

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

Comprehensive Review of the)
Revenue Requirements and Rate)
Stabilization Plan of Southern)
Bell Telephone and Telegraph)
Company)
_____)

Docket No. 920260-TL

In re: Investigation into the)
Integrity of Southern Bell's)
Repair Service Activities and)
Reports)
_____)

Docket No. 910163-TL

Show Cause Proceeding Against)
Southern Bell Telephone and)
Telegraph Company for Misbilling)
Customers)
_____)

Docket No. 900960-TL

Investigation into Southern Bell)
Telephone and Telegraph)
Company's Compliance with Rule)
25-4.110(2), F.A.C.)
_____)

Docket No. 910727-TL

Date filed: February 15, 1993

CITIZENS RESPONSE TO SOUTHERN BELL'S "REQUEST FOR CONFIDENTIAL CLASSIFICATION AND MOTION FOR A PERMANENT PROTECTIVE ORDER" REGARDING THE TESTIMONY OF R. EARL POUCHER AND DR. MARK COOPER

The Citizens of Florida ("Citizens"), by and through Jack Shreve, Public Counsel, file this response to the request for confidential classification and motion for a permanent protective order regarding the testimony of R. Earl Poucher and Dr. Mark Cooper filed by BellSouth Telecommunications, Inc., d/b/a/ Southern Bell Telephone and Telegraph Company ("Southern Bell") on February 4, 1993.

1. Southern Bell seeks confidential treatment of the identity and position of its employees who were disciplined in connection with Southern Bell's repair service activities and reports, the nature of the discipline, and the reason for the discipline.

2. Section 364.183, Florida Statutes (1991) states that the term "proprietary confidential information" includes, but is not limited to, employee personnel information unrelated to duties or responsibilities. Fla. Stat. § 364.183(3)(f) (1991) (emphasis added). The trouble with Southern Bell's argument is that the identification of employees disciplined in connection with Southern Bell's repair service activities and reports, the nature of that discipline, and the reasons for that discipline, is related to the employees' duties and responsibilities. The statute implies that such information should not be shielded from public disclosure.

3. Southern Bell's motion fails to recognize that the Commission ruled against Southern Bell in a number of similar circumstances. See Order Denying Southern Bell Telephone and Telegraph Company's Motion for Confidential Treatment of Document No. 3878-91, 91 F.P.S.C. 10:356 (Oct. 1991) (Order no. 25238); Order Denying Southern Bell Telephone and Telegraph's Request for Confidential Classification of Document No. 0372-91, 91 F.P.S.C. 10:353 (Oct. 1991) (Order no. 25237); and Order Denying Request for Confidentiality, 91 F.P.S.C. 3:334 (Mar. 1991) (Order no.

24226) [hereinafter Order 24226].¹

4. Southern Bell itself previously recognized that the names of employees in similar circumstances are not confidential. See Southern Bell Tel. & Tel. Co.'s Amendment to its Response and Objections to Public Counsel's Request for Production of Documents and Motion for a Temporary Protective Order (May 6, 1991, Docket 900960-TL). In that amendment Southern Bell dropped its request for confidential treatment of employee names and employee specific information, except for employee social security numbers.

5. The Commission has clearly determined the issue of whether employee names qualify for confidential treatment under these circumstances. Ruling that Southern Bell's employees' names and titles are not eligible for proprietary treatment, the Commission stated that

[in] order to readily evaluate the relationship between compensation, duties, qualifications or responsibilities of an individual as well as the reliability of such information, it may well be necessary to identify the individuals. This is particularly so in this case where the actions of individuals are under scrutiny to determine whether these actions were sanctioned by or attributed to the company.

¹ In connection with this last order, See also letter from Attorney General Robert A. Butterworth to Chairman Thomas M. Beard dated March 6, 1991, at page 2.

Order 24226 at 3:337. Disclosing the names of disciplined employees, as the Commission has noted, serves the purpose of determining whether these individual's actions were sanctioned by or attributed to the company.

6. Southern Bell has repeatedly failed to demonstrate that the names of their employees should be granted per se confidential treatment under section 364.183(3)(f), Florida Statutes. Southern Bell also has failed to demonstrate "that the disclosure of the information would cause harm to the ratepayers or the person's or company's business operations." Fla. Stat. § 364.183(3). As the First District Court of Appeals has recognized, the Commission must narrowly construe section 364.183(3), Florida Statutes, in the exercise of its discretionary powers. Southern Bell Tel. & Tel. Co. v. Beard, et. al, 597 So. 2d 873, 876 (Fla. 1st DCA 1992). A liberal interpretation would be contrary to the legislative intent of keeping public records open to the public. See id.

7. Southern Bell claims that disclosure of their employees' names would cause harm to the company. The harm envisioned includes public embarrassment for the employees named and the company, a lowering of morale, a potential loss of candor with higher management on the part of employees in future investigations, and an unwillingness by managers to discipline employees for wrongdoing in the future. These allegations of harm to the company are not legally cognizable. See Southern Bell Tel.

