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June 25, 1993

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

Re: Docket Nos. 920260-TL; 910163-TL;
910727-TL and 900960-TL

Dear Mr. Tribble:

Enclosed please find an original and fifteen copies of Southern Bell Telephone and Telegraph Company's Motion for Reconsideration of Order No. PSC-93-0905-CFO-TL, which we ask that you file in the captioned dockets.

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 (02)
J. Phillip Carver

Enclosures

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

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J. J.
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CERTIFICATE OF SERVICE

Docket No. 920260-TL

Docket No. 900960-TL

Docket No. 910163-TL

Docket No. 910727-TL

I HEREBY CERTIFY that a copy of the foregoing has been
furnished by United States Mail this *25th* day of *June*, 1993
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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Comprehensive Review of) Docket No. 920260-TL
the Revenue Requirements and Rate)
Stabilization Plan of Southern)
Bell Telephone & Telegraph Company)

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

In re: Investigation into) Docket No. 910727-TL
Southern Bell Telephone and)
Telegraph Company's Compliance)
with Rule 25-4.110(2) (Rebates))

In re: Investigation into Southern) Docket No. 900960-TL
Bell Telephone and Telegraph)
Company's Non-Contact Sales)
Practices)

Filed: June 25, 1993

**SOUTHERN BELL TELEPHONE AND TELEGRAPH COMPANY'S
MOTION FOR RECONSIDERATION OF ORDER NO. PSC-93-0905-CFO-TL**

COMES NOW, BellSouth Telecommunications, Inc., d/b/a Southern Bell Telephone and Telegraph Company ("Southern Bell") or ("Company"), and files, pursuant to Rule 25-22.038(2), Florida Administrative Code, its Motion for Reconsideration of Order No. PSC-93-0905-CFO-TL issued on June 15, 1993 by the Prehearing Officer in the above-referenced dockets, and states as grounds in support thereof the following:

1. On September 9, 1992, Southern Bell filed a Motion for Confidential Treatment and Permanent Protective Order for

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portions of the deposition transcripts of ten different Southern Bell employees. Specifically, Southern Bell sought confidential classification for the names of employees who were identified in these depositions as having been disciplined for some reason that may relate to this case. The Office of Public Counsel filed a response in opposition on September 17, 1992. On June 15, 1993, the Prehearing Officer in the above-referenced dockets ruled on Southern Bell's motion by denying Southern Bell's request for confidential treatment.

2. The argument in Southern Bell's Motion for Confidential Treatment can be summarized as follows: The provisions of Florida Statutes, § 364.183 exempt from public disclosure certain information that would otherwise be required by Florida Statutes, Chapter 119. This exempt information is all "employee personnel information unrelated to compensation, duties, qualifications or responsibilities". Florida Statutes, § 364.183(3)(f). Further Section 364.183(3) specifically authorizes the exemption from public disclosure of any document that, if disclosed, "would cause harm to the company's business operations..." Southern Bell argued that the discipline of the employees in question was not, in a strict sense, related to their "compensation, duties, qualifications or responsibilities". Southern Bell also argued that public disclosure of the names of disciplined employees

would unnecessarily subject these employees to public scorn and ridicule. If the discipline of employees for, in some instances, relatively minor infractions were converted into a sort of "public shaming", then this would compromise the Company's ability to deal with any future problems by administering discipline that is appropriate to the particular employee's conduct.

3. The Prehearing Officer denied Southern Bell's motion and, in doing so, flatly "reject[ed] embarrassment of employees and the potential impact on company operations" as the type of harm contemplated by Section 364.183(3)". Order at p.5. The Prehearing Officer further rejected Southern Bell's argument that Section 364.183, Florida Statutes, should be applied in a way that will balance "the benefits to be derived from public disclosure against the detriment to the Company and its employees". Order p. 5. The Prehearing Officer stated that, in the absence of a specific statutory exemption, this Commission is not entitled to make a decision based on such a balancing. In support of this conclusion, the Prehearing Officer cited Gadd v. News-Press Publishing Co., 412 So.2d 894, 895 (Fla. 2d DCA 1982) as stating that "[p]ublic policy considerations, aside from statutory or constitutional rights, can no longer be urged as an exemption to the Public Records Law".

4. Gadd goes on, however, to state that, rather than applying its own notion of the appropriate public policy, a court (or in this case, this Commission) that deals with "the construction and constitutionality of legislative determinations..." is "... confined to a determination of the legislature's intent". Gadd at 896. Thus, Gadd stands for the proposition that a tribunal may not substitute its own notion of correct public policy for legislative intent. Instead, it is bound to interpret and apply a statute as the legislature intended.

5. In our case, it is clear from the language of Chapter 119, Florida Statutes, that the legislature intended precisely the sort of balancing of interests that Southern Bell advocates. Because Order No. PSC-93-0905-CFO-TL overlooked this fundamental point, it is in error and should be reconsidered and reversed by the full Commission.

6. Chapter 119 creates the requirement of public disclosure of certain records. Both Section 364.183 and Section 119.07 list various types of information that are exempt from this requirement of public disclosure. In Section 119.14, Florida Statutes, the legislature has listed specifically the considerations that it will weigh in creating or maintaining exemptions to the disclosure requirements of Chapter 119.

Specifically, § 119.14 states that "[a]n exemption may be created or maintained only if it serves an identifiable public purpose and may be no broader than is necessary to meet the public purpose it serves". Section 119.14(4)(b). (emphasis added) The legislature then goes on to say that the need for an exemption is sufficiently "compelling to override the strong public policy of open government", if the exemption is necessary to accomplish one of two specifically designated public purposes. § 119.14(4)(b)¹ One of these purposes is to protect,

... [I]nformation 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 of such individuals or would jeopardize the safety of such individuals.

Section 119.14(4)(b)2.

7. Thus, the legislature has clearly stated that there is no reason for an exemption to the public disclosure requirement to exist unless it serves to protect individuals from unwarranted damage that would result from this disclosure. This language provides an equally clear statement of the manner in which the legislature intends for all exemptions to Chapter 119 (both those in Section 119.07 and in Section 364.183) to be applied. Thus,

¹ The other purpose set forth in § 119.14(4)(b), the efficient administration of a governmental program, is not pertinent to our issue.

when Southern Bell urged the Prehearing Officer to weigh the damage of public disclosure to individual employees against the negligible benefit to be derived from this disclosure of their identities, the Company was not making an argument for an unauthorized "public policy" determination. Instead, Southern Bell has argued that this issue must be resolved by considering the precise purpose that underlies all exemptions to the public disclosure requirements of Chapter 119, the protection of individuals from, "unwarranted damage" that would be caused by the public release of certain information.

8. If this Commission does not consider the damaging effect of the public release of this information concerning Southern Bell employees, then it will have done nothing more than mechanically apply the language of Section 364.183 without considering the intent of the legislature in creating this exemption. It appears that this is the approach that was taken by the Prehearing Officer, and it is for this reason that the subject Order is erroneous. This Commission can only give effect to the legislative intent, and correct the error that inheres in the subject order by balancing the potentially grave damage to Southern Bell employees against the negligible benefit of publicly disclosing the identities of these employees. For this reason, Southern Bell submits that this Commission must consider

the damaging effects of public disclosure of this information, conclude that it outweighs any benefit from public disclosure and allow confidential treatment for the information at issue.

WHEREFORE, Southern Bell Telephone and Telegraph Company respectfully requests the entry of an Order granting its Motion for Rehearing, setting aside Order No. PSC-93-0905-CFO-TL, and ruling that Southern Bell is entitled to confidential classification for the information at issue.

Respectfully submitted,

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