

SCANNED

J. Phillip Carver
General Attorney

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

October 8, 1993

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

Re: Docket Nos. 920260-TL; 910163-TL;
910727-TL and 900960-TL

Dear Mr. Tribble:

Enclosed please find an original and fifteen copies of Southern Bell Telephone and Telegraph Company's Motion for Reconsideration of Order No. PSC-93-1421-CFO-TL, which we ask that you file in the captioned dockets.

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 (BW)
J. Phillip Carver

- ACK _____
- AFA 2
- APP _____
- CAF _____
- CMU _____
- CTR _____
- EAG _____
- LEG 1 w/ memo
- LIN 6
- OPC _____
- RCH _____
- SEC 1
- WAS _____
- OTH _____

Enclosures

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

A BELL SOUTH Company

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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 *8TH* day of *Oct.*, 1993

to:

Robin Norton
Division of Communications
Florida Public Service
Commission
101 East Gaines Street
Tallahassee, FL 32399-0866

Tracy Hatch
Division of Legal Services
Florida Public Svc. Commission
101 East Gaines Street
Tallahassee, FL 32399-0863

Joseph A. McGlothlin
Vicki Gordon Kaufman
McWhirter, Grandoff & Reeves
315 South Calhoun Street
Suite 716
Tallahassee, FL 32301-1838
atty for FIXCA

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

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

Charles J. Beck
Deputy Public Counsel
Office of the Public Counsel
111 W. Madison Street
Room 812
Tallahassee, FL 32399-1400

Michael J. Henry
MCI Telecommunications Corp.
MCI Center
Three Ravinia Drive
Atlanta, Georgia 30346-2102

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

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

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

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

J. Phillip Carver

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Comprehensive review of revenue requirements and rate stabilization plan of Southern Bell Telephone and Telegraph Company) DOCKET NO. 920260-TL

In re: Investigation into the integrity of Southern Bell Telephone and Telegraph Company's repair service activities and reports) DOCKET NO. 910163-TL

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

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

In re: Request by Broward Board of County Commissioners for extended area service between Ft. Lauderdale, Hollywood, North Dade and Miami.) DOCKET NO. 911034-TL

FILED: October 8, 1993

**SOUTHERN BELL TELEPHONE AND TELEGRAPH COMPANY'S
MOTION FOR RECONSIDERATION OF ORDER PSC-93-1421-CFO-TL
(DOCKET NO. 910163-TL)**

COMES NOW, BellSouth Telecommunication, 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 Reconsideration of Order No. PSC-93-1421-CFO-TL, issued September 29, 1993 by the Prehearing Officer in the above-referenced dockets, and states as grounds in support thereof the following:

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PSC-RECORDS/REPORTING

1. On September 29, 1993, the Prehearing Officer issued Order No. PSC-93-1421-CFO-TL, which granted in part and denied in part Southern Bell's Request for Confidential Classification for certain information contained in the depositions of Southern Bell employees Carmen Ortiz, James Bryant, Joann Davis, Robert Corriveau and Alice Short. This motion is directed to the portions of the Order that partially deny Southern Bell's request for confidentiality.

2. In the above-referenced depositions various deponents made a number of allegations that certain identified Southern Bell employees may have engaged in some impropriety. During these depositions Public Counsel also asked a number of questions that appeared to incorporate the assumption that the named employees engaged in some improper activity. Southern Bell requested confidential classification, pursuant to the provisions of Section 364.183(3)(f), Florida Statutes, for the names of employees who were the subject of these allegations and assumptions. Southern Bell's request for confidentiality of these employees' names was premised upon Section 364.183(3)(f), Florida Statutes, which provides that confidential classification shall be granted for "[e]mployee personnel information unrelated to compensation, duties, qualifications, or responsibilities".

3. The Prehearing Officer denied this portion of Southern Bell's request for confidential treatment. In so doing, the Prehearing Officer erred by overlooking two determinative principles of statutory interpretation that were specifically

raised by Southern Bell in its motion: (1) a statute must be interpreted in a way that will render it logical rather than illogical; (2) a statute must be interpreted to give effect to the legislative intent.

4. The most fundamental tenant of statutory interpretation is that when the statute employs clear and unambiguous language, that language must simply be applied. "It is neither the function nor prerogative of the courts to speculate on constructions more or less reasonable, when the language itself conveys an unequivocal meaning". Heredia v. Allstate Ins. Co., 358 So.2d 1353, 1355 (Fla. 1978). On the other hand, when the statutory language is susceptible to more than one meaning, the tribunal must necessarily interpret the language to determine how it applies to a given set of facts.

