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June 24, 1991

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 Motion for Confidential Treatment and Permanent 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,

*Harris R. Anthony*  
Harris R. Anthony

Enclosures

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

RECEIVED & FILED

*[Signature]*

FPC-BUREAU OF RECORDS

DOCUMENT NUMBER-DATE

06335 JUN 24 1991

A BELLSOUTH Company FPC-RECORDS/REPORTING

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

I HEREBY CERTIFY that a copy of the foregoing has been  
furnished by United States Mail this *24* day of *June*, 1991,  
to:

Charles J. Beck  
Assistant Public Counsel  
Office of the Public Counsel  
111 W. Madison Street  
Room 812  
Tallahassee, FL 32399-1400

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

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

*Harris R. Anthony*

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Investigation into the Integrity of Southern Bell's Repair Service Activities and Reports )  
Docket No. 910163-TL )  
Filed: June 24, 1991 )  
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**SOUTHERN BELL TELEPHONE AND TELEGRAPH  
COMPANY'S MOTION FOR CONFIDENTIAL TREATMENT  
AND PERMANENT PROTECTIVE ORDER**

COMES NOW Southern Bell Telephone and Telegraph Company ("Southern Bell" or the "Company"), pursuant to Rule 25-22.006, Florida Administrative Code, and files its Motion for Confidential Treatment and Permanent Protective Order.

I. Item No. 1 of the Office of Public Counsel's  
First Request for Production of Documents

1. On February 18, 1991, the Office of Public Counsel ("Public Counsel") filed its First Set of Requests for Production of Documents. Public Counsel's Item No. 1 requested the following documents:

Please provide the two most recent internal review reports for each of your installation and maintenance centers in Florida, and please provide each document in your possession, custody or control responding to, evaluating, or following up on each such internal review.

On April 9, 1991, Southern Bell produced to Public Counsel the documents requested. The documents were produced on a confidential basis to Public Counsel pursuant to Southern Bell's

DOCUMENT NUMBER-DATE  
06335 JUN 24 1991  
PSC-RECORDS/REPORTING

April 9, 1991 Motion for Temporary Protective Order. Subsequent to that Motion, Public Counsel notified Southern Bell that it intended to use the documents during the hearing. Pursuant to Rule 25-22.006, Florida Administrative Code, Southern Bell now files its Motion for Confidential Treatment and Permanent Protective Order with regard to the documents produced in response to Public Counsel's Request No. 1 of Public Counsel's First Set of Requests for Production of Documents.

2. The documents responsive to Item No. 1 for which Southern Bell has requested confidential treatment are listed in Attachment "A". The documents consist of internal, self-evaluative review reports of Southern Bell's network operations in Florida as well as of follow ups to such reports. As discussed below, the internal review reports are the equivalent of internal audits and it would harm the ratepayers and the Company if they were disclosed. Therefore, they should be treated as confidential in their entirety. The internal review reports are appended hereto in a sealed container marked as Attachment "B".

3. In the event that the Commission were to find that these internal review are not confidential in their entirety, Southern Bell has also filed a highlighted version of these internal review reports. In accord with the Commission's rules,

Southern Bell is identifying all specific information that is confidential on a line-by-line basis. The specific information contained within the internal reviews that has been highlighted is customer specific information which is exempt from public disclosure pursuant to Section 119.07(w), Florida Statutes. Appended hereto as Attachment "C" is a highlighted version of those documents in a sealed container. Until the Commission rules whether or not these documents in their entirety are proprietary, Southern Bell will not file a redacted version. If it becomes necessary to do so, Southern Bell will file a redacted version.

4. With regard to the network reviews in their entirety, these consist of internal reviews performed by employees of the Company's network operations in Florida. The purpose of each of these reviews and the follow-up material associated with them is to provide self-evaluative and self-corrective analysis of the operations of Southern Bell. The reviews are conducted for the very purpose that internal audits are conducted and therefore should be treated as proprietary confidential business information. Indeed, the only difference between these reviews and "internal audits" is that the reviews are performed by a network department review staff rather than a group of employees denominated as "auditors".

