

ORIGINAL
FILE COPY

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October 21, 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. 910163-TL 920260-TL

Dear Mr. Tribble:

Enclosed please find an original and fifteen copies of Southern Bell Telephone and Telegraph Company's Request for Confidential Classification, 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 (hw)
J. Phillip Carver

Enclosures

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

A BELLSOUTH Company

DOCUMENT NUMBER-DATE

11337 OCT 21 83

11337-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

ORIGINAL
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In re: Petition on behalf of)
Citizens of the State of Florida)
to initiate investigation into)
integrity of Southern Bell)
Telephone and Telegraph Company's)
repair service activities and)
reports.)

Docket No. 910163-TL

Filed: October 21, 1993

**SOUTHERN BELL TELEPHONE AND TELEGRAPH COMPANY'S
REQUEST FOR CONFIDENTIAL CLASSIFICATION**

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 Classification and Permanent Protective Order and states as grounds in support thereof the following:

1. The Office of Public Counsel issued a Notice of Deposition in the above-referenced docket in order to take the depositions of numerous Southern Bell employees on July 27, 1992 through July 31, 1992 in Miami, Riviera Beach, Orlando, Gainesville, Jacksonville and Fort Lauderdale, Florida. The depositions of the following Southern Bell employees that were taken pursuant to this notice have been transcribed and were received by Southern Bell on September 29, 1993: Florida Bell Green, James T. Febus, William David Morris, III, Carl J. Kingcade, Richard Bird, Robert J. Connor, Dorothy E. Hall, Jose Rugama, Marisela Soto, Alexander B. Moir, Georgina Maestri, Geoffrey Liebrich, Sandra Terry, Robert Bernard Welt, Cheryl Yvette Johnson, Lawrence J. Long, Christina Haney, Maria Munoz,

Rodolfo E. Leon, Joyce Hamman, Betty J. Malone, Kathleen A. Reed, Althea Nichols, James W. Harris, James H. Thomas, Dennis Slattery, Dennis William Marshall, Everett Bruce Hensey, Clarence Edwards Hankerson, and Georgia Mikle. During these depositions numerous questions were asked and answered that entailed the disclosure of information regarding Southern Bell employees that may relate to the matters at issue in this docket. Some of this employee-related information is entitled to confidential classification.

2. Southern Bell filed on September 30, 1993, its Notice of Intent to Seek Confidential Classification of the information contained in these depositions. Accordingly, Southern Bell's Request for Confidential Classification is due under Rule 25-22.006(3)(a), Florida Administrative Code, on or before October 21, 1993.

3. Southern Bell has filed as Attachment "A" a listing of the specific pages and lines of each deposition that contain proprietary confidential information, which has been correlated so that the page and line are "identified with the specific justification proffered in support of the classification of such material". Rule 25-22.006(4)(c). Southern Bell has also filed a highlighted version of the depositions in a sealed container, which is marked as Attachment "B." Finally, Southern Bell has filed two redacted copies of the depositions as Attachment "C."

4. Southern Bell seeks confidential treatment of the employee information described below. This information is

clearly confidential and proprietary under Florida Statutes, Section 364.183(f), which provides that "proprietary confidential business information" includes "employee personnel information unrelated to compensation, duties, qualifications, or responsibilities."

5. Specifically, this employee-related information arose in three different contexts: One, in all except one of the depositions identified above, Public Counsel requested that the employee deposed state his or her home address. This information was provided in each instance in response to Public Counsel's request. This information appears in each of the depositions listed above except the deposition of Maria Munoz at the first page of the respective deposition that is identified as confidential on Attachment "A" to this motion. This information should be treated as confidential because it is employee information that is obviously unrelated to "compensation, duties, qualifications or responsibilities".

6. Two, in several of the above-referenced depositions, the deponent identifies specific Southern Bell employees by name and alleges that these employees may have engaged in some improper activity. In other instances, questions asked by Public Counsel appear to incorporate into the question the assumption that certain named employees have engaged in some improper activity. Both of these types of unsupported allegations as to specific employees should also be treated as confidential pursuant to Section 364.183(f).

7. Three, in several of the above-referenced depositions, numerous questions were asked and answered that either required the disclosure of the names of certain Southern Bell employees who received some form of discipline or included facts that would allow the identification of disciplined employees. Southern Bell seeks confidential treatment only of the specific identities of the employees disciplined. This information is clearly confidential and proprietary under Florida Statutes, § 364.183(f).

8. 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 both the names of employees who were disciplined and the names of employees who allegedly acted improperly do not fit any of these exceptions and are, therefore, entitled to confidential classification under § 364.183(f), Florida Statutes.

9. 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.

