

NANCY B. WHITE
General Attorney

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

ORIGINAL
FILE COPY

December 1, 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. 900960-TL

Dear Mr. Tribble:

Enclosed are an original and fifteen copies of Southern Bell Telephone and Telegraph Company's Request for Confidential Classification and Motion for a Permanent Protective Order. Please file these documents 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

Enclosures

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

RECEIVED & FILED

dd
FPSC-BUREAU OF RECORDS

DOCUMENT NUMBER-DATE

12872 DEC-1 83

FPSC-RECORDS/REPORTING

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 1st day of December, 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

Kenneth A. Hoffman
Messer, Vickers, Caparello,
Madsen, Lewis & Metz, PA
Post Office Box 1876
Tallahassee, FL 32302
atty for FPTA

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

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.
780 Johnson Ferry Road
Suite 700
Atlanta, Georgia 30342

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

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 710, Barnett Bank Bldg.
315 South Calhoun Street
Tallahassee, FL 32302

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

Angela Green
Division of Legal Services
Florida Public Svc. Commission
101 East Gaines Street
Tallahassee, FL 32399-0863

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

Stan Greer
Division of Communications
Florida Public Svc. Commission
101 East Gaines Street
Tallahassee, FL 32399-0863

Nancy B. White

FILE COPY

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Show Cause proceeding)	Docket No. 900960-TL
against Southern Bell Telephone)	
and Telegraph Company for)	Filed: December 1, 1993
misbilling customers)	
)	

SOUTHERN BELL TELEPHONE AND TELEGRAPH COMPANY'S
 REQUEST FOR CONFIDENTIAL CLASSIFICATION
AND MOTION FOR A PERMANENT PROTECTIVE ORDER

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 Rules 1.280(c), Florida Rules of Civil Procedure, and files its Request for Confidential Classification and Motion for a Permanent Protective Order regarding portions of and exhibits attached to the testimony of R. Earl Poucher, witness for the Office of Public Counsel ("Public Counsel") filed on November 8, 1993 in the above-captioned docket. In support of its Request and Motion, Southern Bell shows the following:

1. During the course of this proceeding, Public Counsel has conducted extensive discovery of Southern Bell. Documents have been delivered to Public Counsel in response to Public Counsel's requests for production of documents and interrogatories. In addition, numerous depositions have been taken by Public Counsel. These documents were the subject of Motions for a Temporary Protective Order filed herein and consequently are currently treated by Public Counsel as confidential materials.

2. Public Counsel has used certain documents and information in this proceeding as part of the testimony and

DOCUMENT NUMBER-DATE

12872 DEC-18

FPSC-RECORDS/REPORTING

exhibits of Public Counsel's witness, R. Earl Poucher. Therefore, Southern Bell herewith files its Request for Confidential Classification and its Motion for Permanent Protective Order for the information contained in the testimony and exhibits of the witness for Public Counsel. Southern Bell has appended to this Request for Confidential Classification as Attachment "A" a listing of the location in the documents of the information designated by Southern Bell as confidential, together with a statement indicating why the material should be treated as confidential proprietary business information.

3. Appended hereto in an envelope designated as Attachment "B" are two copies of the documents with the confidential information deleted. Appended hereto in an envelope designated as Attachment "C" is a copy of the documents with the proprietary information highlighted.

4. The information deemed to be confidential by Southern Bell and identified in Attachment "A" contains several categories of proprietary information, each of which will be discussed herein.

5. The first category of information sought to be protected, concerns information contained in internal audit reports and workpapers thereof performed by Southern Bell auditors. Section 364.183(3)(b) exempts from the public disclosure requirements of Section 110.07 all "internal auditing controls and reports of internal auditors." Thus, under the

express provisions of Section 364.183, this material is entitled to the confidential treatment sought herein.

6. The second category of information sought to be protected concerns certain employee information, such as names, social security numbers, home addresses and telephone numbers, business addresses and telephone numbers. In addition, this information contains an identification of specific employees by name, together with allegations that these employees may have engaged in some improper activity. 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."

