

NANCY B. WHITE  
General Attorney

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

July 12, 1993

Mr. Steve C. Tribble  
Director, Division of Records and Reporting  
Florida Public Service Commission  
101 East Gaines Street  
Tallahassee, Florida 32301

RE: Docket Nos. 920260-TL, 900960-TL, 910163-TL, 910727-TL

Dear Mr. Tribble:

Enclosed is an original and fifteen copies of Southern Bell Telephone and Telegraph Company's Motion for Review of Order No. PSC-93-0979-CFO-TL. Please file this document in the above-captioned dockets.

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 (es)

ACK \_\_\_\_\_  
AFA 1  
APP \_\_\_\_\_  
CAF 1  
Enclosures

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

LEP 6  
LIT \_\_\_\_\_  
RIP 1  
SIC 1  
WAS \_\_\_\_\_  
OTH \_\_\_\_\_

DOCUMENT NUMBER-DATE

07451 JUL 12 88

FILED-RECORDS/REPORTING



confidential classification for the identity of the employees whose personnel records were produced in response to Staff's request. On June 30, 1993, the Prehearing Officer in the above-referenced dockets ruled on Southern Bell's request by denying confidential treatment. Southern Bell respectfully submits, on the basis of the pertinent facts and the controlling law cited herein, that the Order includes mistakes of law such that the full Commission should review and reverse this decision and hold that the names of these employees are exempt from public disclosure.

2. The argument in Southern Bell's Motion for Confidential Treatment can be summarized as follows: The provisions of Florida Statutes, § 364.183 exempt from public disclosure certain information that would otherwise be subject to disclosure under Florida Statutes, Chapter 119. This exempt information is all "employee personnel information unrelated to compensation, duties, qualifications or responsibilities." Florida Statutes, § 364.183(3)(f). Further, Section 364.183(3) specifically authorizes the exemption from public disclosure of any document that, if disclosed, "would cause harm to the company's business operations..." In its Motion, Southern Bell argued that the discipline of the employees in question was not, in a strict sense, related to their "compensation, duties, qualifications or responsibilities." Southern Bell also argued that public disclosure of the names of disciplined employees would unnecessarily subject these employees to public scorn and

ridicule. If the discipline of employees were converted into a sort of "public shaming," then this could compromise the Company's ability to deal with any future problems by its administering discipline that is appropriate to the particular employee's conduct.

3. The Prehearing Officer denied Southern Bell's motion, and in doing so, flatly "reject[ed] the embarrassment of employees and the potential impact on company operations as the type of harm contemplated by Section 364.183(3)." Order at p. 4. The Prehearing Officer further rejected Southern Bell's argument that Section 364.183, Florida Statutes, should be applied in a way that will balance "the benefits to be derived from public disclosure against the detriment to the Company and its employees." Order p. 2. The Prehearing Officer stated that, in the absence of a specific statutory exemption, this Commission is not entitled to make a decision based on such a balancing. In support of this conclusion, the Prehearing Officer cited Gadd v. News-Press Publishing Co., 412 So.2d 894, 895 (Fla. 2d DCA 1982).

4. Gadd, however, states that, rather than applying its own notion of the appropriate public policy, a court (or in this case, this Commission) that deals with "the construction and constitutionality of legislative determinations..." is "...confined to a determination of the legislature's intent." Gadd at 896. Thus, Gadd stands for the proposition that a tribunal may not substitute its own notion of correct public

policy for legislative intent. Instead, it is bound to interpret and apply a statute as the legislature intended.

5. In this case, it is clear from the language of Chapter 119, Florida Statutes, that the legislature intended precisely the sort of balancing of interests that Southern Bell advocates. Because Order No. PSC-93-0979-CFO-TL overlooked this fundamental point, it is in error and should be reconsidered and reversed by the full Commission.

6. Chapter 119 creates the requirement of public disclosure of certain records. Sections 364.183 and 119.07 both list various types of information that are exempt from the requirement of public disclosure. In Section 119.14, Florida Statutes, the legislature has listed specifically the considerations that it will weigh in creating or maintaining exemptions to the disclosure requirements of Chapter 119. In particular, Section 119.14 states that "[a]n exemption may be created or maintained only if it serves an identifiable public purpose and may be no broader than is necessary to meet the public purpose it serves." Section 119.14(4)(b). (emphasis added) The legislature then goes on to say that the need for an exemption is sufficiently "compelling to override the strong public policy of open government," if the exemption is necessary to accomplish one of two specifically designated public purposes. Section 119.14(4)(b)<sup>1</sup> One of these purposes is to protect,

---

<sup>1</sup>The other purpose set forth in Section 119.14(4)(b), the efficient administration of a governmental program, is not pertinent to our issue.