10. Obviously, the allegation that a particular employee engaged in improper acts has nothing to do with the employee's qualifications or compensation. Likewise, these allegations are not related in a strict sense to the employee's responsibilities or with the particular employee's duties. Conceivably, these allegations of wrongdoing could relate to a very broad definition of the employee's responsibilities or duties. This interpretation, however, would require that "duties" or "responsibilities" be taken to describe not only the specific parameters of the employee's job, but also any act, whether authorized or not, that the employee does while on the job. Southern Bell asserts that this broad construction is inconsistent with both the exemption from public disclosure that is contained in § 364.183(f) and the legislature's intended application of the public disclosure requirements of Chapter 119.

11. 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, or duties, 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. Therefore, the exceptions to § 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.

12. This narrow application of the exceptions to § 364.183 is not only consistent with the normal rules of statutory construction, it is supported by the express provisions of Chapter 119. 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.¹

13. Inasmuch as this docket has already 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 unnecessary where, as here, the public will have access to all information relating to these allegedly improper acts, except for the names of the employees allegedly involved.

14. At the same time, the unnecessary public disclosure of the names of employees who allegedly engaged in misconduct would have the potential effect of subjecting them to public opprobrium and scorn at a point in this docket at which there has been no finding that any wrongful conduct actually occurred. In other words, on the basis of nothing more than unproven allegations, these particular employees would be publicly identified and subjected to public ridicule even though it may be subsequently determined that they did nothing wrong. Clearly, the public disclosure of the identities of these employees at this juncture and under these circumstances is antithetical to the legislative

¹ 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 § 364.183(f).

intent to apply Chapter 119 in a way that will avoid the unwarranted disclosure of defamatory and damaging information of a personal nature.

15. The same factors apply to require the conclusion that the identities of disciplined employees is entitled to confidentiality pursuant to § 364.183(f), Florida Statutes. Further, in the case of information relating to employee discipline, there is an equally compelling reason that this information 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 result from disclosure of the subject information is great.

16. 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, appropriately, and that it would result in discipline 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.

17. 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 problems 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 future problems diminishes significantly.

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

19. 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.

20. This Commission can fully consider all issue pertinent to this docket, based on the information that Southern Bell has provided, which includes the names of employees disciplined. It is only the public disclosure of these employees' names that Southern Bell seeks to prevent. 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 number of persons disciplined. There simply is nothing to be gained by the additional, 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.

21. This Commission should rule that the names of these employees shall not be publicly disclosed because this disclosure would require an inappropriately broad construction of the four exceptions to the grant of confidentiality for personnel information that is set forth in § 364.183(f).

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

Respectfully submitted,

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CERTIFICATE OF SERVICE

**Docket No. 920260-TL
Docket No. 910163-TL
Docket No. 910727-TL
Docket No. 900960-TL**

I HEREBY CERTIFY that a copy of the foregoing has been
furnished by United States Mail this 21st day of Oct, 1993
to:

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J. Phillip Carva (Pw)

FPSC DOCKET 910163-TL
SOUTHERN BELL TELEPHONE AND TELEGRAPH COMPANY
REQUEST FOR CONFIDENTIAL CLASSIFICATION

TRANSCRIPTS OF JULY 27 - 31, 1992 DEPOSITIONS OF
GREEN, FEBUS, MORRIS, KINGCADE, BIRD, CONNOR, HALL, RUGAMA,
SOTO, MOIR, MAESTRI, LIEBRICH, TERRY, WELT, JOHNSON, LONG,
HANEY, MUNOZ, LEON, HAMMAN, MALONE, REED, NICHOLS, HARRIS,
THOMAS, SLATTERY, MARSHALL, HENSEY, HANKERSON AND MIKLE

JUSTIFICATION FOR CONFIDENTIALITY REQUEST

1. This information is employee personnel information unrelated to compensation, duties, qualifications and responsibilities. As such, this information is confidential business information pursuant to Section 364.183, Florida Statutes, and is exempt from the requirement of public disclosure of Section 119.07, 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>REASON PROPRIETARY</u>	
GREEN	8	23	1	
	9	13-17	1	
	10	1-3, 16-25	1	
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	12	2-25	1	
	13	1-25	1	
	14	1-25	1	
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	29	21-23	1	
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13		14, 25	1	
14		16, 24	1	
15		5, 10, 11	1	
MORRIS	8	2, 4	1	
	16	25	1	
	17	3-5, 7-23	1	
	18	7-15, 18	1	

