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SEARCHED
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INDEXED
FILED

November 5, 1993

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

920260

RE: Docket Nos. 910163-TL and 910727-TL

Dear Mr. Tribble:

Enclosed are an original and fifteen copies of Southern Bell Telephone and Telegraph Company's Request for Confidential Classification. Please file these documents in the above-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 on the parties shown on the attached Certificate of Service.

Sincerely,

Sidney J. White, Jr.
Sidney J. White, Jr.

Enclosures

cc: All Parties of Record
A. M. Lombardo
H. R. Anthony
R. D. Lackey

RECEIVED & FILED

FPSC-BUREAU OF RECORDS

DOCUMENT NUMBER-DATE

11975 NOV-58

FPSC-RECORDS/REPORTING

CERTIFICATE OF SERVICE**Docket No. 920260-TL****Docket No. 900960-TL****Docket No. 910163-TL****Docket No. 910727-TL**

I HEREBY CERTIFY that a copy of the foregoing has been
furnished by United States Mail this 5th day of November, 1993 to:

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hotline communications, customer specific information, employee-specific information unrelated to compensation, duties, qualifications or responsibilities and information related to competitive interests. This information is expressly deemed to be confidential pursuant to § 364.183(3), (3)(e), (3)(f) and § 119.07(3)(w), Florida Statutes.

2. Southern Bell has appended to this Request for Confidential Classification as Attachment A a listing showing the location in the documents of the information designated by Southern Bell as confidential.

3. Appended hereto in an envelope designated as Attachment B are two edited copies of the documents with the confidential information deleted.

4. Attached as Attachment C is a sealed package containing copies of the documents with the material which is confidential and proprietary highlighted. Copies of Attachment C are not being served on the other parties in this proceeding.

5. With respect to documents produced in response to Request No. 3, these documents consist of confidential communications from Company employees to other Company personnel involved in receiving, processing and investigating potential ethics violations. These individuals are also charged with the duty of giving advice relating to a broad range of ethics-related issues, many of which are unrelated to these dockets. The information contained in the documents produced is proprietary confidential business information pursuant to Section 364.183(3), (3)(e), (3)(f) and § 119.07(3)(w), Florida Statutes, and public disclosure of the details of the

communications and subsequent investigatory efforts would result in substantial harm to the Company and its internal efforts to police its affairs. Further, any chilling effect on the effective use of this valuable internal control process could ultimately inure to the detriment of Southern Bell's ratepayers through rendering less effective this tool for the continuous improvement of Southern Bell's quality of service to its customers.

6. The documents produced were generated as a result of the use, by Southern Bell's employees, of internal Company ethics hot line telephone numbers or as a result of other employee contacts with BellSouth Corporation's Office of Corporate Compliance and Responsibility, also known as the Company Ombudsman. Any public disclosure of the details of these contacts would negatively affect the continued viability of BellSouth's Corporate ombudsman's office. Similarly, in cases of ethics hot line inquiries, the representatives of the Company's Headquarters Security Department act in the same manner as the ombudsman, and with the same express pledge of confidentiality relating to ethical matters brought to them by Company employees. Southern Bell will primarily discuss the operations of the ombudsman specifically herein, but the Security Department's participation is governed by the same standards applicable to the ombudsman in handling hotline inquiries.

7. The documents at issue are replete with confidential information, including: reporting employees' names; business addresses and telephone numbers of reporting employees; direct supervisors' names; names of persons alleged to have done certain acts perceived as unethical or otherwise improper; details relating

the facts of specific cases; customer specific information such as name, address, telephone number; details of competitive accounts; social security numbers; and home addresses and telephone numbers of employees. Even if only portions of these documents were held to be confidential, the totality of the compiled information could lead to the direct or indirect disclosure of the details communicated by employees as well as the identities of the employees themselves. Due to the disclosure of such details, one could easily pinpoint the specific instance or instances discussed and thereby determine the individuals involved. This is so because the detail contained in the notes taken by the ombudsman and Security Department representatives contains all the pertinent information which led to the communication being made in the first instance. Anyone involved in the fact pattern shown in these investigatory notes would clearly be given sufficient information to determine the source of the communication. Thus, it is crucial that the details of these communications, as well as all of the supplemental information relating to the investigation of the matters raised in the initial communications, be granted confidential classification. As more specifically set forth hereafter, it is not only the specific information that must be protected from public disclosure, but it is in the public interest to maintain the integrity and viability of the process itself. As indicated in some of the investigatory materials, employees have refused to be identified due to concerns over confidentiality. In light of such a fragile environment, any action by the Commission making this documentation public could seriously impair the effective use of the reporting hotlines, and of the ombudsman.

