

J. Phillip Carver
General Attorney

Southern Bell Telephone
and Telegraph Company
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Phone (305) 530-5558

September 28, 1992

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 Protest of the Prehearing Officer's Preliminary Ruling in Order No. PSC-92-1003-CFO-TL, 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)

ACK _____

AFA _____

APP _____

CAF _____

CMU Enclosures

CTR ~~cc:~~ All Parties of Record

EAG _____ A. M. Lombardo

LEG 1 w/m Harris R. Anthony

LIN 6 R. Douglas Lackey

OPC _____

RCH _____

SEC 1

WAS _____

OTH _____

A BELLSOUTH Company

LOCAL ENGINEER-DIVISION

11309 SEP 28 1992

FPS-C-RECORDS/REPORTING

CERTIFICATE OF SERVICE
Docket No. 910163-TL

I HEREBY CERTIFY that a copy of the foregoing has been
furnished by United States Mail this *28th* day of *Sept.*, 1992,
to:

Charles J. Beck
Assistant 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

J. Phillip Carver

(22)

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition on behalf of Citizens) Docket No. 910163-TL
of the State of Florida to initiate)
investigation into integrity of) Filed: 9/28/92
Southern Bell Telephone and Telegraph)
Company's repair service activities)
and reports.)
_____)

**SOUTHERN BELL TELEPHONE AND TELEGRAPH COMPANY'S
PROTEST OF THE PREHEARING OFFICER'S PRELIMINARY
RULING IN ORDER NO. PSC-92-1003-CFO-TL**

COMES NOW BellSouth Telecommunications, Inc., d/b/a Southern Bell Telephone and Telegraph Company ("Southern Bell" or "Company"), pursuant to Rule 25-22.006(3)(C), Florida Administrative Code, and hereby protests the preliminary ruling of the Prehearing Officer set forth in Order No. PSC-92-1003-CFO-TL (the "Order") and respectfully requests that the Commission conduct de novo review and enter an Order granting Southern Bell's Motion for Confidential Treatment and Permanent Protective Order, and states in support thereof the following:

1. On June 24, 1991, Southern Bell filed a Motion for Confidential Treatment and Permanent Protective Order for documents that were produced in this proceeding, and that have subsequently come to be identified as Document Nos. 6336-91, 6337-91, and 6339-91. The Office of Public Counsel ("Public Counsel") filed its response and opposition to this motion on July 8, 1991. On July 22, 1991, Southern Bell filed its reply to Public Counsel's response.

2. On September 17, 1992, the Prehearing Officer issued Order No. PSC-92-1003-CFO-TL, in which he preliminarily ruled

11309 SEP 28 1992

FPSC-RECORDS/REPORTING

that the above-referenced documents were not entitled to confidential treatment.¹

3. Southern Bell requested confidential treatment of Document Nos. 6336-91 and 6337-91 in part because each document consists of internal reviews that Southern Bell believes are exempt from public disclosure under the provisions of Florida Statutes, Section 364.183(3)(b).

4. Document No. 6339-91 contains names of employees who have been subject to discipline by the Company. Accordingly, Southern Bell believes that this document is exempted from public disclosure by the provisions of Florida Statutes, Section 364.183(3)(f).

5. As to the documents for which Southern Bell seeks confidential classification because they constitute internal reviews, Southern Bell has set forth fully the basis for its argument in its previously-filed Motion for Permanent Protective Order and Reply, copies of which are attached hereto as Exhibit "A". Accordingly, Southern Bell will not restate at length the arguments contained therein. The thrust of Southern Bell's position can be summarized by stating the self-evident proposition that the Florida Public Service Commission ("Commission") should determine whether a document is entitled to

¹ The Prehearing Officer did sustain Southern Bell's alternative request for confidential treatment of customer specific information contained in Document Nos. 6336-91 and 6337-91. This protest is directed to the portions of the order denying Southern Bell's broader request for confidential treatment on the primary grounds asserted in support of this request.

confidential treatment by considering the purpose of the statutory provision that grants confidentiality in any particular case.