7. 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 contained in Webster's Seventh New Collegiate Dictionary demonstrate that the employee information discussed herein does not fit any of these exceptions and are, therefore, entitled to confidential classification under Section 364.183(f), Florida Statutes.

8. 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 follows:

- 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.

9. 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 Section 364.183(f) and the legislature's intended application of the public disclosure requirements of Chapter 119.

10. 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, 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 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 employee's responsibilities and duties.

11. 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. 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

12. 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.

13. 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,

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 Section 364.183(f).

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

14. This Commission should rule that the names of specific employees who allegedly engaged in some improper conduct, as well as the remaining employee specific information, 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 Section 364.183(f), and because the disclosure of this information would have the probable effect of subjecting possibly innocent employees to public ridicule on the basis of nothing more than unproven allegations.

15. The third category of information sought to be protected concerns customer-specific information, including names, addresses, and telephone numbers of subscribers. This information is entitled to confidential classification, and the Commission has consistently protected such customer-specific information from public disclosure. Moreover, Section 119.07(3)(w) specifically provides that information such as customers' names, addresses, and telephone numbers are exempt

from the inspection and examination provisions of the Public Record Act.

16. The fourth category of information sought to be protected contains information concerning inside wire. This information contains competitively sensitive information relating to the unregulated business of inside wire. As such, the information contained therein is proprietary confidential business information.

17. The inside wire business is a competitive business, and companies participating in that market do not typically share their sales and marketing information with their competitors. Section 364.183(e), Florida Statutes, specifically includes "information relating to competitive interests, the disclosure of which would impair the competitive business of the provider of the information" as proprietary confidential business information. Knowledge of this type could help a competitor develop sales and marketing strategies in certain markets subject to the greatest competition.

18. The final category of information sought to be protected concerns a Company commissioned study and related information analyzing and assessing key aspects of the Company's internal business practices and relationships and internal training materials purchased from an outside vendor. This information is included as proprietary confidential business information under Section 364.183(3), (3)(a), (3)(d) and (3)(e), Florida Statutes and Rule 25-22.006, Florida Administrative Code.

19. A Commission order compelling disclosure of the information communicated in this study would invade the principle of confidentiality that was its cornerstone and which was absolutely necessary for its effectiveness. 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. This Commission has the obligation and responsibility to balance the need for disclosure against the overriding public policy supporting corporate improvement.

20. There was a justifiable expectation of strict confidentiality of communications between these employees questioned and the interviewers hired by the Company. Any public disclosure of the statement or other communications received by the interviewers would send the extremely destructive signal to Company employees that "confidential" does not really mean confidential. This would likely render the future studies far less effective.

21. 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 system and will abandon it. 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.

22. The information sought to be protected herein is analogous to that protected in Order No. PSC-93-1689-CFO-TL, issued on November 22, 1993.

23. In accordance with Rule 25-22.006, Florida Administrative Code, the information for which confidential treatment is sought is intended to be and is treated by the Company as private and has not been disclosed on a non-confidential basis.

WHEREFORE, Southern Bell Telephone and Telegraph Company moves the Prehearing Officer to enter an Order declaring the information described above, and contained in the indicated portions of the attached exhibits, to be confidential, proprietary business information and thus not subject to public disclosure.

Respectfully submitted this 1st day of December, 1993.