8. The BellSouth Office of Vice-President-Corporate Responsibility and Compliance is constituted as an independent and neutral entity within BellSouth Corporation and operates under an express promise to employees of the corporation that communications between employees and members of the office will remain strictly confidential.¹ The same is true for Security Department personnel charged with handling ethics-related communications. Moreover, the office operates to assure such confidentiality by inter alia, notifying callers to the ethics hot line that they are entitled to confidentiality of their communications and protection of their individual identities if so desired.

9. The Commission should not allow public disclosure of the information communicated to BellSouth's ombudsman or to its Security Department, since a contrary position would destroy the reputation of that office by invading the principle of confidentiality that is the cornerstone of the office and which is absolutely necessary for its effective performance. It is the function of the ombudsman to receive, investigate and remedy work place problems in a strictly confidential atmosphere. Without this confidentiality, the office would be just one more non-confidential opportunity for employees to air disputes. The ombudsman's office provides employees an opportunity for complete and unedited disclosure without the threat or fear of retaliation that may exist in other arenas. Wholesale compelled disclosure of this information would result in a chilling

¹ Typical of most, if not all, other corporate ombudsman offices, BellSouth advertises to its employees that their communications will be kept confidential. In fact, the Code of Ethics of the Corporate Ombudsman Association expressly provides for the confidentiality of such communications.

effect on internal communications vital to the goals of continuous corporate improvement and the internal policing of the Company's affairs. Such a result would be contrary to the public interest. This Commission has the obligation and responsibility to recognize the overriding public policy supporting the confidentiality of ombudsman programs, such as evidenced in these documents, and to the corporation and society as a whole.²

10. The confidentiality referred to by Southern Bell is the appropriately held perception by Company employees that there is a justifiable expectation of strict confidentiality of communications between these employees and the ombudsman's office. Any public disclosure of the statements or other communications received by the ombudsman would send the extremely destructive signal to Company employees that "confidential" does not really mean confidential. This would likely render the ombudsman program far less effective, with fewer employees taking advantage of it.

11. If a program promises confidentiality, and later it is found that such confidentiality does not exist, or that information discussed purportedly in confidence may be publicly disclosed in legal proceedings, such employees are unlikely to trust the system

² The resolution of problems informally is more desirable than other more formal procedures and can mitigate the chances for costly complaints, grievances and litigation regarding such issues.

and will abandon it.³ If this were to occur, the ironic result would be that information or communications that could be conveyed and used as a catalyst for positive improvement with informal and timely responses to a broad array of work place problems and issues will be disabled.

12. Due to the sensitivity of the information contained in the documents produced for Staff relating to ethics hot line activity and due to the overriding public policy in favor of the creation and use of avenues such as these to stimulate open and candid input from employees, Southern Bell urges the Commission to consider all such documents produced in response to Request No. 3 confidential and therefore not subject to the examination and inspection provisions of Section 119.07(1), Florida Statutes. In so doing, the Commission will have access to such information, but the threat and risk of details of these matters filtering back to the reporting employees' work place, and attaching to particular employees will be eliminated. It cannot be overstated that the effectiveness of programs such as BellSouth's ombudsman and the hot lines for employee reporting are