5. Section 364.183, Florida Statutes, provides that "the term 'proprietary confidential business information' means information...which...is treated by the person or company as private in that the disclosure of the information would cause harm to the ratepayers or the person's or company's business operations...." (Emphasis added.) If the information contained in Southern Bell's internal network reviews is disclosed to the public, Southern Bell and its ratepayers would be harmed because similar self-critical and self-corrective analysis may not be performed with the same candor and openness by Southern Bell's network managers in the future, thereby preventing Southern Bell from receiving meaningful self-corrective constructive analysis. Such analysis is absolutely necessary in order to assure compliance with the Company's internal standards and to improve the methods by which it conducts business.

6. Section 364.183(3), Florida Statutes, provides guidelines for determining what type of records would harm Southern Bell if disclosed. The statute specifically states that the "...term [proprietary confidential business information] includes, but is not limited to..." certain categories of information. Thus, the Florida Legislature specifically, expressly, and in no uncertain terms, intended that proprietary confidential business information not be limited to the examples

provided for in the statute but rather include all documents which "if disclosed would harm" the ratepayers or the Company's business operations. As one of several examples, the Florida Legislature provided that "internal auditing controls and reports of internal auditors" shall be treated as confidential. Southern Bell asserts that, although its internal reviews reports were not performed by internal auditors, the reports were created for the very same purpose and in the same manner as internal audits. Therefore, just as internal audits are proprietary confidential business information, so too are the internal reviews reports. Thus, the Commission has the prerequisite statutory authority to grant and should grant confidential treatment of the critical reviews.

7. If self-critical analysis is not encouraged by the Commission, areas directly related to the quality of service rendered by Southern Bell might remain unexamined and unimproved. For instance, the internal review reports, which analyze the Company's compliance with its own internal standards, might be "toned down" by the Company's managers if those managers believed that their reviews might be publicly disclosed during a Commission proceeding. Frank, critical analysis of the implementation of internal standards is absolutely necessary in order to assure the Company's management that its various

operations properly comply with all pertinent standards. Such analysis protects both the Company and its ratepayers from inefficient operations. Not all this analysis can be performed by the Company's internal auditors nor should it be so required by the Commission. If the Commission refuses to treat as confidential any internal reviews other than those performed by persons with the specific title of "internal auditor", it will discourage other Company employees, acting in their official capacity, from reviewing the operations of their departments. Surely the Legislature did not intend such a result.

8. Moreover, in a different yet nonetheless instructive context, federal courts have held self-critical to be privileged. See, *Plough Incorporated v. National Academy of Sciences*, 530 A2d 1152 (D.C. 1987). (The Plough court held that allowing the discovery of a report of "internal deliberations" would have a "chilling" effect on the ability of an internal company committee to discuss freely a scientific matter, thus inhibiting its research.) While Southern Bell is not suggesting that the federal common law be used as precedent with regard to the issue of privilege, Southern Bell does believe that the federal courts' decisions demonstrate that harm will occur if the internal reviews reports are disclosed and thus should be kept confidential. As set forth in the federal cases, self-critical

documents are privileged<sup>1</sup> because, if the documents were disclosed to the public, businesses would not perform open, critical analysis in the future. This would, in turn, harm the businesses and their customers. See Bredice v. Doctors Hospital, Inc., 50 F.R.D. 249 (D.C. 1970), affirmed, 479 F2d 920 (D.C. 1973). (Holding the reports of a hospital staff meeting privileged, the Bredice court stated that "[t]here is an overwhelming public interest in having those staff meetings held on a confidential basis so that the flow of ideas and advice can continue unimpeded." Id at p. 250. The Bredice court also noted that, "[t]he propose of these staff meeting is the improvement, through self-analysis, of the efficiency of medical procedures and techniques." Id. at p. 250) In like fashion, improvement of the efficiency of Southern Bell's operations was the purpose of Southern Bell's internal reviews.

9. In a 1983 Harvard Law Review article entitled "The Privilege of Self-Critical Analysis", several pertinent comments are made regarding the balancing of various interests when discovery of critical self-analysis has been requested.

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<sup>1</sup> Southern Bell does not assert a privilege against providing these documents to Public Counsel. Rather, Southern Bell asserts that these documents should be held as proprietary confidential business information.

Explaining the Bredice v. Doctors Hospital, Inc., supra, case the Harvard article states:

The Bredice court emphasized that confidentiality is often essential to the free flow of information and that the free flow of information is essential to promote recognized public interests.

