NANCY B. WHITE
General Attorney

Southern Bell Telephone
and Telegraph Company
Suite 400
150 South Monroe Street
Tallahassee, Florida 32301
(404) 529-5387

August 23, 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. 920260-TL

Dear Mr. Tribble:

Enclosed is an original and fifteen copies of Southern Bell Telephone and Telegraph Company's Opposition to Public Counsel's Sixteenth Motion to Compel and Request for In Camera Inspection of Documents. Please file this document in the above-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 on the parties shown on the attached Certificate of Service.

Sincerely,

Nancy B. White

Nancy B. White (cf)

Enclosures

cc: All Parties of Record
A. M. Lombardo
H. R. Anthony
R. D. Lackey

ACK
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APP
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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 23rd day of August, 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

Joseph Gillan
J. P. Gillan and Associates
Post Office Box 541038
Orlando, Florida 32854-1038

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
Association, 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

Donald L. Bell, Esq.
104 East Third Avenue
Tallahassee, FL 32303
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

Nancy B. White (AJ)

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Comprehensive Review of the Revenue Requirements and Rate Stabilization Plan of Southern Bell Telephone and Telegraph Company	)	Docket No. 920260-TL
	)	Filed: August 23, 1993

SOUTHERN BELL TELEPHONE AND TELEGRAPH COMPANY'S OPPOSITION TO PUBLIC COUNSEL'S SIXTEENTH MOTION TO COMPEL AND REQUEST FOR IN CAMERA INSPECTION OF DOCUMENTS

COMES NOW BellSouth Telecommunications, Inc. d/b/a Southern Bell Telephone and Telegraph Company ("Southern Bell" or "Company"), pursuant to Rule 25-22.037, Florida Administrative Code, and Rule 1.280(c), Florida Rules of Civil Procedure and files its Opposition to the Citizens' of Florida ("Public Counsel") Sixteenth Motion to Compel with regard to Public Counsel's Thirty-Fourth Request for Production of Documents, dated April 21, 1993. In support of its Motion, Southern Bell shows the following:

1. On April 21, 1993, Public Counsel served its Thirty-Fourth Request for Production of Documents on Southern Bell. On May 24, 1993, Southern Bell responded to Public Counsel's discovery requests, objecting to document Request Nos. 478, 479, 480 and 481. Specifically, these requests sought all records relating to any and all employee communications with the Company's ombudsman's office via the ethics hotline and other related avenues of communications. The basis for these objections was that the requests were overly broad and burdensome, called for the production of information neither relevant to this docket nor reasonably calculated to lead to

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relevant and admissible information in this docket, and that production would breach the confidentiality assured to each employee who may have made a communication subject to Public Counsel's requests.

2. On June 4, Public Counsel filed its Fifth Motion to Compel responses to the above-referenced requests for documents. On June 11, 1993, Southern Bell filed a Response in Opposition to Public Counsel's Fifth Motion to Compel. Subsequently, in conversations with Public Counsel, it was agreed that the request would be limited to documents concerning sales and repair activities in Florida and the Fifth Motion to Compel was withdrawn. On August 3, 1993, Southern Bell produced all responsive documents, with the exception of two investigations conducted by the Florida Legal department which were subject to the attorney-client privilege and the attorney work product doctrine. In addition, Southern Bell indicated to Public Counsel that the documents produced were considered to be proprietary confidential information by Southern Bell and should be treated accordingly.

3. Public Counsel has now filed its Sixteenth Motion to Compel and Request for In Camera Inspection of Documents disputing, among other things, the existence of the privilege vel non of the withheld documents and the confidentiality of the documents produced. In addition, Public Counsel objects to the general objections filed by Southern Bell in response to Public Counsel's Thirty-Fourth Request for Production of Documents.

4. Public Counsel first takes issue with Southern Bell's general objection to Public Counsel's "instructions" regarding details of privileged documents. Southern Bell's objection is a standard one and is presented to make clear that, in certain cases, certain information related to privileged documents may also be privileged. This general objection merely reserves Southern Bell's right to withhold such information as appropriate. Nevertheless, in order to avoid further controversy before the Commission, Southern Bell has set forth below an index of those responsive documents which it has not provided under a claim of privilege. A review of this index reveals that each of these documents has been properly withheld and that Public Counsel's request for in camera inspection of such documents is not necessary and should be denied. In addition, it should be noted that, in its current pleadings, Southern Bell agrees to provide a general index of any responsive documents not provided under a claim of privilege.