6. Any interpretation by this Commission of a statute that mandates confidentiality must be governed by the legislative intent that is reflected in the clear language of the statute. See, generally, Gadd v. News-Press Publishing Co. Inc., 412 So.2d 894 (Fla 2d DCA 1984) (which is discussed more fully below). Southern Bell submits that this legislative intent cannot be given effect by any analysis that stresses form over substance. More specifically, an internal review serves precisely the same function as an "internal audit." Therefore, the results of either process is a document that should be exempt from disclosure under Chapter 364.183, Florida Statutes. An internal "review" should be entitled to exemption from public disclosure because it serves the same purpose as an internal audit.

7. It is both counter-productive and inconsistent with the clear legislative intent to deny confidential treatment to a report that is the equivalent of an audit based upon the technicality that the report is prepared by an employee whose job title is not "internal auditor."

8. Support for this position can be found in the plain meaning of the words used in the statutory language. Section 364.183(3)(b), Florida Statutes, provides specific exemption from Section 119.07(1), Florida Statutes, for proprietary confidential business information in the form of "Internal auditing controls

and reports of internal auditors" (emphasis added). The statute, by its own terms, is broad enough to encompass not only the traditional internal financial and accounting audit activities of a corporation, but also equally important internal procedural and operational audits, routinely and specially conducted by the company. More importantly, nothing in the statute expressly limits the use of the terms "auditing controls" or "reports of internal auditors" to financial and accounting-related activity. In fact, absent such indication, the meaning to be placed on such words is the standard dictionary definition of these terms.

9. According to the Random House Dictionary of the English Language, unabridged (1966), an "audit" is defined as:

an official examination and verification of accounts and records, esp. of financial accounts.

and also an:

examin[ation] of accounts, records, etc., for purposes of verification... (emphasis added)

Although the above-cited dictionary definitions do use financial and accounting examples of auditing and auditor behavior, they also clearly encompass the examination and verification of other non-accounting "records, etc." which in the present case is made manifest in the internal network review investigations and reports of these internal company reviewers.

10. Had the legislature desired to limit the present exemption under Section 364.183(3)(b), Florida Statutes, to internal auditing controls and reports of internal auditors employed **only** in the formal internal auditing departments,

divisions, or other internal organizations set up for such discrete activity, it could have so qualified this provision. Rather, the legislature fashioned a broader exemption which is designed to protect internal auditing activity and the fruits of such efforts, regardless of whether the "Internal Audit Department" employees or other equally qualified internal "auditors" conducted these internal reviews. The clear legislative intent is to encourage open and frank evaluation, examination and reviews of company accounts, records, and procedures by not systematically subjecting these valuable internal control mechanisms to unnecessary outside scrutiny. The Commission should recognize the pragmatic and reasonable interpretation of this exemption and not place limitations on its application based purely upon arbitrary corporate structure. Such a restrictive interpretation could lead to the absurd result that future internal reviews of the network organization's internal controls and processes would of necessity have to be "flowed through" the internal audit department to satisfy this unrealistic standard. In such cases, the unintended result of such a restrictive interpretation would be to unnecessarily involve more individuals in the process without ensuring any more comprehensive review of the matters being audited.

11. As to the request for confidential classification of the names of disciplined employees, Southern Bell submits that these names are confidential pursuant to the clear provisions of Florida Statutes, Section 364.183(f). This statute specifically

exempts from the public disclosure requirements of Section 119.07(1), Florida Statutes, all "employee personnel information unrelated to compensation, duties, qualifications, or responsibilities." Thus, the sole question at issue herein is whether employee discipline is related to that employee's compensation, duties, qualifications, or responsibilities. In making this determination, the Commission must once again give paramount consideration to the intent of the legislature.

