

J. Phillip Carver  
General Attorney

ORIGINAL  
FILE COPY

Southern Bell Telephone  
and Telegraph Company  
c/o Marshall M. Criser III  
Suite 400  
150 So. Monroe Street  
Tallahassee, Florida 32301  
Phone (305) 530-5558

September 21, 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*  
J. Phillip Carver  
(22)

Enclosures

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

DOCUMENT NUMBER-DATE

10207 SEP 21 8 A BELL SOUTH Company

FD-302-RECORDS/REPORTING

Attachment-B

Attachment-C

DOCUMENT NUMBER-DATE

10208 SEP 21 8 10209 SEP 21 8

FD-302-RECORDS/REPORTING

**CERTIFICATE OF SERVICE**

**Docket No. 920260-TL  
Docket No. 910163-TL  
Docket No. 910727-TL  
Docket No. 900960-TL**

**ORIGINAL FILE COPY**

I HEREBY CERTIFY that a copy of the foregoing has been furnished by United States Mail this *21<sup>st</sup>* day of *Sept.*, 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, FL 32301-1838  
atty for FIXCA

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

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

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

Kenneth A. Hoffman  
Messer, Vickers, Caparello,  
Madsen, Lewis & Metz, PA  
Post Office Box 1876  
Tallahassee, FL 32302  
atty for FPTA

Laura L. Wilson, Esq.  
c/o Florida Cable Television  
Assoc. Inc.  
Post Office Box 10383  
310 North Monroe Street  
Tallahassee, FL 32302  
atty for FCTA

Chanthina R. Bryant  
Sprint Communications Co.  
Limited Partnership  
3065 Cumberland Circle  
Atlanta, GA 30339

DOCUMENT NUMBER-DATE

10207 SEP 21 83

REC'D-RECORDS/REPORTING

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  
Gerald B. Curington  
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 Communications  
Florida Public Svc. Commission  
101 East Gaines Street  
Tallahassee, FL 32399-0863

  
\_\_\_\_\_

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition on behalf of ) Docket No. 910163-TL  
Citizens of the State of Florida )  
to initiate investigation into )  
integrity of Southern Bell )  
Telephone and Telegraph Company's )  
repair service activities and )  
reports. )  
\_\_\_\_\_ ) Filed: 09-21-93

**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 7, 8, 9, 10, and 11, 1993 in Orlando, Cocoa, and Daytona, Florida. Pursuant to this notice, the deposition of David Lobach was taken on June 10, 1993 in Cocoa, Florida. During this deposition 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.

2. Upon receiving the transcript of the deposition of Mr. Lobach, Southern Bell promptly filed on August 31, 1993, its

Notice of Intent to Seek Confidential Classification of the information contained in this deposition.

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 deposition of the employee identified above.

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 deposition in a sealed container, which is marked as Attachment "B." Finally, Southern Bell has filed two redacted copies of the deposition as Attachment "C."

5. Southern Bell seeks confidential treatment of certain employee information. 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." Specifically, in this deposition, the deponent identifies specific Southern Bell employees by name and alleges that these employees may have engaged in some improper activity.

6. 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.

7. 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.

8. 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.

9. 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.

10. 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>

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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).

11. 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.

12. 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.

13. 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

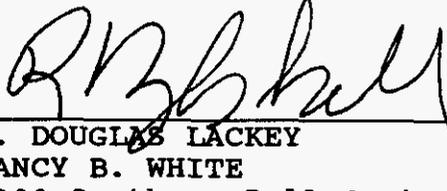
set forth in § 364.183(f), and because the disclosure of this information would have the probable effect of subjecting possibly innocent employees to public ridicule on the basis of nothing more than unproven allegations.

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

Respectfully submitted,

ATTORNEYS FOR SOUTHERN BELL  
TELEPHONE AND TELEGRAPH COMPANY

  
HARRIS R. ANTHONY (22)  
J. PHILLIP CARVER  
c/o Marshall M. Criser III  
150 So. Monroe Street  
Suite 400  
Tallahassee, Florida 32301  
(305) 530-5555

  
R. DOUGLAS LACKEY  
NANCY B. WHITE  
4300 Southern Bell Center  
675 W. Peachtree St., NE  
Atlanta, Georgia 30375  
(404) 529-3862

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

TRANSCRIPT OF THE JUNE 10, 1993 DEPOSITION OF  
LOBACH

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>
LOBACH	5	17,21	1
	7	12,23,24	1
	8	9	1
	9	24	1
	13	7	1