A. Letter from Harris R. Anthony, General Counsel-Florida, to John Gunter, Vice-President (Ombudsman), dated March 4, 1993, forwarding an attached March 3, 1993 investigative report from Stephen M. Klimacek, Attorney-Florida to Harris R. Anthony, regarding the use of codes on time reports. Privileged on the basis of attorney-client communication and attorney work product.

B. Letter from Robert G. Beatty, General Attorney-Florida to Harris R. Anthony, General Counsel-Florida, dated June 8, 1993, forwarding an attached May 28, 1993 investigative report from Stephen M. Klimacek, Attorney-Florida to Robert G. Beatty, General Attorney-Florida, regarding the closure of service orders. Privileged on the basis of attorney-client communication and attorney work product.

Each of these documents was intended to be and has been kept confidential. Thus, each is privileged from discovery.

5. Public Counsel next takes issue with Southern Bell's position that the definitions of the terms "document" and "documents" are overly broad and objectionable. However, Public Counsel fails to mention that, despite making this objection, with the exception of the four requests substantively at issue as a result of Public Counsel's Motion to Compel, the Company either produced or provided access to all of the documents which it in good faith found to be responsive to public Counsel's requests contained in its Thirty-Fourth Request for Production of Documents. Consequently, this portion of Public Counsel's motion is moot. In Order No. PSC-93-0071-PCO-TL, issued January 15, 1993, addressing the identical issue, Commissioner Clark reached a similar conclusion, finding that Southern Bell had represented that it had made a good faith effort to produce all documents meeting the definition provided by Public Counsel. Order, at p.

4. The same is true in this case. Notwithstanding the breadth of the definition, Southern Bell hereby states that it has undertaken a diligent, good faith effort to produce all documents falling within the scope of Public Counsel's discovery requests. Further, it should be noted that, in its current pleadings, Southern Bell makes it abundantly clear that it has conducted a good faith reasonable search.

6. Public Counsel next takes issue with Southern Bell's withholding of responsive documents on the basis of attorney-client privilege and attorney work product. Public Counsel first implies that, because an objection concerning privilege was not made when Southern Bell initially responded to Public Counsel's Thirty-Fourth Request for Production of Documents, the privilege has somehow been waived. There is no basis for such an allegation. Section 90.507 of the Florida Statutes clearly provides that disclosure of the privileged information must occur before a waiver argument can even be attempted. Thus, in Truly Nolen Exterminating v. Thomasson, 554 So.2d 5 (Fla. App. 3rd Dist. 1989), the court stated that "a failure to assert a work-product privilege at the earliest opportunity, in response to a discovery motion, does not constitute a waiver of the privilege so long as the privilege is asserted by a pleading, to the trial court, before there has been an actual disclosure of the information alleged to be protected." See also Eastern Airlines, Inc. v. Gellert, 431 So.2d 329 (Fla. 3d DCA 1983) and Insurance Company of North America v. Noya, 398 So.2d 836 (Fla. 5th DCA

1981). Thus, Public Counsel's assertion that Southern Bell's failure to object on the basis of privilege in its initial response constitutes a waiver is simply incorrect.

7. With regard to the privileged status of the documents in question, communications between attorneys and their clients are shielded from discovery under Rule 1.280(b)(i) of the Florida Rules of Civil Procedure. This rule is codified at Section 90-502, Fla. Stat. The attorney-client privilege applies to corporations. Upjohn Co. v. United States, 449 U.S. 383, (1981). The elements of the attorney-client privilege require that (1) the communication must be made in confidence, (2) by one who is a client, (3) seeking legal advice from an attorney, and (4) the communication is requested to be kept confidential and such privilege has not been waived. International Tel. & Tel. Corp. v. United Tel. Co., 60 F.R.D. 177, 184-85 (M.D.Fla. 1973).