5. Southern Bell and the Prehearing Officer appear to agree that the instant statute requires some interpretation as to how it should be applied. The statute dictates that employee personnel information should be confidential or not, depending upon whether it is "unrelated" to four very general, undefined categories, i.e., compensation, duties, qualifications and responsibilities. There is an obvious need to apply the proper principles of statutory construction to define the parameters of these categories. The Prehearing Officer appears to agree, as reflected in the statement in the instant Order that "the Prehearing Officer does exercise discretion in interpreting an exemption, . . .". Order, at p. 8. Likewise, the Order makes

numerous references to the legal proposition that exemptions from the public disclosure that would otherwise be required by Florida's Public Records Law are to be "narrowly construed". Order, at p. 6, 8. Thus, the issue is not whether interpretation is necessary, but rather which interpretive guidelines are to be followed and what result is required by the application of these guidelines. Southern Bell submits that the Prehearing Officer erred by applying a "narrow construction" of the exemption and, in so doing, disregarding other applicable principles of statutory construction.

6. First, the subject Order characterizes Southern Bell's position as advocating broadly that "the exemption to public disclosure found in Subsection (f) of Section 364.183(3), Fla. Stat. is to be interpreted in favor of nondisclosure of information". Order, at p. 6. The Order rejects this purported argument based on the previously cited principle that exemptions from disclosure are to be "narrowly construed".

7. Southern Bell's position, however, is based upon a more fundamental principle of statutory interpretation, that a statute must be construed in a way that will render it logical rather than illogical. It is a, "well settled principle" that a statute should not be interpreted "in ways which ascribe to the legislature an intent to create an absurd result". Ferre v. State Ex Rel. Reno, 478 So.2d 1077, 1082 (Fla. 3rd DCA 1985). "[W]hen the use of a statutory definition results in a manifest incongruity, . . . that definition should not be employed".

Ferre, Id. Likewise, a statute should not be interpreted in a way that "presume[s] that the Legislature employed useless language" in enacting the statute. Times Publishing Company v. Williams, 222 So.2d 470, 476 (Fla. 2nd DCA 1969).

8. The principle that all statutes should be construed so as to be logical and congruent applies regardless of the particular statute in question or whether that statute is to be construed broadly or narrowly. The interpretation of Section 364.183(3)(f), that is contained in the subject Order, although admittedly consistent with the legal mandate to interpret exceptions narrowly, has also interpreted the statutory exemption in a way that renders it incongruous, self-contradictory and ultimately pointless.

9. Section 364.183(3)(f) excludes from the requirement of disclosure all employee personnel information except that which falls into four specifically named categories. Thus, it is only the information that falls into one of these categories that is to be disclosed. The categories, however, are facially very broad. Specifically, they include all information relating to the particular employee's "compensation, duties, qualifications, or responsibilities". If these four categories of information are given a broad reading, then they would necessarily encompass virtually everything related to a particular employee's position. In fact, if these categories are broadly defined, then it becomes difficult to conceive of employee personnel information that has

any relationship whatsoever to an employee's job that would not fall into one of these four categories.

10. Thus, when read in the context of Subsection (f), the subject Order, in effect, interprets this statute to mean that the legislature intended to exempt from disclosure all employee personnel related information, except for personnel information that has some relationship, no matter how tenuous, to the employee's employment. This is tantamount to creating an exemption from disclosure and at the same time qualifying the exemption to the point of obliteration. Such legislative action would simply make no sense. Thus, a broad reading of these four exceptions to the exemption from disclosure of employee related information necessarily has the effect of attributing to the legislature the intent to enact incongruous and pointless language to reach an absurd result. Again, the Florida Supreme Court has ruled very clearly that an interpretation that attributes to the legislature this type of intent simply cannot be upheld (See, Ferre, supra).

11. Southern Bell also argued in its request for confidentiality that 364.183(3)(f), must be construed in light of the legislative intent in creating exemptions of certain information from public disclosure.¹ Southern Bell noted in its

¹ "[W]here any ambiguity in the meaning or context of a statute exists, this must yield to the legislative purpose". Smith v. City of St. Petersburg, 302 So.2d 756, 757 (Fla. 1974); "The primary guide to statutory interpretation is to determine the purpose of the Legislature . . ." Cape Development Co. v. City of Cocoa Beach, 192 So.2d 766, 771 (Fla. 1966).

request that, "although Section 119.14(4)(b)(2) 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(3)(f)." Request for Confidential Classification, June 11, 1993, p. 8, fn. 2. Accordingly, Southern Bell submitted that Subsection (f) should be interpreted in light of the specific statement in Subsection 119.14(4)(b)(2) that an exemption from disclosure serves a public purpose if it also serves to "protect 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 of such individuals" Section 119.14(4)(b)(2).

12. The Prehearing Officer apparently misconstrued the above-stated position of Southern Bell to be an argument that, under the statute, there must "be a 'finding' by the Commission that Southern Bell employees engaged in improper activity in the performance of their jobs before the information is subject to public disclosure." Order, at p. 8. Obviously, there is no such requirement in the instant statute, and Southern Bell has not argued that information that would otherwise be subject to disclosure can not be disclosed absent an evidentiary hearing and a finding that the particular information is true.

