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July 27, 1993

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

920260-TL

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 Request for Confidential Classification and Motion for 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,
J. Phillip Carver
J. Phillip Carver

Enclosures

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

RECEIVED & FILED

J. J.
FPSC DIVISION OF RECORDS

A BELL SOUTH Company

DOCUMENT NUMBER-DATE

08068 JUL 27 93

FPSC-RECORDS/REPORTING

CERTIFICATE OF SERVICE

Docket No. 920260-TL

Docket No. 910163-TL

Docket No. 910727-TL

Docket No. 900960-TL

I HEREBY CERTIFY that a copy of the foregoing has been
furnished by United States Mail this 27th day of July, 1993
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J. Phillip Carver
(2)

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition on behalf of)
Citizens of the State of Florida) Docket No. 910163-TL
to initiate investigation into)
integrity of Southern Bell)
Telephone and Telegraph Company's)
repair service activities and)
reports.)
_____) Filed: July 27, 1993

**SOUTHERN BELL TELEPHONE AND TELEGRAPH COMPANY'S
REQUEST FOR CONFIDENTIAL CLASSIFICATION
AND MOTION FOR 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 files its Motion for Confidential Treatment and Permanent Protective Order and states as grounds in support thereof the following:

1. The Office of Public Counsel ("Public Counsel") issued a Notice of Deposition in the above-referenced docket in order to take the depositions of Southern Bell employees on June 7, 8 and 9 at 7900 Mandarin Boulevard, Orlando, Florida. Pursuant to this notice, the depositions of Southern Bell employees, Sara S. Stake, Julia Paula Strait and Joyce V. Hardiman were taken on those dates. During these depositions numerous questions were asked and answered that entailed the disclosure of information regarding Southern Bell employees that may relate to the matters

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at issue in this docket. Some of this employee-related information is entitled to confidential classification.

2. Southern Bell received the transcripts of the depositions of the above-named employees on July 6, 1993. Accordingly, Southern Bell filed on July 6, 1993, its Notice of Intent to Seek Confidential Classification of the information contained in these depositions.

3. Southern Bell's Request for Confidential Classification is due under Rule 25-22.006(3)(a), Florida Administrative Code, on or before July 27, 1993. Southern Bell has determined that, of the three depositions taken, two do not include confidential information. These depositions are of Julia Strait and Joyce Hardiman. Accordingly, the depositions of these employees are not encompassed within this Request for Confidential Treatment. Southern Bell now timely files this Motion for Confidential Treatment and Permanent Protective Order as to the remaining employee identified above. Specifically, the instant request is for information contained in the deposition of Sara Stake.

4. Southern Bell has filed as Attachment "A" a listing of the specific pages and lines of the deposition that contain proprietary confidential information, which has been correlated so that the page and line are "identified with the specific justification proffered in support of the classification of such

material". Rule 25-22.006(4)(c). Southern Bell has also filed a highlighted version of the depositions in a sealed container, which is marked as Attachment "B." Finally, Southern Bell has filed two redacted copies of the depositions as Attachment "C."

5. Southern Bell seeks confidential treatment of the employee information described below. 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."

6. Specifically, this employee-related information arose in two different contexts: One, a discussion appears in the deposition of the discipline of an employee regarding a matter that has absolutely no relevance to the issues in this proceeding.

7. Two, in the deposition, the deponent identifies a specific Southern Bell employee by name and alleges that this employee may have engaged in some improper activity. Both, the unsupported allegations as to a specific employee and the disclosure of completely unrelated and irrelevant employee discipline should be treated as confidential pursuant to Section 364.183(f), Florida Statutes.

8. The four areas of employee personnel information that are not, per se, confidential pursuant to § 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 names of employees who allegedly acted improperly do not fit any of these exceptions and are, therefore, entitled to confidential classification under § 364.183(f), Florida Statutes.

9. A review of these terms, in the context of § 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 follow:

- 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.

10. 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 § 364.183(f) and the legislature's intended application of the public disclosure requirements of Chapter 119.

11. If this Commission were to interpret § 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 § 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 employees' responsibilities and duties.

12. This narrow application of the exceptions to § 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

13. 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 involved employees would also be widely published. This disclosure is unnecessary where, as here, the public will have access to all information relating to any allegedly improper acts, except for the names of the employees allegedly involved.

14. At the same time, the unnecessary public disclosure of the name of an employee who allegedly engaged in misconduct would have the potential effect of subjecting that employee 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 an unproven allegation, a particular employee would be publicly identified and subjected to public ridicule even though it may be

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 § 364.183(f).

subsequently determined that this employee did nothing wrong. Clearly, the public disclosure of the identity of this employee 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.

15. This Commission should rule that the name of a specific employee who allegedly engaged in some improper conduct shall not be publicly disclosure 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 § 364.183(f), and because the disclosure of this information would have the probable effect of subjecting a possibly innocent employee to public ridicule on the basis of nothing more than unproven allegations.

16. Likewise, there is absolutely no purpose to be served by subjecting an employee to the public disclosure of disciplinary action that is unrelated to the issues in this case and that occurred in the distant past. For the reasons set forth above, this information should also be accorded confidential treatment.

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

Respectfully submitted,

ATTORNEYS FOR SOUTHERN BELL
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FPSC DOCKET 910163-TL
SOUTHERN BELL TELEPHONE AND TELEGRAPH COMPANY
REQUEST FOR CONFIDENTIAL CLASSIFICATION

TRANSCRIPT OF JUNE 7, 1993 DEPOSITION OF
SARA STAKE

JUSTIFICATION FOR CONFIDENTIALITY REQUEST

1. This information is employee personnel information unrelated to compensation, duties, qualifications and responsibilities. As such, this information is confidential business information pursuant to Section 364.183, Florida Statutes, and is exempt from the requirement of public disclosure of Section 119.07, Florida Statutes.

The following information identified by page and line numbers is considered confidential and proprietary:

<u>DEPONENT</u>	<u>PAGE</u> <u>No.</u>	<u>Line Nos.</u>	<u>Reason Proprietary</u>
STAKE	17	21-25	1
	18	1-8, 11-14	1
	20	13-18	1
	22	6,7	1