8. The communications in issue in this matter involve legal advice sought from and rendered by counsel. The communications were made in confidence and should be protected from disclosure. As shown by the attached affidavit of Stephen M. Klimacek, the reports at issue were the results of internal investigations conducted by the Company's Legal Department. The investigations were performed by the Company's Legal Department at the request of the Company's management in order to provide the Legal Department with the information necessary to render legal counsel to the Company. The results were relayed in confidence to the investigator's superiors in the Legal

Department and limited distribution was made to members of the Legal Department and to the Ombudsman. In accordance with such limited distribution, the information was confidential and properly subject to a claim of privilege. Affiliated of Florida, Inc. v. U-Need Sundries, Inc., 397 So.2d 764 (Fla. 2d DCA 1981).

9. Public Counsel argues that the reports at issue are routine business records prepared in the ordinary course of business and thus not subject to the attorney-client privilege. Motion to Compel at 5-7. Public Counsel is correct in its assertion that various internal reports are routinely performed on various aspects of the Company's business. However, as the affidavit of Mr. Klimacek shows, these particular investigations were specifically requested by the Ombudsman and would not have been performed by the Legal Department without that direct request.

10. The Company sought legal advice from its counsel regarding the validity of certain claims made to the Company ombudsman. For the Legal Department to be able to provide that advice it needed to investigate the claims. The investigative reports are information which is protected from discovery by the attorney-client privilege and, as such, should not be released to Public Counsel or any other person. Public Counsel's Motion to Compel should therefore be denied.

11. Further, the case relied upon by Public Counsel in support of the contrary conclusion, Soeder v. General Dynamics Corp., 90 F.R.D. 253 (U.S.D.C. Nov. 1980), is factually

distinguishable on its face. Public Counsel cites to Soeder to show that an in-house report that is both prepared in anticipation of litigation, but also motivated by the Company's goals of improving its products, protecting future passengers and promoting its economic interests is not necessarily protected by the work product doctrine. Motion to Compel at 5-6. Soeder, however, is inapplicable here for two reasons.

12. First, as has been set forth by Southern Bell in its previous responses to Public Counsel's Motions to Compel, the reports at issue in Soeder were routinely prepared in every instance in which an incident incurred. However, the investigations in question were not conducted for the purpose of trouble shooting Southern Bell's operations. The investigations were not, as in Soeder, routinely performed reports that simply had the ancillary purpose of providing the basis for a legal opinion.

13. Second, Soeder is inapplicable for a reason that is manifest. The Soeder decision was based in large part on the fact that the Company's "motivation" in generating the report was, at least in part, to further business interests rather than to obtain legal opinions. In other words, the issue was resolved by looking to the Company's subjective motivation for preparing the report. It is clear in Southern Bell's case that Southern Bell was motivated to have the legal investigations prepared in order to aid Southern Bell's lawyers in the rendering of legal opinions. Public Counsel, nevertheless, ignores this fact and

indulges in the fiction that the investigations were performed for routine business purposes. Interestingly enough, it is wholly apparent that that is not the case. Out of the almost 100 pages of documents provided to Public Counsel as responsive, only documents concerning two complaints were withheld on the basis of privilege. It is patently obvious that a legal department investigation is not performed on every complaint made to the Ombudsman. See Affidavit of Stephen M. Klimacek. Thus, Public Counsel's assertion that the reports prepared by the legal department are routine has no basis in fact.

14. In the alternative, Southern Bell submits that the investigative reports at issue constitute the work product of attorneys and agents for Southern Bell which should be shielded from discovery under Rule 1.280(b)(1), Florida Rules of Civil Procedure. See also, Karch v. MacKay, 453 So.2d 452, 453 (Fla. 4th D.C.A. 1984). In Surf Drugs, Inc. v. Vermette, 236 So.2d 108, 113 (Fla. 1970), the Supreme Court of Florida held attorney work product to include: interviews, statements, memoranda, correspondence, briefs, personal impressions, and investigative materials prepared in anticipation of litigation by an attorney or an employee investigator at the direction of a party. Hickman v. Taylor, 329 U.S. 495, 67 S.Ct 385, 91 L.Ed. 451 (1947). Litigation need only be anticipated; it need not be pending. See Florida Cypress Gardens, Inc. v. Murphy, 471 So.2d 203 (Fla. 2nd D.C.A. 1985) and Winn Dixie Stores, Inc. v. Nakutis, 435 So.2d 307 (Fla. 5th D.C.A. 1983). It does not matter whether the

product is the creation of a party, agent, or attorney where the subject matter of the discovery is the work product of the adverse party. Atlantic Coast Line R.R. v. Allen, 40 So.2d 115 (Fla. 1949).