13. To the contrary, Southern Bell has argued simply that the stated purpose of many of the exemptions from public

disclosure that exist in both Chapter 119 and Section 364.183 is to avoid unnecessarily subjecting individuals to defamatory statements and the resulting "unwarranted damage". For this reason, resolution of any statutory ambiguity should be done in such a way that it will give effect to this clearly stated legislative intent. Therefore, to determine how this specific statutory ambiguity should be resolved, this Commission should certainly consider the fact that the allegations in question are, in most instances, vague, unsupported in the depositions, and that they may very well have the effect of defaming innocent persons who happen to be Southern Bell employees.

14. The Prehearing Officer has, of course, found to the contrary. The Order, however, contains an internally inconsistent statement of the method by which this result was reached. First, the Order states:

It is clear that allegations that employees engaged in improper activity in the performance of their jobs is information related to the employees' duties and responsibilities.

Although the Prehearing Officer does exercise discretion in interpreting an exemption, the Prehearing Officer is bound to follow the language of the exemption in light of the fact that exemptions are to be narrowly construed in favor of public disclosure.

Order, at p. 8. Thus, the Order's reference to following "the language of the exemption" appears to reflect the conclusion that the terms "duties" and "responsibilities" are unambiguous, and that the only supportable conclusion is that these terms necessarily encompass vague and facially unsupported allegations of impropriety. At the same time, however, the Order expressly

notes that an interpretation (as opposed to a mere "application" of unambiguous statutory language) is necessary to reach this result. The Order also cites once more to the interpretive principle that exemptions from public disclosure are to be narrowly construed.

15. Southern Bell submits that vague, in some instances general, and uniformly unproven allegations that an employee engaged in some impropriety are not the type of information that clearly and unambiguously falls within any reasonable view of an employee's "duties", or "responsibilities". Instead, Southern Bell submits that this type of information can only be ruled subject to disclosure (or not) by interpreting the intended breadth of the terms "duties", and "responsibilities" of an employee. In doing so, the legislative intent must be observed and supported. See, Smith, Cape Development Co., supra.

16. There is certainly law to support the subject Order's premise that exemptions from the requirement of public disclosure are to be narrowly construed. There is no law, however, to support the theory that maximum disclosure is the paramount concern in every situation concerning an exemption. Nor is there a legal basis to disregard fundamental principles of statutory interpretation in pursuit of the goal of optimum disclosure. Southern Bell submits that the narrow construction of the exemption that is encompassed within the above-referenced Order is one that simply ignores the clearly-stated legislative intent to avoid the disclosure of defamatory information that will cause

unwarranted damage to individuals. The Order also necessarily encompasses the conclusion that Section 364.183(3)(f) must be interpreted in a way that renders it internally inconsistent and ultimately pointless. While the mandate of narrow construction of exemptions exists and must be observed, it must also be balanced by the legal requirement to interpret legislation according to its clearly-stated intent and in a manner that renders the legislation coherent and internally consistent. Because the subject Order fails to consider and apply these principles of statutory interpretation, it is in error as a matter of law. The Order must be overturned for this reason.

17. In its Request for Confidential Classification, Southern Bell also requested confidentiality as to certain information that was originally set forth in Southern Bell's Supplemental Answers to Public Counsel's Third Set of Interrogatories. Southern Bell originally sought confidential classification for the information in these interrogatory answers at the time that they were filed. During the above-identified depositions, Public Counsel made reference to the particular information for which Southern Bell had previously requested confidentiality. Therefore, Southern Bell incorporated the previous request for confidentiality for this information into the instant request for confidential classification. The above-referenced Order rejected this request because the previously entered Order No. PSC-93-1046-CFO-TL has already rejected the request for confidential classification of the information

included in the interrogatories. Southern Bell, however, filed a Motion for Reconsideration of Order No. PSC-93-1046-CFO-TL on July 29, 1993. This motion has not yet been ruled upon by the Full Commission. Therefore, Southern Bell incorporates by reference that Motion into the instant Motion for Reconsideration. A copy of Southern Bell's July 29, 1993 Motion for Reconsideration of Order No. PSC-93-1046-CFO-TL is attached hereto as Exhibit "A".

18. Wherefore, Southern Bell Telephone and Telegraph Company respectfully requests the entry of an Order granting its Motion for Full Commission review, setting aside the portions of Order No. PSC-93-1421-CFO-TL that deny Southern Bell's Request for Confidential Classification, and ruling that Southern Bell is entitled to confidential classification for the information at issue.

Respectfully submitted this 8th day of October, 1993.

SOUTHERN BELL TELEPHONE
AND TELEGRAPH COMPANY

Harris R. Anthony (bw)

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

R. Douglas Lackey

R. DOUGLAS LACKEY
4300 - 675 West Peachtree St.
Atlanta, Georgia 30375
(404) 529-5387

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.

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...[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.

SOUTHERN BELL TELEPHONE
AND TELEGRAPH COMPANY

Harris R. Anthony
HARRIS R. ANTHONY
c/o Marshall M. Criser, III
400 - 150 South Monroe Street
Tallahassee, Florida 32301
(305) 530-5555

R. Douglas Lackey
R. DOUGLAS LACKEY
SIDNEY J. WHITE, JR.
4300 - 675 W. Peachtree Street, NE
Atlanta, Georgia 30375
(404) 529-5094