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July 12, 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, 900960-TL, 910163-TL, 910727-TL

Dear Mr. Tribble:

Enclosed is an original and fifteen copies of Southern Bell Telephone and Telegraph Company's Motion for Review of Order No. PSC-93-0978-CFO-TL. Please file this document in the above-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 on the parties shown on the attached Certificate of Service.

Sincerely,

Nancy B. White
Nancy B. White (P2)

ADK _____
AFA 1
APP _____
CAF 1

CMU Enclosures

CTE cc: All Parties of Record

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DOCUMENT NUMBER-DATE

07452 JUL 12 8

FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Show cause proceeding)
against Southern Bell Telephone) Docket No. 900960-TL
and Telegraph Company for)
misbilling customers.)

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

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

In re: Comprehensive review of)
the revenue requirements and rate) Docket No. 920260-TL
stabilization plan of Southern)
Bell Telephone and Telegraph)
Company.) Filed: July 12, 1993

SOUTHERN BELL TELEPHONE AND TELEGRAPH COMPANY'S
MOTION FOR REVIEW OF THE ORDER NO. PSC-93-0978-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-93-0978-CFO-TL issued on June 30, 1993 by the Prehearing Officer in the above-referenced dockets, and states as grounds in support thereof the following:

1. On January 22, 1993, Southern Bell filed a Request for Confidential Classification for portions of certain Company responses to Staff's Seventh Set of Interrogatories filed in Docket 910163-TL. Specifically, Southern Bell sought

confidential classification for the names, titles, business addresses and telephone numbers of current employees who were disciplined by the Company for some reason that may relate to this case. In addition, Southern Bell sought confidential classification for the names, addresses and telephone numbers of former employees who were either disciplined by the Company or unavailable for depositions conducted by the Office of Public Counsel the week of July 27-31, 1992. On June 30, 1993, the Prehearing Officer in the above-referenced dockets ruled on Southern Bell's request by denying confidential treatment for all information except the addresses and phone numbers of former employees. Southern Bell respectfully submits, on the basis of the pertinent facts and the controlling law cited herein, that the Order includes mistakes of law such that the full Commission should review and reverse this decision and hold that the names of these employees are protected from public disclosure.

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 subject to disclosure under 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..." In its Motion, 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."

3. The Prehearing Officer rejected the 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. 2. 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).

4. Gadd, however, states 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 this 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-93-0978-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. Sections 364.183 and 119.07 both list various types of information that are exempt from the 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. In particular, Section 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. Section 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.

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

7. Thus, the legislature has clearly stated that there is good reason for an exemption to the public disclosure requirement if 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, 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 should 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 should 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 Reconsideration, setting aside Order No. PSC-93-0978-CFO-TL, and ruling that Southern Bell is entitled to confidential classification for the information at issue.

Respectfully submitted,

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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 12th day of July 1993 to:

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