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October 1, 1992

Steve Tribble, Director
Division of Records and Reporting
Florida Public Service Commission
101 East Gaines Street
Tallahassee, FL 32399-0850

Re: Docket No. 910163-TL

Dear Mr. Tribble:

Enclosed for filing in the above-captioned proceeding on behalf of the Citizens of the State of Florida are the original and 15 copies of Citizens' Response to Southern Bell's Request for Confidential Classification and Motion for Permanent Protective Order.

Please indicate the time and date of receipt on the enclosed duplicate of this letter and return it to our office.

- ACK
- AFA _____
- APP _____
- CAF _____
- CMS _____
- CTP _____
- EAC _____
- LED
- LIR
- OPD _____
- RFI _____
- SEC
- WIS _____
- OTH _____

Enclosure

Sincerely,

Janis Sue Richardson
Associate Public Counsel

DOCUMENT NUMBER-DATE

11470 OCT -1 1992

FPSC-RECORDS/REPORTING

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: October 1, 1992

CITIZENS' RESPONSE TO SOUTHERN BELL'S REQUEST FOR CONFIDENTIAL CLASSIFICATION AND MOTION FOR PERMANENT PROTECTIVE ORDER

The Citizens of Florida ("Citizens"), by and through Jack Shreve, Public Counsel, file this response to the request for confidential classification and motion for permanent protective order filed by Southern Bell Telephone and Telegraph Company ("Southern Bell") on September 21, 1992.

1. Southern Bell seeks confidential treatment of the identity of its employees who were disciplined in connection with Southern Bell's security investigations. These documents were produced pursuant to Staff's eighteenth request for production. Additionally, Southern Bell seeks confidential treatment of customer specific information contained in the investigatory reports. Citizens objects to granting proprietary treatment for employee specific information, but agrees to granting confidentiality to customer specific information.

2. No statutory basis exists for granting confidential treatment to employee specific information. See Fla. Stat. §§ 119.07 & 364.183(3)(f) (1991). In the absence of an express

statutory exemption from the Public Records Act, Florida courts have refused to expand specific exemptions through judicial construction. See e.g., Wait v. Florida Power & Light Co., 372 So. 2d 420 (Fla. 1979) (refusing to construe section 119.07(2), Florida Statutes as incorporating the common-law privileges of attorney-client and work product).

3. Since public utilities are granted a monopoly to provide services to this state's citizens and do so under a legislative mandate, utility employees are quasi-public employees. So, rather than a tortured analogy to the child abuse exemption, this matter is more analogous to public personnel information. The Second District Court of Appeal held that section 119.07(2), Florida Statutes, which exempted all public records "deemed by law to be confidential", exempted government employees' personnel files from public inspection. Wisher v. News-Press Pub. Co., 310 So. 2d 345 (Fla. 2d DCA 1975) (emphasis added); rev'd 345 So. 2d 646 (Fla. 1977). Following Wisher, the Legislature revised the wording of "deemed by law" to "provided by law". Wait, 372 So. 2d at 424. Hence, under the Supreme Court of Florida's construction of section 119.07 in Wait, only express statutory exemptions will be considered confidential. See Warden v. Bennett, 340 So. 2d 977 (Fla. 2d DCA 1976) (holding that names and addresses of junior college employees were not exempt). This comports with the overriding purpose of the Public Records Act that "the policy of this state that all state, county, and municipal records shall at all times be open for a personal inspection by any person." Downs

v. Austin, 559 So. 2d 246 (Fla. 1st DCA 1990) (granting an award of attorney's fees at trial level because polygraph tests were not confidential under the express statutory exemption for criminal investigative files); review denied, 574 So. 2d 140 (Fla. 1990).

4. Potential public embarrassment of disciplined employees is not cognizable under Florida law. Cf., News-Press Pub. Co. v. Wisner, 345 So. 2d 646, 648 (Fla. 1977) ("No policy of the state protects a public employee from the embarrassment which results from his or her public employer's decision or action on the employee's failure to perform his or her duties properly."); Michel v. Douglas, 464 So. 2d 545 (Fla. 1985) (public employee personnel records are open to public inspection and subject to publication). Citizens addressed this issue in their Response to Southern Bell's Request for Confidential Classification and Motion for Permanent Protective Order filed September 16, 1992, and incorporates that prior statement herein.

5. Southern Bell's suggestion that following the dictates of the Public Records Act and denying confidentiality to company disciplinary actions taken against its employees would undermine its ability to thoroughly investigate future wrongdoing is insufficient justification for granting confidential treatment to employee specific information. Citizens addressed this concern in their response filed September 16, 1992, and incorporates that prior statement herein. The Commission has a duty to protect the public welfare by subjecting telecommunications companies to effective service regulation. Fla. Stat. § 364.01(1)(b) (1991).

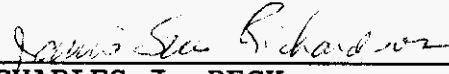
Encompassed within this mandate is the authority to ensure that regulated utilities adequately investigate any allegations of misconduct by their employees. This can only be accomplished if the Commission has access to all investigatory information and the authority to conduct its own follow-up investigations. As the Federal Communications Commission asserted, a pattern of repeated employee misconduct may raise questions as to whether the licensee is adequately supervising its employees. In re: Notification to Columbia Broadcasting System, Inc. Concerning Investigations by CBS of Incidents of "Staging" by its Employees of Television News Programs, 45 F.C.C. 2d 119, 122 (Nov. 1973).

6. No grounds exist for granting confidential treatment to this employee information. Southern Bell's request for confidential treatment should be denied.

WHEREFORE, Citizens respectfully request the Commission deny Southern Bell's request for confidential treatment.

Respectfully submitted,

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Public Counsel


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of the State of Florida

**CERTIFICATE OF SERVICE
DOCKET NO. 910163-TL**

I HEREBY CERTIFY that a correct copy of the foregoing has been furnished by U.S. Mail or hand-delivery to the following persons on this 1st day of October, 1992.

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& Telegraph Co.)
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