15. In Upjohn, the Supreme Court stated in dictum that even if the subject memoranda memorializing employee statements produced by attorneys were not protected by the attorney-client privilege, they should be protected by the work-product privilege. "To the extent they do not reveal communications, they reveal the attorney's mental processes in evaluating the communications." Upjohn, S.Ct. at p. 688. Therefore, the Court went on to state the applicable standard: "As rule 26 and Hickman make clear, such work product cannot be disclosed simply on a showing of substantial need and inability to obtain the equivalent without undue hardship." Id.

16. Federal courts have gone even further in protecting opinion work product, i.e., that which consists of "mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the litigation." Rule 26(b)(2), Federal Rules of Civil Procedure. This provision of Rule 26 has been interpreted to mean that "'opinion' work product is absolutely immune from discovery. U.S. v. Pepper's Steel & Alloys, Inc., 132 FRD 695, 698 (S.D. Fla. 1990) (emphasis added). In this regard, the investigative reports are more than just factual. They contain the attorney's mental impressions, as indicated by the Affidavit of Stephen M.

Klimacek. For all these reasons, Southern Bell respectfully asserts that the investigative reports in dispute are protected from discovery and Public Counsel's Motion should be denied.

17. Finally, Public Counsel takes issue with Southern Bell's assertion that, under a Motion for Temporary Protective Order, the documents provided to Public Counsel by Southern Bell are proprietary and confidential. First, Public Counsel's action of opposing Southern Bell's Motion for Temporary Protective Order is, in itself, a subversion of the process that is clearly contemplated in the applicable rule. Rule 25-22.006(5)(c), Florida Administrative Code, reads in its entirety as follows:

> (c) When a utility or other person agrees to allow Public Counsel to inspect or take possession of utility information for the purpose of determining what information is to be used in a proceeding before the Commission, the utility may request a temporary protective order exempting the information from Section 119.07(1), F.S. If the information is to be used in a proceeding before the Commission, then the utility must file a specific request for a protective order under paragraph (a) above. If the information is not to be used in a proceeding before the Commission, then Public Counsel shall return the information to the utility in accordance with the record retention requirements of the Department of State.

18. On its face the rule is crystal clear as to what it requires. Public Counsel is to request information for the purpose of inspecting it to determine if it intends to use it. If Public Counsel notifies the utility providing the information that it intends to use it in a hearing, then -- and only then -- is it appropriate for the party to make a more detailed request for confidentiality in the form of a Motion for Permanent

Protective Order. The rule provides just as clearly that if Public Counsel elects not to use the information, then it must return the information. The obvious purpose of this rule is to allow Public Counsel the opportunity to inspect information while the party providing that information maintains an essentially unchallenged claim of confidentiality. If Public Counsel elects to use the information, then only at this point will the utility and Public Counsel need to argue the issue of whether confidential treatment is appropriate.

19. Instead of following the clear mandates of Rule 25-22.006(5)(c), Public Counsel has engaged in a clear abuse of the purpose of this rule. Specifically, Public Counsel has not informed Southern Bell of any intent to use the information at the hearing in this matter. Yet, Public Counsel is seeking to have the Commission declare this information public, even though it may ultimately elect not to use the information at the hearing. This rule was clearly not intended to be utilized by Public Counsel as a premature attempt to force the issue of proper classification for information obtained in discovery. Public Counsel's effort is thus improper and it should not be allowed by this Commission.

20. With regard to the substance of Public Counsel's assertions that the material is not proprietary and confidential, Southern Bell contends that this information is clearly confidential and proprietary under Florida Statutes, Section 364.183(3)(3)(f).