& Tel. Co., 597 So. 2d at 877 (Fla. 1st DCA 1992) (finding that the potential public embarrassment of the company's managers if documents were released to the public is not sufficient in itself to warrant proprietary treatment).

8. Employee morale may be of concern to a company; however, like public embarrassment, it is not the type of harm cognizable under section 364.183(3), Florida Statutes. Employee morale has already been affected by the company's own actions: company press statements that employees have been disciplined for mishandling customer records;² termination of employees found by the company to have falsified customer records; and disciplining of managers. Southern Bell's attempt to forestall further morale problems, while understandable, is not the harm encompassed by section 364.183(3), Florida Statutes.

9. The notion that employees will be more circumspect, less forthright in their cooperation with internal investigators, is also not cognizable under the "harm" standard. See Southern Bell Tel. & Tel. Co., 597 So. 2d at 875-76 & nn. 2, 4 & 5 (Fla. 1st DCA 1992) (rejecting Bell's argument that employees would be "less likely to provide frank, critical, honest, confidential information" to analysts in the future unless its Benchmark reports were granted proprietary treatment). The Legislature explicitly provided an exception for internal audits and security measures.

² E.g., Sun-Sentinel, July 14, 1991, §A at 1, 12.

Fla. Stat. § 364.183(3)(b)-(c). Information obtained from employees, who cooperate with company auditors and security personnel in internal investigations, may be explicitly exempt from public disclosure. Hence, Southern Bell's argument is illusory.

10. Lastly, the notion that managers may be hesitant to discipline employees for misconduct in the future is specious. Southern Bell is a regulated entity. As such, it has a legal and ethical duty to ensure that its employees fully comply with the law and the Commission's regulations. Any laxity in the exercise of that duty is itself punishable by sanctions, fines or penalties. Fla. Stat. § 364.285. When faced with the very real possibility of being the cause of the company's being penalized for failure to properly supervise employees, which includes administering discipline, managers are aware of where their duty lies.

11. The Legislature clearly intended to guide the Commission's exercise of its discretion in determining whether specified information may be exempt from the overriding mandate of public access to public records. The specific exemptions created deal with the potential "harm" to a company from disclosure of competitive business information, i.e. trade secrets, internal audits, security measures, bids, and contractual data. Fla. Stat. § 364.183(3)(a)-(d). One exception for employee information is designed to protect an individual employee's right to privacy for personal matters, i.e. health, family, counseling or other matters

that may be in a personnel file which are unconnected to job performance. Id. § 364.183(3)(f). This is supported by the limited exemptions from disclosure of the names, addresses, phone numbers, and health information of specified persons under the Public Records Act. Id. § 119.07. The Legislature did not exempt the identity of a government employee, who has been disciplined for wrongdoing from public disclosure. The only exemptions are for certain law enforcement and judicial employees' addresses, phone numbers, location of children's schools, and state employees' medical histories if unrelated to job performance. Id. Each exemption listed is grounded in a potential harm to the health, safety and welfare of specified persons or the potential harm to the state's competitive business interest in securing the lowest responsible bid on a government project. If this had been a judicial matter, Southern Bell could not have supported a claim for keeping the names of employees accused of wrongdoing secret. Our judicial system, and our legislative system mandate public disclosure.

12. Granting confidential treatment to parts of the prefiled testimony of Dr. Cooper and Mr. Poucher, wherein the names of employees who have been disciplined would be shielded from public disclosure, would damage the truth seeking process by inhibiting the first amendment rights of the press, by denying ratepayers access to the truth, and by sacrificing one of the Commission's most powerful enforcement tools -- the power to disclose a

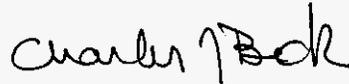
company's culpability to the final arbiter, the citizens of this state. Past Commission rulings and judicial interpretation of section 364.183(3) make it equally obvious that the identities of employees who were disciplined, the nature of the discipline, and the reason for the discipline are not proprietary business information.

13. In addition to the matters relating to discipline, Southern Bell claims that parts of Dr. Cooper's testimony are confidential because it relates to competitive interests or unregulated operations. Southern Bell does not state how disclosure of any of this information would harm the company. Much of the information does not relate to competitive or unregulated operations, as claimed by Southern Bell, and in any event the disclosure of this information would not harm Southern Bell. The Commission should reject all of these claims.

WHEREFORE, the Citizens oppose Southern Bell's request for confidential classification of the testimony of Mr. R. Earl Poucher and Dr. Mark Cooper.

Respectfully submitted,

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**CERTIFICATE OF SERVICE
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I HEREBY CERTIFY that a copy of the foregoing has been furnished by U.S. Mail or hand-delivery to the following parties on this 15th day of February, 1993.

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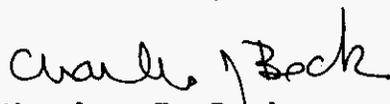
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