... [I]nformation 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 of such individuals or would jeopardize the safety of such individuals.

Section 119.14(4)(b)2.

7. Thus, the legislature has clearly stated that there is good reason for an exemption to the public disclosure requirement if it serves to protect individuals from unwarranted damage that would result from this disclosure. This language provides an equally clear statement of the manner in which the legislature intends for all exemptions to Chapter 119 (both those in Section 119.07 and in Section 364.183) to be applied. Thus, when Southern Bell urged the Prehearing Officer to weigh the damage of public disclosure to individual employees against the negligible benefit to be derived from this disclosure of their identities, the Company was not making an argument for an unauthorized "public policy" determination. Instead, Southern Bell has argued that this issue must be resolved by considering the precise purpose that underlies all exemptions to the public disclosure requirements of Chapter 119, the protection of individuals from, "unwarranted damage" that would be caused by the public release of certain information.


8. If this Commission does not consider the damaging effect of the public release of this information concerning Southern Bell employees, then it will have done nothing more than mechanically apply the language of Section 364.183 without

considering the intent of the legislature in creating this exemption. It appears that this is the approach that was taken by the Prehearing Officer, and it is for this reason that the subject Order is erroneous. This Commission should give effect to the legislative intent and correct the error that inheres in the subject order by balancing the potentially grave damage to Southern Bell employees against the negligible benefit of publicly disclosing the identities of these employees. For this reason, Southern Bell submits that this Commission should consider the damaging effects of public disclosure of this information, conclude that it outweighs any benefit from public disclosure and allow confidential treatment for the information at issue.

WHEREFORE, Southern Bell Telephone and Telegraph Company respectfully requests the entry of an Order granting its Motion for Reconsideration, setting aside Order No. PSC-93-0979-CFO-TL, and ruling that Southern Bell is entitled to confidential classification for the information at issue.

Respectfully submitted,

ATTORNEYS FOR SOUTHERN BELL  
TELEPHONE AND TELEGRAPH COMPANY

  
HARRIS R. ANTHONY (s) |  
J. PHILLIP CARVER  
c/o Marshall M. Criser III  
150 So. Monroe Street  
Suite 400  
Tallahassee, Florida 32301  
(305) 530-5555

  
R. DOUGLAS LACKEY (s) |

NANCY B. WHITE  
4300 Southern Bell Center  
675 W. Peachtree Street, N.E.  
Atlanta, Georgia 30375  
(404)529-3862



**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 12th day of July 1993 to:

Robin Norton  
Division of Communications  
Florida Public Service  
Commission  
101 East Gaines Street  
Tallahassee, FL 32399-0866

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

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

Michael J. Henry  
MCI Telecommunications Corp.  
MCI Center  
Three Ravinia Drive  
Atlanta, Georgia 30346-2102

Joseph A. McGlothlin  
Vicki Gordon Kaufman  
McWhirter, Grandoff & Reeves  
315 South Calhoun Street  
Suite 716  
Tallahassee, Florida 32301  
atty for FIXCA

Richard D. Melson  
Hopping Boyd Green & Sams  
Post Office Box 6526  
Tallahassee, Florida 32314  
atty for MCI

Joseph Gillan  
J. P. Gillan and Associates  
Post Office Box 541038  
Orlando, Florida 32854-1038

Rick Wright  
Regulatory Analyst  
Division of Audit and Finance  
Florida Public Svc. Commission  
101 East Gaines Street  
Tallahassee, FL 32399-0865

Patrick K. Wiggins  
Wiggins & Villacorta, P.A.  
Post Office Drawer 1657  
Tallahassee, Florida 32302  
atty for Intermedia and Cox

Peter M. Dunbar  
Haben, Culpepper, Dunbar  
& French, P.A.  
306 North Monroe Street  
Post Office Box 10095  
Tallahassee, FL 32301  
atty for FCTA

Laura L. Wilson, Esq.  
Messer, Vickers, Caparello,  
Madsen, Lewis & Metz, PA  
Post Office Box 1876  
Tallahassee, FL 32302  
atty for FPTA

Chanthina R. Bryant  
Sprint  
3065 Cumberland Circle  
Atlanta, GA 30339

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

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 202  
8130 Baymeadows Circle, West  
Jacksonville, FL 32256

Monte Belote  
Florida Consumer Action Network  
4100 W. Kennedy Blvd., #128  
Tampa, FL 33609

Bill L. Bryant, Jr., Esq.  
Foley & Lardner  
Suite 450  
215 South Monroe Street  
Tallahassee, FL 32302-0508  
Atty for AARP

Michael B. Twomey  
Assistant Attorney General  
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

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

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

Nancy B. White  
(02)