21. In this particular case, there is a compelling reason why these documents should be treated as confidential. That is the effect a contrary ruling would have on the continued viability of BellSouth's corporate ombudsman's office. The BellSouth Office of Vice-President-Corporate Responsibility and Compliance is constituted as an independent and neutral entity within BellSouth Corporation and operates under an express promise to employees of the corporation that communications between employees and members of the office will remain strictly confidential.[1] Moreover, the office operates to assure such confidentiality by inter alia, notifying callers to the ethics hotline that they are entitled to confidentiality of their communications and protection of their individual identities if so desired. Even Public Counsel, in its Motion, acknowledge that the hotline is "a means whereby employees may confidentially report on activities..." Motion to Compel at 6, emphasis added.

22. A Commission order compelling disclosure of the information communicated to BellSouth's ombudsman would destroy the reputation of that office by invading the principle of confidentiality that is the cornerstone of the office and which is absolutely necessary for its effective performance. It is the function of the ombudsman to receive, investigate and remedy workplace problems in a strictly confidential atmosphere.

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[1] Typical of most, if not all, other corporate ombudsman offices, BellSouth advertises to its employees that their communications will be kept confidential. In fact, the Code of Ethics of the Corporate Ombudsman Association expressly provides for the confidentiality of such communications.

Without this confidentiality, the office would be just one more non-confidential opportunity for employees to air disputes. The ombudsman's office provides employees an opportunity for complete and unedited disclosure without the fear of retaliation that may exist in other arenas. Wholesale compelled disclosure of this information would result in a chilling effect on internal communications vital to the goals of continuous corporate improvement and the internal policing of the Company's affairs. Such a result would be contrary to the public interest. It would also harm the Company's operations, a test under Florida Statutes, Section 364.183(3). This Commission has the obligation and responsibility to balance Public Counsel's purported need for this discovery against the overriding public policy supporting ombudsman programs and the extremely sensitive and important role they play for the corporation and society as a whole.[2] This Commission also has the discretion to find such documents confidential, as stated by the Court in Southern Bell Tel. & Tel. Co. v. Beard, 597 So.2d 873, 877, at footnote 5 (Fla. 1st DCA 1992).

23. If a program promises confidentiality, and later it is found that such confidentiality does not exist, or that information discussed purportedly in confidence may be disclosed in legal proceedings, such employees are unlikely to trust the

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[2] The resolution of problems informally is more desirable than other more formal procedures and can mitigate the chances for costly complaints, grievances and litigation regarding such issues.

system and will abandon it.[3] If this were to occur, the ironic result would be that information or communications that could be conveyed and used as a catalyst for positive improvement within the Company will not be communicated, and this vehicle for information and timely responses to a broad array of workplace problems and issues will be disabled.

24. Even if the Commission were to find that the documents as a whole are not protected from disclosure, Section 364.183(f), Florida Statutes would protect the names of employees. That section provides that "proprietary confidential business information" includes "employee personnel information unrelated to compensation, duties, qualifications, or responsibilities."

25. The four areas of employee personnel information that are not, per se, confidential pursuant to Section 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

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[3] In some respects, employees may reasonably believe that such communications are tantamount to being privileged. In fact, in other jurisdictions, several cases have applied the Federal Rules of Evidence and have found that confidential communications made to company ombudsmen are protected from disclosure. Kientzy v. McDonnell Douglas Corporation, 133 FRD 570 (ED Mo. 1991); Monoranjan Roy v. United Technologies Corp., Civil Cause No. H89-680 (JAC) (D. Conn. 1990). These cases are instructive and discuss the four factors to be considered in determining whether to grant or deny discovery of ombudsman materials. The four factors are: (1) whether the parties believed that the communications were confidential; (2) the need for confidentiality; (3) whether society would recognize the value of the confidential relationship; and (4) a comparison of the benefits of disclosure compared to the corresponding injury that might result from such disclosure.

contained in Webster's Seventh New Collegiate Dictionary demonstrate that the names of employees in associated with reports of possible misconduct do not fit any of the exceptions and thus are, per se, confidential under Section 364.183(f), Florida Statutes.

26. A review of these terms, in the context of Section 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 names of the employees in the information provided to Public Counsel is not encompassed within any of the concepts or definitions set forth above.