³ In some respects, employees may reasonably believe that such communications are tantamount to being privileged. In fact, in other jurisdictions, several cases have applied the Federal Rules of Evidence and have found that confidential communications made to company ombudsmen are protected from disclosure. Kientzy v. McDonnell Douglas Corporation, 133 FRD 570 (ED Mo. 1991); Monoranjian Roy v. United Technologies Corp., Civil Cause No. H89-680 (JAC) (D. Conn. 1990). These cases are instructive and discuss the four factors to be considered in determining whether to grant or deny discovery of ombudsman materials. The four factors are: 1) whether the parties believed that the communications were confidential; 2) the need for confidentiality; 3) whether society would recognize the value of the confidential relationship, and 4) a comparison of the benefits of disclosure compared to the corresponding injury that might result.

grounded in the premise that strict confidentiality must be afforded, and the employees must trust that such confidentiality will be honored. Southern Bell and BellSouth do honor the Company's pledge of confidentiality, and urge the Commission to similarly find that these documents in their entirety are entitled to confidential classification.

13. Southern Bell is aware that typically the Company is required to identify only the specific portions of documents containing the proprietary information sought to be protected. However, in this case, the confidentiality of the information is inextricably linked to the purposes served through non-public disclosure of any of the details of the initial communications as well as the details of follow-up investigation potentially linking the investigation to a particular employee as the source of the inquiry. It is the trust, integrity and viability of these employee-reporting programs that must be maintained through strict adherence to the tenets of confidentiality which form the foundation for BellSouth's effective ethics compliance efforts. Without employee trust, such efforts will be severely diluted and their purposes rendered much less effective. The resulting harm to Southern Bell and BellSouth would be the crippling of a powerful tool for self policing and continuous improvement within the Company. Conversely, through these efforts, the Company can continue to improve the way it provides its service to its customers, who will be the ultimate beneficiaries.

14. Given the stated harm that could result to Southern Bell and ultimately its ratepayers from public disclosure, Section

364.183(3), Florida Statutes gives the Commission sufficient discretion to recognize these documents as entitled to confidential classification. Section 364.183(3), Florida Statutes defines proprietary confidential business information as:

- (1) information
- (2) owned or controlled by the Company
- (3) treated as private
- (4) public disclosure of which would cause harm to the Company or ratepayers
- (5) and has not been disclosed unless
 - disclosed pursuant to statutory provision or
 - an order of a court of administrative agency or
 - private agreement providing for non-disclosure

The statute then enumerates a non-exclusive list of six representative types of proprietary confidential business information. It is clear from the express language of the statute that the six enumerated categories of proprietary confidential business information are not intended to be all inclusive. Specifically, Section 364.183(3) provides that the term proprietary confidential business information "...includes, but is not limited to..." the six categories of information listed in the statute. Clearly, the Commission has the requisite discretion to find that, under the circumstances and for the public policy reasons explained above, these documents should be afforded confidential classification, and that they fit squarely within the parameters of Section 364.183(3), Florida Statutes.

15. The First District Court of Appeals has acknowledged the statutory discretion afforded to the Commission:

Clearly both the prehearing officer and the Commission recognized that they had discretion to find documents others (sic) that (sic) those explicitly listed in the six categories confidential. 597 So.2d 873 (Fla. 1st OCA 1992) at page 877, footnote 5.

In that case, the Commission had chosen not to classify certain information as confidential, but did acknowledge that it had the discretion to do so if so inclined. Consequently, Southern Bell urges the Commission to exercise its discretion and find that these documents are entitled to confidential classification.

16. In the event the Commission decides not to grant confidentiality to all of the documents produced by Southern Bell in response to Request No. 3, Southern Bell has identified in Attachment A the locations in these documents where specific employee identifiable information is contained which could be directly or indirectly used to trace the source of the information back to an employee. This would include the reporting employees' names, supervisors, work addresses, telephone numbers, and any references in the narratives or notes of a communication or other document which would tend to directly or indirectly implicate a particular individual, either as the reporting party or as the alleged offending party. Southern Bell urges that this information, at a minimum, should be protected, and that such information also satisfies the test set forth in Section 364.183(3), Florida Statutes, as already shown herein.

