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November 17, 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 Reply to Public Counsel's Response to Southern Bell's Motion for a Temporary 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

Enclosures 

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

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A BELL SOUTH Company

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**CERTIFICATE OF SERVICE**  
**Docket No. 910163-TL**

I HEREBY CERTIFY that a copy of the foregoing has been  
furnished by United States Mail this 17<sup>th</sup> 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 Cannon 02

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: 11/17/92  
Southern Bell Telephone and Telegraph )  
Company's repair service activities )  
and reports. )  
\_\_\_\_\_)

**SOUTHERN BELL TELEPHONE AND TELEGRAPH COMPANY'S  
REPLY TO PUBLIC COUNSEL'S RESPONSE TO SOUTHERN  
BELL'S MOTION FOR A TEMPORARY PROTECTIVE ORDER**

COMES NOW BellSouth Telecommunications, Inc., d/b/a Southern Bell Telephone and Telegraph Company ("Southern Bell" or "Company"), and files its Reply to the Office of Public Counsel's ("Public Counsel") Response to Southern Bell's Motion for Temporary Protective Order, and states as grounds in support the following:

1. On September 14, 1992, Southern Bell filed its responses to Public Counsel's Twenty-Eighth Set of Interrogatories. At that time, Southern Bell moved for the entry of a temporary protective order and for confidential treatment of the names of employees disciplined as a result of certain matters that may relate to this docket.

2. On October 9, 1992, Public Counsel filed a response in opposition to this Motion. In this response Public Counsel stated that both parties had fully addressed in prior filings the pertinent issues regarding confidentiality. Southern Bell agrees that both parties have fully set forth previously their respective positions as to whether the identities of disciplined employees are exempt from the public disclosure requirements of

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Section 119.07(1), Florida Statutes, by operation of the provisions of Section 364.183(f). Southern Bell takes issue, however, with Public Counsel's filing of a response to oppose a motion for temporary protective order. Opposing a motion for temporary protective order, while not expressly prohibited by the rules, is in direct conflict with the procedure that is set out therein.

3. Rule 25-22.006(5)(c) authorizes the filing of a motion for a temporary protective order to exempt information from Section 119.07(1), F.S., when documents or other information is provided to Public Counsel for "the purpose of determining what information is to be used in a proceeding before the Commission."<sup>1</sup> The rule further provides that if Public Counsel decides to use the information in a proceeding before the Commission, then the party producing that information must file a specific request for permanent protective order. If the information is not to be used in a proceeding, however, Public Counsel is to return the information to the utility.

4. If all documents produced to Public Counsel were intended to automatically become public in the absence of a request for confidential classification, then there would be no need for subsection (5)(c) of Rule 25-22.006. In that case, a

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<sup>1</sup> Unquestionably, answers to interrogatories are the type of information that is to be dealt with in accordance with the above-referenced rule. Since this information is requested through formal discovery in an ongoing docket, the only legitimate purpose for which Public Counsel could seek to obtain this information would be to evaluate it for possible use in the proceeding.

request for confidentiality of documents produced to Public Counsel would simply be treated in the same fashion as a request for confidentiality when documents are produced to Florida Public Service Commission ("Commission") Staff pursuant to Rule 25-22.006(3), Florida Administrative Code.

5. Instead, Rule 25-22.006, Florida Administrative Code, provides a two-step process dialing specifically with the production of documents to Public Counsel. The logical assumption is that this special process was created to avoid unnecessary discovery disputes over claims of confidentiality. In other words, if Public Counsel obtains a confidential document for possible use at a hearing, then subsequently decides to use the document at the hearing, the issue of whether or not that document, or a portion thereof, is confidential is then ripe for consideration.

6. In this instance, Public Counsel has made no determination that it will use the information provided. Nevertheless, Public Counsel has opposed Southern Bell's temporary motion for protective order in an attempt to have the subject information immediately made public. This attempt flies in the face of the manner in which Subsection (5)(c) is meant to operate. If Public Counsel does not intend to use the requested information, then there is simply no legitimate basis for an attempt to render this information public.

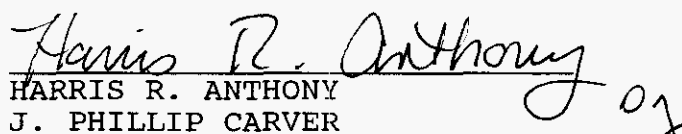
7. If this Commission were to allow this approach, then Public Counsel could effectively avoid the intended operation of


subsection (5)(c) by routinely requesting information or documents, disclosing the information publicly, then electing not to use it in the proceeding for which it was ostensibly requested in the first instance. This subversion of the intended operation of the rules regarding confidentiality should not be allowed. In the event that Public Counsel subsequently decides to use the information in a hearing and states this intent, Southern Bell and Public Counsel can then properly address at that juncture the issue of confidentiality. In the interim, this Commission should grant Southern Bell's Motion for Temporary Protective Order.

WHEREFORE, Southern Bell respectfully requests the entry of an order granting its Motion for Temporary Protective Order for the reasons set forth above.

Respectfully submitted,

ATTORNEYS FOR SOUTHERN BELL  
TELEPHONE AND TELEGRAPH COMPANY

  
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