

SCANNED

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2 COPY

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September 2, 1993

920260-TL

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

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, 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 (ej)*  
J. Phillip Carver

Enclosures

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

RECEIVED & FILED

14F

A BELL SOUTH Company

DOCUMENT NUMBER-DATE  
09493 SEP-28

FILE COPY

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: September 2, 1993

**SOUTHERN BELL TELEPHONE AND TELEGRAPH COMPANY'S  
 REQUEST FOR CONFIDENTIAL CLASSIFICATION**

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 Classification 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 numerous Southern Bell employees on June 22, 23, and 24, 1993 in Pompano Beach, Florida. Pursuant to this notice, the depositions of Southern Bell employees, Mario Martinez, Robert Fecht, Marguerite Winter, Linda Henry, Robert Madden, Patricia Phelan, Linda Moss, Timothy Keating, and William Farbarik were taken on June 22 - 24, 1993. During these depositions numerous questions were asked and answered that

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FILE RECORDS/REGISTRATION

entailed the disclosure of information regarding Southern Bell employees that may relate to the matters at issue in this docket. Some of this employee-related information is entitled to confidential classification.

2. Upon receiving the transcripts of the depositions of the above-named employees, Southern Bell promptly filed on August 12, 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 September 2, 1993. Southern Bell has determined that, of the nine depositions taken, three do not include confidential information, i.e. the depositions of Robert Madden, Patricia Phelan and Timothy Keating. Accordingly, the depositions of these employees are not encompassed within this Request for Confidential Treatment. Southern Bell now timely files this Motion for Confidential Classification and Permanent Protective Order as to the six other employees identified above. Specifically, the instant request is for information contained in the depositions of Mario Martinez, Robert Fecht, Marguerite Winter, Linda Henry, Linda Moss, and William Farbarik.

4. Southern Bell has filed as Attachment "A" a listing of the specific pages and lines of each 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 certain 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." Southern Bell also seeks confidential classification of certain information relating to its Employee Reporting Line. This information is entitled to confidential treatment under the provisions of Section 364.183(3), Florida Statutes, in that its public release would cause harm to Southern Bell's business operations.

6. The employee-related information arose in four different contexts: One, in the deposition of Linda Moss, the deponent stated her home address in response to a question by Public Counsel. This information appears in Ms. Moss' deposition

at the first page of the deposition that is identified as confidential on Attachment "A" to this motion. This information should be treated as confidential because it is employee information that is obviously unrelated to "compensation, duties, qualifications or responsibilities".

7. Two, in several of the depositions, Public Counsel refers to the substance of information provided in response to Public Counsel's Third Set of Interrogatories propounded in this docket. Southern Bell has previously requested confidential treatment of this information in its Motion for Permanent Protective order that was filed April 16, 1993. Southern Bell incorporates that motion by reference and requests for the reasons stated therein that this information be classified as confidential.

8. Three, in several of the above-referenced depositions, the deponent identifies specific Southern Bell employees by name and alleges that these employees may have engaged in some improper activity. This information also should be treated as confidential pursuant to Section 364.183(f).

9. Four, in one of the depositions, there is a reference to the discipline of a Southern Bell employee that occurred several years ago.

10. 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.

11. 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.

12. 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.

13. 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.

14. 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.<sup>1</sup>

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

16. At the same time, the unnecessary public disclosure of the names of employees who allegedly engaged in misconduct would have the potential effect of subjecting them 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 unproven allegations, these particular employees would be publicly identified and subjected to public ridicule even though it may be subsequently

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<sup>1</sup> 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).

determined that they did nothing wrong. Clearly, the public disclosure of the identities of these employees 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.

17. This same analysis applies equally to the single reference in these depositions to an instance in which an employee was disciplined several years ago in an incident that bears no direct relationship to the matters at issue in this docket.

18. This Commission should rule that the names of specific employees 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 possibly innocent employees to public ridicule on the basis of nothing more than unproven allegations. The names of employees who were disciplined in the past for essentially unrelated matters should also be treated confidentially.

19. Finally, Southern Bell requests confidential classification for an exhibit to the deposition of Mario Martinez and to certain references to this exhibit in the deposition, which relate to information that has been communicated to Southern Bell's corporate ombudsman by way of the Employee Reporting Line. This information is entitled to confidential classification under the terms of § 364.183(3), Florida Statutes because its public release would cause harm to the business operations of Southern Bell. Specifically, the public release of this information would have an extreme detrimental effect on the continued viability of BellSouth's corporate ombudsman's office.

20. The BellSouth Office of Vice-President-Corporate Responsibility and Compliance is an independent entity within BellSouth Corporation that operates under an express promise to employees of the corporation that communications between employees and members of the office will remain strictly confidential. The office specifically notifies callers to the ethics hotline that if they desire, their communications and their identities will be treated confidentially.

21. The public disclosure of the information communicated to BellSouth's ombudsman would destroy the viability of that office by, in effect, prohibiting the confidentiality that is an absolutely necessity for its effective performance. It is the

function of the ombudsman to receive, investigate and remedy workplace problems in a strictly confidential atmosphere. The ombudsman's office provides employees an opportunity for complete and unedited disclosure without the fear of retaliation that might exist in other forums. Wholesale public disclosure of this information would result in a chilling effect on internal communications that are vital to the goals of continuous corporate improvement and the internal policing of the Company's affairs.

22. If a program promises confidentiality, and later it is found that such confidentiality cannot exist because of compelled public disclosure, then employees are unlikely to trust the program and will ultimately abandon it. If this were to occur, the result would be that information that could be conveyed and used as a catalyst for positive improvement within the Company will not be communicated, and this vehicle for informal and timely responses to a broad array of workplace problems and issues will be disabled. This result would certainly be contrary to the public interest.

23. Accordingly, this information should be granted confidential classification under the terms of § 364.183. To do otherwise would inarguably damage the ability of Southern Bell's

ombudsman program to serve its intended purpose, and, by so doing, would damage Southern Bell's business operations.

WHEREFORE, Southern Bell requests that this Commission grant its Motion for Confidential Treatment.

Respectfully submitted,

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

TRANSCRIPTS OF JUNE 22, 23 & 24, 1993 DEPOSITIONS OF  
WINTER, FARBARIK, HENRY, MARTINEZ, FECHT AND MOSS

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.

2. The designated portions of this document contain information relating to Southern Bell's Employee Reporting Line. This information is entitled to confidential treatment under the provisions of Section 364.183(3), Florida Statutes, in that its public release would cause harm to Southern Bell's business operations.

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>
WINTER	27	19,20,21	1
	28	5-10	1
FARBARIK	16	11,13-25	1
	17	1-11	1
	19	24	1
	20	6,9,19	1
	29	4,16	1
HENRY	16	2	1
MARTINEZ	42	12,13	1
	43	2,8	1
	44	9,10,20	1
	45	8,10,18	1
(EXHIBIT 1)			
FO4B02Z 007714		ALL	2
FO4B02Z 007715		ALL	2
FO4B02Z 007716		ALL	2

FPSC DOCKET 910163-TL  
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FECHT	45	2	1
	47	17	1
	59	1,2,14-17	1
	60	15,20-22,24,25	1
MOSS	6	3,5	1
	16	10-12	1

**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 *2nd* day of *September*, 1993  
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