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September 8, 1993

920260

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

Re: XDocket 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 (P)
J. Phillip Carver

Enclosures

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

RECEIVED & FILED

55
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A BELL SOUTH Company

DOCUMENT NUMBER-DATE

09701 SEP-88

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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 *5th* day of *September* 1993
to:

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J. Phillip Connor
(01)

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition on behalf of)
Citizens of the State of Florida)
to initiate investigation into)
integrity of Southern Bell)
Telephone and Telegraph Company's)
repair service activities and)
reports.)

Docket No. 910163-TL

Filed: September 8, 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 29 and 30, 1993 in Miami, Florida. Pursuant to this notice, the depositions were taken of Southern Bell employees, Kenneth R. Matthews, Kathleen Minus, Ronald Bates and Bertha Brooks. 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 at issue in this docket. Some of this employee-related information is entitled to confidential classification.

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2. Upon receiving the transcripts of the depositions of the above-named employees, Southern Bell promptly filed on August 18, 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 8, 1993. Accordingly, Southern Bell now timely files this Request for Confidential Classification as to the four employees identified above.

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."

6. The employee-related information arose in three different contexts: One, in the deposition of Ronald Bates, the deponent stated his home address in response to a question by Public Counsel. This information appears in Mr. Bates' 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 some 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. 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.

10. 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.

11. 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.

12. 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.

13. 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

14. 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

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).

here, the public will have access to all information relating to these allegedly improper acts, except for the names of the employees allegedly involved.

15. 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 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.

16. 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.

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 29 & 30, 1993 DEPOSITIONS OF
BROOKS, MINUS, BATES, AND MATTHEWS

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 No.</u>	<u>Line Nos.</u>	<u>Reason Proprietary</u>
BROOKS	19	18-24	1
	20	1-4,9,11,12	1
	21	20-24	1
	22	13,14	1
MINUS	18	17-19	1
	19	4-6	1
BATES	4	11,13,15	1
	17	5-7,15-17	1
MATTHEWS	21	19-21	1
	22	5,6	1