17. In addition, certain other information contained in the documents produced in response to Request No. 3 is independently

entitled to confidential classification and is also specifically identified in Attachment A together with the reasons justifying confidentiality. This information is as follows:

Customer Specific Information/Competitive Information

18. Certain of the documents contained in the investigatory files produced by Southern Bell contain customers names, addresses, telephone numbers and details of Southern Bell's competitive service offerings to such customers. This information is proprietary confidential business information pursuant to Section 364.183(3)(e) (competitive service information) and Section 119.07(3)(w) (customer's names, addresses and telephone numbers). The information discloses customer-specific rates paid under competitive service arrangements, the specific serving arrangements, and equipment provided to the customers, as well as the specific identities of the particular customers. The public release of this competitive information could harm Southern Bell's ability to compete for the named customers' business in the future, since competitors would have free access to the existing prices paid and service and equipment requirements of these customers. Thus, competitors could potentially bid for these customers' business from the competitive advantage of knowing the details of Southern Bell's existing serving arrangements with these customers. Pursuant to Section 119.07(3)(w), Florida Statutes, the customer's name, address and telephone number are expressly deemed to be exempt from the inspection and examination provisions of Section 119.07(1), Florida Statutes. Also, the Commission has previously recognized that this type of customer specific information is entitled to confidential classification.

PSC-93-0891-CFO-TL, issued June 14, 1993 in Docket Nos. 920260-TL, 910163-TL, 910727-TL and 900960-TL. The competitive information is deemed proprietary pursuant to Section 364.183(3)(e), Florida Statutes.

Employee Specific Information Unrelated to Compensation, Duties, Qualifications or Responsibilities

19. Certain of the documents contained in the investigatory files produced contain employees' home telephone numbers, home addresses and social security numbers. Clearly, this information is not related to the employees' compensation, duties, qualifications or responsibilities. Thus, pursuant to Section 364.183(3)(f), Florida Statutes, this information is entitled to confidential classification. The Commission has also recognized that home addresses and telephone numbers are proprietary to the customers. PSC-93-1421-CFO-TL, issued September 29, 1993; PSC-93-1410-CFO-TL, issued September 29, 1993, (issued in these consolidated cases); Social security numbers of employees are equally entitled to confidential classification, since they do not relate to employees' compensation, duties, qualifications or responsibilities.

20. With respect to documents produced in response to Request Nos. 9 and 10, these documents are employee-specific "B Forms" which are contained in the named employees' personnel records, and relate to employee discipline. This information is clearly confidential and proprietary under Florida Statutes, 364.183(f), which provides that "proprietary confidential business information" includes "employee personnel information unrelated to compensation, duties, qualifications, or responsibilities."

21. The four areas of employee personnel information that are not confidential pursuant to 364.183(f), Florida Statutes, are compensation, duties, qualifications, and responsibilities of an employee. Employee discipline does not fit any of the exceptions and thus is confidential under 364.183(f), Florida Statutes.

22. 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 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.

Webster's Seventh New Collegiate Dictionary, 1970. A reading of these commonly-understood definitions makes it clear that the disciplining of an employee is not encompassed within any of the concepts of definitions set forth above.

23. Section 364.183(3) Florida Statutes, provides that in addition to the specifically identified types of documents that are confidential, such as those enumerated in subsection (f), any

document that, if disclosed, "would cause harm to the ratepayers or the person's or company's business operations... is also entitled to protection." As will be shown hereafter, the potential for harm to Southern Bell's business operations that would result from public disclosure of the subject information is substantial.

24. The discipline applied to the employees shown in the Company's response to Item Nos. 9 and 10 was the result of Southern Bell's internal investigation of such matters. The level of any disciplinary action that was taken was based upon the magnitude of the actions of the particular employees in question. It was never contemplated by either the Company or the individuals involved that there would be a subsequent public disclosure that would subject the disciplined employees to the additional punishment of public opprobrium and scorn. In effect, any public disclosure of the discipline applied to these employees would convert internal discipline into an inappropriate and inflammatory "public shaming" of these employees.