(emphasis added.) Note, "The Privilege of Self-Critical Analysis", 96 Harvard Law Review 1083, 1087. Analyzing the privilege, the article states:

Implicit in any application of the privilege is an acknowledgment of the self-defeating nature of allowing discovery of frank self-analyses: in the long run, denying protection will stifle more information than applying the privilege. Refusing to recognize the privilege will thus hinder the flow of information not only to the parties seeking protection, but also to the courts themselves.

(Emphasis added.) Id. at 1088. The reason that disclosure of critical self-analysis would "stifle" more information in the future is because of the disclosure would result in a chilling effect.

The chilling effect of disclosure of self-critical analysis has a twofold nature. First, if a plaintiff obtains discovery, there may be a direct chilling effect on the institutional or individual self-analyst; this effect operates to discourage the analyst from investigating thoroughly and frankly or even from investigating at all.

(Emphasis added) Id.

10. Fearing the embarrassment the internal report might cause for a manager or his company if it were publicly disclosed, the manager may not prepare the report with frankness, openness, or candor.

... If an individual self-analyst is asked by his superiors to conduct an internal analysis, the individual may temper his criticism out of a fear that reprisals will result if the analysis ultimately leads to liability or adverse publicity for the employer.

(emphasis added.) Id. at 1092. Not only would the fear of disclosure have a chilling effect on the analyst, but it would also have a chilling effect on those that supply the analyst with what is intended to be frank, critical, and confidential information. The Harvard article explains:

...[C]ourts should be concerned about the ability of the self-analyst to gather that information that it needs to make an evaluation. Knowledge that a final report may be disclosed will often discourage individuals from coming forward with relevant information.

(Emphasis added.) Id.

11. In the current docket, Southern Bell is not asserting that the network reviews are privileged. To the contrary, they have already been produced to Public Counsel. What Southern Bell does assert is that, for the same reasons that courts have held

such reports to be privileged, this Commission should hold the reviews to be confidential, proprietary business information.

II. Interrogatory No. 7 of Public Counsel's  
First Set of Interrogatories

12. Public Counsel also notified Southern Bell that it intended to use at the hearing the information provided by Southern Bell in response to Public Counsel's Interrogatory No. 7. In accord with Rule 25-22.006, Florida Administrative Code, Southern Bell is appending hereto as Attachment "D" two edited copies of Southern Bell's response to Interrogatory No. 7. In addition, a copy of the response to Interrogatory No. 7 with the confidential information highlighted is appended hereto as Attachment "E" in a sealed envelope. The confidential information is identified on a line-by-line basis on Attachment "A".

13. Public Counsel's Interrogatory No. 7 requested the names of employees who were disciplined as a result of improper practices related to the falsification of service records. The request also asked for certain other information, including why the employees had been disciplined and how they were disciplined. Section 364.183(3)(f), Florida Statutes, states that "proprietary confidential business information" includes employee personnel information unrelated to "...compensation, duties,

qualifications, or responsibilities." In this instance, Southern Bell requests that the employees' names only be treated as proprietary confidential business information. Southern Bell has not requested that information related to the discipline imposed or the reasons for the discipline be treated as confidential.

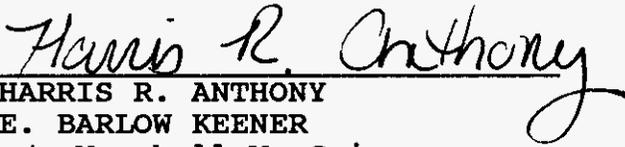
14. The treatment of the employees' names as confidential is entirely appropriate since the identification of the employees in question in this context does not relate to their compensation, duties, qualifications, or responsibilities. Indeed, Southern Bell would further note that this position is consistent with the position of the Commission Staff set forth in its letter, dated December 13, 1990 (asking for similar information), where the Staff instructed Southern Bell to use codes in identifying the employees about whom the Staff was seeking information.

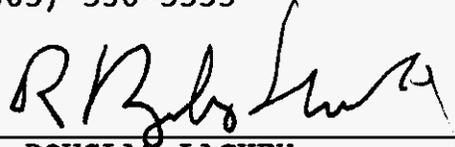
15. All of the information for which Southern Bell is requesting confidential treatment is intended to be treated as confidential and has not been disclosed except pursuant to statutory provisions or private agreement that provides that the information will not be released to the public.

