilities."

6. 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 the names of employees in connection with discipline do not fit any of the exceptions and thus are, per se, confidential under § 364.183(f), Florida Statutes.

7. 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.

Even a cursory reading of these commonly-understood definitions makes it clear that the disciplining of an employee is not encompassed within any of the concepts or definitions set forth above.

8. Thus, the names of the employees who have been disciplined do not relate to their compensation, duties, qualifications, or responsibilities. Instead, the name of an employee who has been disciplined is a personnel-related matter, the disclosure of which would be highly damaging to the reputation of the employee in the community at large. Certainly, § 364.183, Florida Statutes, was not intended to require such disclosure.

9. 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, wages, or qualifications, 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.

10. In this particular case, though, there is an equally compelling reason that these documents 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 necessarily result from disclosure of the subject information is both obvious and striking.

11. The discipline of Southern Bell's employees in this matter was the result of a thorough, privileged internal investigation that was designed to determine whether or not a repair reporting problem existed. It was never contemplated by either the Company or the individuals involved that, in the aftermath of this effort by Southern Bell to police itself, there would be a resulting forced public disclosure that would subject the disciplined employees to the additional punishment of public opprobrium and scorn. In effect, the public disclosure of the names of the disciplined employees would convert internal discipline into an inappropriate and inflammatory "public shaming" of these employees.

12. Inasmuch as this docket already has 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 particularly unnecessary where, as here, the public will have access to all disciplinary information, except for the names of the employees themselves. Thus, for example, the number of employees disciplined, the stated basis for the discipline and the type of discipline would all be publicly available.

13. 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 and appropriately, and that it would result in a level of discipline, if any, 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.

14. 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 any problems that may arise 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 possible future problems diminishes significantly.

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

16. 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.

17. Public Counsel can make its arguments in this matter, and the Commission can fully consider all issues pertinent to this docket, based on the information that Southern Bell has provided. Public Counsel has the names of the employees in question because Southern Bell provided that information without objection. It is only the public disclosure of employees' names to which Southern Bell objects. 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 job

responsibilities of those disciplined. There simply is nothing to be gained by the additional, gratuitous 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.

18. All of the information for which Southern Bell requests confidential treatment is intended to be treated as confidential, and has not been disclosed except pursuant to statutory provisions or private agreement that provides that the information will not be released to the public.

19. Likewise, the home addresses and telephone numbers of each of the employees whose depositions were taken on October 14 and 15, 1992, and whose names are listed above, are confidential. This information constitutes "employee personnel information unrelated to compensation, duties, qualifications, or responsibilities," and is, therefore, exempt under the provisions of Florida Statutes, § 364.183(f) from public disclosure.¹

¹ As to each of the five deponents, the first page of the respective deposition that is noted on Exhibit "C" to this motion contains the pertinent information regarding home telephone numbers and addresses.

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

Respectfully submitted,

ATTORNEYS FOR SOUTHERN BELL
TELEPHONE AND TELEGRAPH COMPANY

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FPSC DOCKET 910163-TLTRANSCRIPT OF DEPOSITIONS OF
WARD, MULCAHY, WILSON, GARGIULO

JUSTIFICATION FOR CONFIDENTIALITY REQUEST

1. The confidential and proprietary information that is contained in this listing is all employee-personnel information that is not related to qualifications, duties, responsibilities or compensation. Accordingly, these documents are exempted from the Public Records Act by the express provisions of Section 364.183, Florida Statutes.

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

<u>DEPONENT</u>	<u>PAGE No.</u>	<u>Line Nos.</u>	<u>Reasons Proprietary</u>
WARD	6	9, 10	1
	20	1, 9, 12	1
MULCAHY	7	7, 8	1
	35	14-25	1
	36	1-7	1
WILSON	7	23, 24	1
	8	1	1
	17	20-25	1
	18	1, 2, 4-8, 18-25	1
	19	1, 5-13, 22-25	1
	20	1-10, 14-22	1
	21	1, 2, 3, 10, 11, 17-19	1
	22	1-4, 7, 8, 12-15	1
	23	3-5, 7-12	1
GARGIULO	7	2, 3, 5	1
JOHNSON	7	6, 7	1