25. The public disclosure of the nature of the discipline in these cases would have a significantly deleterious effect on morale that, in turn, would serve as a practical impediment to the functioning of the Company. Those who cooperate with the efforts of the company to address employment-related labor issues do so on the well-founded assumption that the information will be handled discreetly, appropriately, and that it will result in discipline that is warranted. If Southern Bell is now forced to reveal publicly the nature of the discipline relating to these two employees, then these employees will no doubt feel that their good faith efforts to address

any problems that may have occurred have been betrayed. It is easy to see how this sense of betrayal could result in morale problems that would be both widespread and severe.

26. Moreover, public disclosure could well result not only in general morale problems, but also in a general employee wariness and concern that would make future attempts to remedy internal business-related issues far more difficult. Southern Bell can only effectively investigate its internal business affairs with the cooperation of its employees. In this case, the public exposure of the details of the discipline applied to these two employees could likely lead to a diminished capability of the Company to police its internal business matters.

27. Further, the managers of Southern Bell who are charged with the duty of administering employee discipline will unquestionably be hesitant to do so if they know that any employee disciplined for even the most minor infraction may later have that discipline disclosed and widely published.

28. Finally, to reveal this information publicly would serve no purpose whatsoever. Arguably, if disclosure of the details of the discipline applied to these two employees served some public purpose, or if this disclosure were necessary for this Commission to deal thoroughly with the issues of this docket, then a balancing test might be necessary. That is, the Commission would need to balance the benefits to be derived from public disclosure against the detriment to the Company and the employees. In this case, however, public disclosure will result in no benefit whatsoever.

29. This Commission can fully consider all issues pertinent to this docket, based on the information that Southern Bell has already provided, which includes the names of employees disciplined. It is only the public disclosure of these employees' names together with disciplinary actions taken against the employees that Southern Bell seeks to prevent. Southern Bell has stated previously that it does not generally object to public disclosure of the extent of the employee discipline, the type of discipline, and the number of persons disciplined. However, there simply is nothing to be gained by the additional public disclosure of these data in a manner which will publicly link certain discipline with discrete individuals. To hold otherwise will do nothing more than damage, perhaps irreparably, the reputations of individual Southern Bell employees and expose them personally to public ridicule.

30. Southern Bell has treated and intends to continue to treat the material for which confidential classification is sought as private, and this information has not been generally disclosed.

WHEREFORE, based on the foregoing, Southern Bell moves the Prehearing Officer to enter an order declaring the information described above and contained in the indicated portions of the attachments to be proprietary confidential business information, and thus not subject to public disclosure.

Respectfully submitted this 5th day of November, 1993.

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FPSC DOCKET 910163-TL
SOUTHERN BELL TELEPHONE AND TELEGRAPH COMPANY
REQUEST FOR CONFIDENTIAL CLASSIFICATION
STAFF'S 36TH REQUEST FOR PRODUCTION OF DOCUMENTS

JUSTIFICATION FOR CONFIDENTIALITY REQUEST

1. This information could be directly or indirectly used to trace the source of the information back to an employee. This would include the reporting employees' names, supervisors, work addresses, telephone numbers, and any references in the narratives or notes of a communication which would tend to directly or indirectly implicate a particular individual, either as the reporting party or the alleged offending party. These references in the narratives include, but are not limited to time, place and salient details of the reported incidents. Public disclosure of these details could result in harm to Southern Bell and ultimately the ratepayer. As such, this information is confidential business information pursuant to Section 364.183(3), Florida Statutes, and is exempt from the requirement of public disclosure of Section 119.07, Florida Statutes.

2. This information contains customer names, addresses, telephone numbers and/or details of Southern Bell's competitive services and equipment provided to said customers. (ESSX(R), Megalinks, etc.). The information discloses customer-specific rates paid under competitive contracts for services and equipment, the specific serving arrangement, as well as the specific identity of the particular customer. As such, this information is proprietary, confidential business information pursuant to Section 364.183(3)(e) (competitive service rate information) and Section 119.07(3)(w) (customer's name and address), Florida Statutes and is exempt from the requirement of public disclosure of Section 119.07, Florida Statutes.

3. 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.

