

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Show cause proceeding)
against Southern Bell Telephone) Docket No. 900960-TL
and Telegraph Company for)
misbilling customers.)

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.)

In re: Investigation into)
Southern Bell Telephone and) Docket No. 910727-TL
Telegraph Company's compliance)
with Rule 25-4.110(2), F.A.C.,)
Rebates.)

In re: Comprehensive review of)
the revenue requirements and rate) Docket No. 920260-TL
stabilization plan of Southern)
Bell Telephone and Telegraph)
Company.) Filed: July 29, 1993

SOUTHERN BELL TELEPHONE AND TELEGRAPH COMPANY'S MOTION
FOR FULL COMMISSION REVIEW OF ORDER NO. PSC-93-1046-CFO-TL

COMES NOW, BellSouth Telecommunications, Inc. d/b/a Southern Bell Telephone and Telegraph Company ("Southern Bell" or "Company"), and files, pursuant to Rule 25-22.038(2), Florida Administrative Code, its Motion for Full Commission Review of Order No. PSC-93-1046-CFO-TL issued on July 19, 1993 by the Prehearing Officer in the above-referenced dockets, and states as grounds in support thereof the following:

1. On April 16, 1993, Southern Bell filed a Motion for Permanent Protective Order for certain portions of the Company's

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answers and supplemental answers to Public Counsel's Third Set of Interrogatories.¹

2. On July 19, 1993, the Prehearing Officer issued Order No. PSC-93-1046-CFO-TL granting in part and denying in part the Company's confidentiality requests. The Prehearing Officer denied Southern Bell's Motion for Permanent Protective Order relating to certain employee specific information contained in the supplemental answers to Interrogatory Item Nos. 1 - 10. Specifically, the information discloses the names, titles, business addresses and business telephone numbers of current and former employees of Southern Bell identified as persons who may have knowledge regarding issues in these consolidated dockets. This information, if publicly disclosed could cause unnecessary public embarrassment to these employees or could cause unwarranted damage to the good names and reputations of such individuals.

3. 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 protected from public disclosure. The argument in Southern Bell's Request for Confidential Classification can be summarized as follows: The provisions of

¹ The Order mistakenly referred to Southern Bell's Motion as a Request for Confidential Classification.

Section 364.183, Florida Statutes exempt from public disclosure certain information that would otherwise be subject to disclosure under Chapter 119, Florida Statutes. This exempt information includes all "employee personnel information unrelated to compensation, duties, qualifications or responsibilities."

§ 364.183(3)(f), Florida Statutes. In its Motion, Southern Bell argued that the names and other personnel information of the employees in question was not, in a strict sense, related to their "compensation, duties, qualifications or responsibilities."

4. The Company further argued that a review of the terms included 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 follows:

- 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.

Thus, Southern Bell argued that the names and other personnel information of any employees who may have some knowledge of these allegations do not relate to the compensation, duties, qualifications, or responsibilities of these employees.

5. The Prehearing Officer also overlooked or failed to apply other guiding statutory provisions in denying Southern Bell's Motion for Permanent Protective Order. Chapter 119, Florida Statutes 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 should be considered in creating or maintaining exemptions to the disclosure requirements of Chapter 119. In particular, Section 119.14 states that "[a] 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)². One of these purposes is to protect,

² 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.

6. 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. Consequently, Southern Bell urges the Commission to weigh the damage of public disclosure to individual employees against the negligible benefit to be derived from public disclosure of their identities in this case. Instead, Southern Bell urges 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. Some of the individuals on the lists provided were the subject of discipline by the Company. As previously argued by Southern Bell on numerous occasions in these consolidated cases, unwarranted embarrassment, possible defamation and damage to these individuals' good names and reputations could result from public disclosure of their identities.

7. If this Commission does not consider the damaging effect of the public release of this information concerning Southern Bell's current and former 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 inherent 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 Full Commission Review, setting aside Order No. PSC-93-1046-CFO-TL, and ruling that Southern Bell is entitled to confidential classification for the information at issue.

Respectfully submitted this 29th day of July, 1993.

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