SOUTHERN BELL TELEPHONE
AND TELEGRAPH COMPANY

Harris R. Anthony
HARRIS R. ANTHONY (2X)

J. PHILLIP CARVER
c/o Marshall M. Criser, III
400 - 150 South Monroe Street
Tallahassee, Florida 32302
(305) 530-5555

R. Douglas Lackey
R. DOUGLAS LACKEY (2X)
NANCY B. WHITE
4300 - 675 W. Peachtree Street
Atlanta, Georgia 30375
(404) 529-5387

ATTACHMENT "A"
FPSC DOCKET 900960-TL
R. EARL POUCHER TESTIMONY

JUSTIFICATION FOR CONFIDENTIALITY REQUEST

1. This information relates to and summarizes portions of an internal audit and workpapers. Accordingly, this information from internal audits is entitled to confidential treatment under the express provisions of Section 364.183(3)(b), Florida Statutes.
2. This information contains employee-personnel information that is not related to qualifications, duties, responsibilities or compensation. Accordingly, these documents are exempted from the Public Records Act by the express provisions of Section 364.183, Florida Statutes.
3. This information includes the names, addresses and/or telephone numbers of subscribers. Accordingly, it is exempt from the public disclosure requirements of Section 119.07, Florida Statutes, by the express provisions of Section 119.07(w).
4. This information relates to competitive interests and/or unregulated operations, the disclosure of which would impair the competitive business and/or unregulated operations of Southern Bell. As such, this information is classified as confidential business information pursuant to Section 364.183, Florida Statutes, and is exempt from the Open Records Act.
5. This information relates to a Company commissioned study and related information which analyzes and assesses key aspects of Southern Bell's internal business practices and relationships. As such, this information is proprietary confidential business information pursuant to Section 364.183, Florida Statutes.

The following information identified by page and line numbers is confidential and proprietary for the reasons described above:

	<u>PAGE</u> <u>NO.</u>	<u>LINE NOS.</u>	<u>REASONS</u> <u>PROPRIETARY</u>
TESTIMONY	8	25	1
	9	1 - 8	1
	10	1, 2, 4 - 10	1
	12	3 - 9, 18 - 21	1, 4
	13	10 - 12	1
	14	4 - 10	1, 4
	17	10 - 13, 15 - 20, 23 - 25	1

<u>PAGE NO.</u>	<u>LINE NOS.</u>	<u>REASONS PROPRIETARY</u>
18	1	1
19	20 - 23, 25	1
20	1 - 5	1
23	8 - 25	1
24	1 - 8, 23 - 25	1
25	20 - 25	1
26	1 - 15	1
	20 - 25	1, 4
27	1 - 25	1, 4
28	1, 2	1, 4
	13 - 18	1
33	19 - 25	1, 4
34	1 - 3	1, 4
37	18 - 25	1
38	1 - 24	1, 4
46	2, 17 - 19	1

EXHIBIT NO.

REP-4	6	33	2
		37	3
	7	32, 34	3
	8	4	3
	10	2	2
	11	29	2
	13	8	2
	16	17	2
	19	9	2
	22	2	2
	23	34	2
	25	25	2
	27	12	2
	28	33, 34	2
	30	24	2
REP-5	ALL	ALL	1
REP-7A	ALL	ALL	1, 4
REP-7B	ALL	ALL	1, 4
REP-7C	ALL	ALL	1, 4
REP-7D	ALL	ALL	1, 4
REP-8A	ALL	ALL	1, 4
REP-8B	ALL	ALL	1, 4
REP-9	ALL	ALL	1, 4
REP-10A	ALL	ALL	1, 4
REP-10B	ALL	ALL	1, 4
REP-10C	ALL	ALL	1, 4
REP-10D	ALL	ALL	1, 4
REP-12	ALL	ALL	1

<u>EXHIBIT NO.</u>	<u>PAGE NO.</u>	<u>LINE NOS.</u>	<u>REASON PROPRIETARY</u>
REP-13	ALL	ALL	1
REP-14	ALL	ALL	3
REP-15	ALL	ALL	1, 4
REP-16	ALL	ALL	1, 4
REP-18A	ALL	ALL	1, 4
REP-18B	ALL	ALL	1, 4
REP-22	ALL	ALL	1, 4
REP-23	ALL	ALL	1, 4
REP-24	ALL	ALL	1, 4
REP-25	ALL	ALL	1
REP-31	2	ALL	1
REP-33	ALL	ALL	5