DOCUMENT NUMBER-DATE
11387 OCT 21 82
FPSC-RECORDS/REPORTING

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<u>DEPONENT</u>	<u>PAGE NO.</u>	<u>LINE NOS.</u>	<u>REASON PROPRIETARY</u>
KINGCADE	7	12	1
	30	5	1
	38	8-19, 23-25	1
	39	1-5	1
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	45	10-17, 19-22, 25	1
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	49	18	1
BIRD	12	17, 20, 21, 22	1
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	26	5-7, 14, 15, 18-23	1
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17		7, 11, 12	1
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HALL		6	19, 20
RUGAMA	7	15, 17, 19	1
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	16	2-23, 25	1
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THOMAS, SLATTERY, MARSHALL, HENSEY, HANKERSON AND MIKLE

<u>DEPONENT</u>	<u>PAGE NO.</u>	<u>LINE NOS.</u>	<u>REASON PROPRIETARY</u>
SOTO	7	10, 11	1
	14	8-23	1
	15	1-24	1
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	20	1-6	1
	29	25	1
	30	1	1
	38	7-14	1
MOIR	9	5, 9	1
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	26	3-14	1
	27	17-19, 20	1
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	32	2, 3	1

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<u>DEPONENT</u>	<u>PAGE NO.</u>	<u>LINE NOS.</u>	<u>REASON PROPRIETARY</u>	
WELT	6	19,20	1	
	35	18-25	1	
	36	1-8,15,16,23-25	1	
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<u>DEPONENT</u>	<u>PAGE NO.</u>	<u>LINE NOS.</u>	<u>REASON PROPRIETARY</u>
MUNOZ	14	12-17	1
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	15	4-6, 22-24	1
	25	25	1
26	1-11, 18-25	1	

FPSC DOCKET 910163-TL
SOUTHERN BELL TELEPHONE AND TELEGRAPH COMPANY
REQUEST FOR CONFIDENTIAL CLASSIFICATION

TRANSCRIPTS OF JULY 27 - 31, 1992 DEPOSITIONS OF
GREEN, FEBUS, MORRIS, KINGCADE, BIRD, CONNOR, HALL, RUGAMA,
SOTO, MOIR, MAESTRI, LIEBRICH, TERRY, WELT, JOHNSON, LONG,
HANEY, MUNOZ, LEON, HAMMAN, MALONE, REED, NICHOLS, HARRIS,
THOMAS, SLATTERY, MARSHALL, HENSEY, HANKERSON AND MIKLE

<u>DEPONENT</u>	<u>PAGE NO.</u>	<u>LINE NOS.</u>	<u>REASON PROPRIETARY</u>	
HARRIS	6	23	1	
	11	6-25	1	
	12	1-16, 18-24	1	
	13	1-9, 11-24	1	
	14	1-3, 7, 8, 21, 22	1	
	15	3, 4,	1	
	32	23-25	1	
	33	1, 2	1	
	34	12-15, 20-23	1	
	36	1, 2	1	
	THOMAS	7	13, 14	1
		15	7-19, 25	1
16		1-8, 11-18, 20-22	1	
17		10-12, 15-18, 22-25	1	
18		1, 13-15, 17, 18, 21, 24, 25	1	
19		1	1	
SLATTERY		8	1	1
	13	11-23	1	
	14	1-13, 21-23, 25	1	
	15	1-3, 5, 6, 8, 9, 11, 12, 14-25	1	
	16	1-7, 13-16, 17	1	
	20	18-20, 22-24	1	
	21	4, 5, 7-15, 23-25	1	
	22	1-4, 16, 17, 19, 20-22, 23-25	1	
	23	3-5	1	
	24	10, 11, 23-25	1	
	25	1-4, 8-12, 14-17, 20-25	1	
	26	1, 3, 4, 6-18, 21, 22, 24, 25	1	
	27	1-3, 25	1	
	28	1-10	1	
	47	9-11	1	
	49	19-25	1	
	50	1, 2	1	

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<u>DEPONENT</u>	<u>PAGE NO.</u>	<u>LINE NOS.</u>	<u>REASON PROPRIETARY</u>
MARSHALL	7	20,21	1
	15	8-25	1
	16	1-7,9-13,25	1
	17	1-25	1
	18	1-25	1
	19	1-4,20-22,24	1
	20	1,5,6,14-17,21-23	1
	22	16,19-21	1
	23	1,2,4-6,8,10-12	1
	21	6,7,21,23-25	1
	43	24,25	1
	44	1,7,8,10,11	1
HENSEY	7	1,4	1
	15	10-19	1
HANKERSON	6	7,9	1
	10	20-25	1
	11	1-25	1
	12	3,4,12-25	1
	13	8-10,20,21-25	1
	14	1-6	1
	28	13-23	1
MIKLE	8	18, 19	1