

2. On July 19, 1993, the Prehearing Officer issued Order No. PSC-93-1045-CFO-TL denying Southern Bell's confidentiality requests. The Prehearing Officer denied the Company's request for confidential classification relating to certain employee specific personnel information contained in late-filed deposition exhibits 3, 7, 8 and 9. Specifically, the information discloses the names of employees who were disciplined by Southern Bell. This information, if publicly disclosed, would cause unnecessary public embarrassment to these employees and could be defamatory or could cause unwarranted damage to the good name or reputation 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 Florida Statutes, § 364.183 exempt from public disclosure certain information that would otherwise be subject to disclosure under Florida Statutes, Chapter 119. This exempt information includes all "employee personnel information unrelated to compensation, duties, qualifications or responsibilities." Florida Statutes, § 364.183(3)(f). Further Section 364.183(3) specifically authorizes the exemption from public disclosure of any document that, if disclosed, "would cause harm to the Company's business

operation...." In its Request, Southern Bell argued that the discipline of the employees in question was not, in a strict sense, related to their "compensation, duties, qualifications or responsibilities."

4. The Prehearing Officer apparently rejected the argument that Section 364.183, Florida Statutes, should be applied in a way that will balance "the benefits to be derived from public disclosure against the detriment to the Company and its employees." Order, at p. 5. The Prehearing Officer stated that, in the absence of a specific statutory exemption, this Commission is not entitled to make a decision based on such a balancing.

5. In this case, it is clear from the language of Chapter 119, Florida Statutes, that the legislature intended precisely the sort of balancing of interests that Southern Bell advocates. Because Order No. PSC-93-1045-CFO-TL overlooked this fundamental point, it is in error and should be reconsidered and reversed by the full Commission.

6. Chapter 119 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 it will weigh 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)¹. One of these purposes is to protect,

...[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.

7. 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. Thus, when Southern Bell urged the Prehearing Officer to weigh the damage of public disclosure to individual employees against the negligible benefit to be derived from this disclosure of their identities, the Company was not making an argument for an unauthorized "public policy" determination. Instead, Southern Bell has argued

¹ The other purpose set forth in Section 119.14(4)(b), the efficient administration of a governmental program, is not pertinent to our issue.

that this issue must be resolved by considering the precise purpose that underlies this exemption to the public disclosure requirement of Chapter 119, the protection of individuals from "unwarranted damage" that would be caused by the public release of certain information.

8. If this Commission does not consider the damaging effect of the public release of this information concerning Southern Bell 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 that is 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-93-1045-

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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