27. The names of the employees who have called the ombudsman's office or the names of employees who have been accused of wrongdoing (sometimes by an anonymous caller) do not relate to their compensation, duties, qualifications, or responsibilities. To the contrary, the name of an employee who has called the ombudsman or the name of an accused employee is a matter, the disclosure of which would be highly damaging to the reputation of the employee in the community at large. Certainly, Section 364.183, Florida Statutes, was not intended to require such disclosure.

28. If this Commission were to interpret Section 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. The Company must avoid any construction of a statute that would impair, nullify or defeat the result intended. McClellan v. State Farm Mutual Auto Ins. Co., 366 So.2d 811 (4th D.C.A. 1979). Therefore, the exceptions

to Section 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.

29. This narrow application of the exceptions to Section 364.183 is not only consistent with the normal rules of statutory construction, it is supported by the express provisions of Chapter 119, Florida Statutes. 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.[4]

30. Inasmuch as this docket has already resulted in widespread publicity as to Southern Bell, it is probable that the

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[4] 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 Section 364.183(3)(3)(f).

public disclosure of the identities of these employees might also be widely published.

31. At the same time, the unnecessary public disclosure of the names of employees who allegedly engaged in misconduct or the names of the employees who reported them would have the potential effect of subjecting them to public opprobrium and scorn. In other words, on the basis of nothing more than unproven allegations, these particular employees would be publicly identified and subjected to public ridicule. Clearly, the public disclosure of the identities of these employees 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.

WHEREFORE, Southern Bell respectfully urges the Prehearing Officer to deny Public Counsel's Motion to Compel, consistent with the arguments made above.

Respectfully submitted this 23rd day of August, 1993.

SOUTHERN BELL TELEPHONE
AND TELEGRAPH COMPANY

Harris R. Anthony (JEB)
HARRIS R. ANTHONY
c/o Marshall M. Crier, III
400 - 150 South Monroe Street
Tallahassee, Florida 32301
(305) 530-5555

R. Douglas Lackey (JEB)
R. DOUGLAS LACKEY
NANCY B. WHITE
4300 Southern Bell Center

675 W. Peachtree Street, NE
Atlanta, Georgia 30375
(404) 529-5387

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Comprehensive Review of the Revenue Requirements and Rate Stabilization Plan of Southern Bell Telephone and Telegraph Company	)	Docket No. 920260-TL
	)	Filed: August 23, 1993

STATE OF FLORIDA)
)
COUNTY OF DADE)

AFFIDAVIT OF STEPHEN M. KLIMACEK

1.

Before me, the undersigned authority, personally appeared Stephen M. Klimacek, who stated that he is currently an Attorney with Southern Bell's Florida Legal Department ("Legal"), and further states the following:

2.

On February 26, 1993, the Legal Department was requested to investigate a complaint referred to the Legal Department by the Southern Bell Ombudsman's office, as well as by the President of the State of Florida. The purpose of the investigation was to gather information necessary to render legal advice to the Company in anticipation of any litigation arising from the matters alleged.

3.

In April of 1993, the Legal Department was requested to investigate two separate complaints referred to the Legal Department by the Southern Bell Ombudsman's office. The purpose of the investigation was to gather information necessary to render legal advice to the Company with all applicable Florida

Statutes, in anticipation of any litigation arising from the matters alleged.

4.

The investigations of these complaints were performed under the supervision of the undersigned, with some assistance by the Security Department.

5.

The investigation reports were forwarded to my superior in the Legal Department on March 3, 1993 and May 28, 1993, respectively. Each report contained a summary of the steps undertaken in the investigation, as well as a conclusion containing my thoughts and opinions concerning the investigation.

6.

Distribution of these reports was limited to appropriate members of the Legal Department and to the Ombudsman. All copies are marked and treated as privileged, confidential, and subject to the attorney-client privilege and attorney work product doctrine.

7.

The Legal Department rarely conducts an investigation of complaints made to the ombudsman.

8.

Further, affiant sayeth not.

Dated this 23rd day of August, 1993.

Stephen M. Klimacek

Sworn to and subscribed
before me this 23rd
day of August, 1993.

Victoria F. Woods

Notary Public VICTORIA F. WOODS

My Commission Expires:
NOTARY PUBLIC STATE OF FLORIDA
MY COMMISSION EXP. AUG.30,1994
BONDED THRU GENERAL INS. UND.

Commission
No. CC043611