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

Respectfully submitted,

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**ATTACHMENT "A"**

**Item No. 1 of Public Counsel's First Request for Production of Documents**

	<u>Document</u>	<u>Customer Specific Information</u>	
		<u>Page #</u>	<u>Line #(s)</u>
1.	Operational Review, Central Dade, December 1990 (pages 1-58)	43	7,10
2.	Key Results Review, Central Dade, July 19, 1990 (pages 59-82)		
3.	Key Results Review, Central Dade, July 19, (pages 83-124)		
4.	Memo from April Ivy to Whisett dated July 23, 1990, Central Dade (pages 125-126)		
5.	Operational Review, Miami Metro, October 1990 (pages 127-185)	167  182	7,9,11,13,17,19 21,23,25,27,29,31 14,19,25
6.	Key Results Review, Miami Metro, February 9, 1990 (pages 186-207)		
7.	Operational Review, North Dade, September, 1990 (pages 208-273)	218 219 225  226 230 231  245 247	1-3,8,11,13,26,30,42 1-3,8,23,27,47 1-3,8,12,23,26,28, 31,32,37,46 1-4,8,23,28,32,37 1-4,8,12,19,26,29,30 1-3,8,13,21,25, 31,35,42 1-3,8,12,24,27,43 1-3,8,23,26,27,34,41,42

8. Operational Review, North Dade, September, 1990 (pages 274-463)	333	1-3, 8, 11, 13, 26, 30, 42
	334	1-3, 8, 23, 27, 47
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	342	1-4, 8, 18, 22, 23, 28, 31, 32, 37
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	348	1-3, 8, 13, 21, 25, 31, 35, 42
9. Key Results Review, North Dade, June 15, 1990 (464-512)	366	1-3, 8, 12, 24, 27, 43
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10. Operational Review, South Dade, October 1990 (pages 513-564)		
11. Operational Review, South Dade, August 1990 (pages 565-649)		
12. Key Results Review, South Dade, August 3, 1990 (pages 650-718)	642	8, 12
13. Procedure and Statusing Review, South Sector, South Broward, July 1990 (pages 719-764)	723	20, 22, 27
14. Procedure and Statusing Review, South Sector, West Palm Beach, October 15, 1990 (765-792)	771	1-3, 8, 12, 27, 30
	772	1-3, 8, 12, 19, 27, 30
15. Southeast, Jacksonville, November 12, 1987 (pages 793-829)		
16. Southeast, Jacksonville, July 1985 (pages 830-856)	843	11, 22, 32, 36
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17. Northwest, Jacksonville, November 2, 1987 (pages 857-893)		
18. Northwest, Jacksonville, May 1985 (pages 894-920)	912 913 914 916	10,22 10,28,36 13 23,25
19. Standardization of Procedures, Brevard, April 1985 (pages 921-948)	933 935 936 939 940 943 944	24 6,12,16,27 2,9,13,15,31 20 16 16,20,22 8,10,14,22,28,32
20. Standardization of Procedures, Daytona Beach, July 1985 (pages 949-981)	961 965 966 967 968 969 970 971 975	27 12 29,38,42 12,21,27 13,18,22,32,37,43 1,6,22,27,32,43 6,18,34,41 1,6 12
21. Standardization of Procedures, Gainesville, July 1985 (pages 982-1007)	991 995 999	14 14,21 9,19,24
22. Standardization of Procedures, Orlando, October 1985 (pages 1008-1030)	1023	18,35
23. Standardization of Procedures, Orlando, June 1985 (pages 1031-1063)	1039 1040	22 2

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24. Standardization of Procedures, Panama City, August 1985 (pages 1064-1086)	1077	24
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25. Standardization of Procedures, Pensacola, August 1985 (pages 1087-1109)	1097	9
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26. Standardization of Procedures, Sandlake, June 1985 (pages 1110-1136)	1116	8
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	1122	31, 35
	1126	18, 25, 33
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	1128	3
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27. Standardization of Procedures, Sandlake, November 1985 (pages 1137-1156)	1142	13
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**Interrogatory No. 7 of Public Counsel's First Set of Interrogatories**

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