FPSC DOCKET 910163-TL
SOUTHERN BELL TELEPHONE AND TELEGRAPH COMPANY
REQUEST FOR CONFIDENTIAL CLASSIFICATION
STAFF'S 36TH REQUEST FOR PRODUCTION OF DOCUMENTS

LOCATION OF PROPRIETARY MATERIAL

The following information identified by page and line numbers is considered confidential and proprietary:

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| 141 | 1 | 1 |
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FPSC DOCKET 910163-TL
SOUTHERN BELL TELEPHONE AND TELEGRAPH COMPANY
REQUEST FOR CONFIDENTIAL CLASSIFICATION
STAFF'S 36TH REQUEST FOR PRODUCTION OF DOCUMENTS

LOCATION OF PROPRIETARY MATERIAL

The following information identified by page and line numbers is considered confidential and proprietary:

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| 173 | 12,13,18-21 | 1 |
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| 176 | 7,10,14,23,40,41 | 1 |
| 176 | 10,17,18,20,21,23-28,31,38-41 | 2 |
| 177 | 15-18,22,23,25,32,34,36-38,43 | 1 |
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| | 186 | 3, 6, 11, 14, 16-20 | 1 |
| | 187 | 9, 48, 49 | 1 |
| | 188 | 3, 7, 9, 15, 16, 18-23, 26-29, 38, 39, 43 | 1 |
| | 188 | 8 | 1 |
| | 189 | 8 | 1 |
| | 190 | 1, 4, 6 | 1 |
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| | 198 | 1, 5, 6, 8 | 1 |
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| 218 | 21, 22 | 2 |
| 218 | 26 | 1 |
| 219 | 3, 14, 16-18 | 2 |
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| 221 | 2 | 1 |
| 222 | 5-9 | 1 |
| 223 | 13, 18, 23 | 1 |
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| 225 | 9, 10, 17 | 1 |
| 226 | 2 | 1 |
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| 229 | 4, 5 | 2 |
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| 230 | 5, 6, 8, 14, 25, 26 | 2 |
| 230 | 7, 9, 13, 20 | 1 |
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| 234 | 5, 9, 15, 16, 23, 24, 27, 30 | 1 |
| 234 | 12-14, 17-19, 24, 25, 28, 32, 35, 38 | 2 |
| 236 | 2, 5, 8, 11, 17, 20, 23, 26 | 1 |
| 237 | 2, 5, 8, 10, 12, 15, 17, 20, 22 | 1 |
| 237 | 2, 12, 17 | 2 |
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| 275 | 14 | 2 |
| 276 | 2, 6, 9, 12, 13, 15, 16, 17, 21 | 1 |
| 277 | 4-8, 10, 11, 13 | 1 |
| 278 | 6, 7 | 2 |
| 279 | 6, 11 | 1 |
| 281 | 14 | 1 |
| 282 | 8 | 1 |
| 283 | 1, 4, 12, 14, 16, 18, 20, 23, 25 | 1 |
| 284 | 5, 7, 8, 9, 10, 13, 15, 17 | 1 |
| 285 | 7, 14, 15, 18 | 1 |
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| 293 | 12 | 1 |
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| 295 | 5, 6, 8-10, 17 | 1 |
| 296 | 8, 10, 13, 17, 19, 20 | 1 |
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| 299 | 10 | 1 |
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| 325 | 1,2,12 | 1 |
| 327 | 15,18,19 | 1 |
| 328 | 15 | 2 |
| 328 | 28 | 1 |
| 330-332 | Trouble tickets are too small to line-number. Customer name, address, telephone number and contact information have been highlighted in Attachment "C" and redacted in Attachment "B". | 2 |
| 334,335 | Trouble tickets are too small to line-number. Customer name, address, telephone number and contact information have been highlighted in Attachment "C" and redacted in Attachment "B". | 2 |
| 337 | Trouble tickets are too small to line-number. Customer name, address, telephone number and contact information have been highlighted in Attachment "C" and redacted in Attachment "B". | |
| 339-346 | Trouble tickets are too small to line-number. Customer name, address, telephone number and contact information have been highlighted in Attachment "C" and redacted in Attachment "B". | |

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