12. The Order of the Prehearing Officer in this matter states in a somewhat cursory fashion that employee discipline constitutes "personnel information which is related to duties or responsibilities." (Order, p. 8) In reaching this conclusion, the Order makes specific reference to Michel v. Douglas, 464 So.2d 545 (Fla 1985), and to the earlier case of News Press v. Wisher, 345 So.2d 645, 648, which includes the statement that, "no state policy protects a public² employee from the embarrassment which results from...[disciplinary action for]...the employee's failure to perform his or her duties properly." (emphasis added)

13. As the Order notes, the Court in Michel was clearly disturbed by the apparently unavoidable ramification of requiring

² It is noteworthy that this case dealt with the issue of the personnel record of a public employee, whereas our situation involves employees in the private sector whose private personnel records come into the possession of a public agency.

certain personnel records of a state agency to be made public.³ At the same time the court stated, based on the above-quoted logic of News Press v. Wisher, that this information was, nevertheless, public under the particular statutes in question.

14. Likewise, the same issue was addressed by the Court in Gadd v. News-Press Publishing Co., Inc. 412 So.2d 894, wherein the Court held that the controlling statute (different from the one in the present matter) did not provide an exemption from Section 119.07, Florida Statutes, and, therefore, ordered disclosure, despite the adverse effect of this disclosure. Specifically, Gadd quotes the pronouncement of the Court in Wait v. Florida Power and Light, 372 So.2d 420, 424, that "[c]ourts deal with the construction and constitutionality of legislative determinations, not with their wisdom. In this case, we are confined to a determination of the legislature's intent."

15. The situation before this Commission differs substantially from those considered by the respective courts enumerated above in that our issue turns upon an interpretation of a statute that provides a clear legislative basis for the requested confidential treatment. Thus, the instant situation is one in which this Commission can avoid the same inequitable result that was so obviously of concern to the above-referenced

³ "[T]he right of access to public records is not the right to rummage freely through public employee's personal lives." Michel, at 546. The court was so disturbed by this prospect that it suggested that public agencies should monitor closely the contents of an employee's personnel files to avoid any undue public embarrassment.

courts (i.e., undue public embarrassment and damage to the reputations of private individuals).

16. As stated above, the primary issue in this regard is how to interpret the legislature's exclusion from public disclosure of all personnel-related information except that information which is related to the employee's compensation, duties, qualifications or responsibilities.

17. If this Commission were to interpret § 364.183, Florida Statutes, to require public disclosure of any employee information that bears a relationship, albeit indirect or tangential in nature to an employee's job responsibilities, wages, or qualifications, then there would be virtually nothing protected from disclosure. Put another way, an overly broad reading of the exceptions to Section 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.

18. Those who have advocated the broadest possible reading of this statutory exemption may be unwitting partners to a potentially devastating result. This is so because if the Commission were to rule that the details of discipline for violation of private internal corporate policies are to be subject to public disclosure, many of the societal benefits of

such investigatory efforts will be lost as a result of their likely failure to be employed. The Commission must avoid such a result by applying a reasoned, rational-based test in these cases and find that these personnel matters are of a nature unrelated to one's salary, job description, qualifications and day to day responsibilities envisioned under Section 364.183(3)(f), Florida Statutes.

19. Again, it cannot be overstated that the principal consideration in determining what information is entitled to confidential treatment must be the intent of the legislature, and in this case a broad reading of Section 364.183(3)(f) is obviously inapposite to any reasonable construction of what the legislature intended by the statute. Further, because Section 364.183, Florida Statutes, provides selected exemptions from the provisions of Section 119.07, these statutory provisions must be read in pari materia. In this regard, Chapter 119 supplies an equally compelling indication of legislative intent in support of the proposition that the names of individuals disciplined as a result of internal corporate investigations should not be publicly released.

20. Section 119.14, Florida Statutes provides the applicable criteria for the legislature to use in creating or maintaining public records exemptions under Florida's Sunset Review procedures, s. 119.14, Florida Statutes. This statute clearly recognizes that information of a sensitive personal nature, including the name or names of individuals, should be

exempt from public disclosure under certain circumstances, particularly if the release of the 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), Florida Statutes. (emphasis added)

21. The above-stated test is one of three elements that are required to be considered by the legislature in determining whether to create or continue certain exemptions from the public records act. Thus, the clear legislative intent is to protect such information from public scrutiny. The release of names of both disciplined as well as exonerated present and past employees of Southern Bell would serve no public purpose, would do irreparable damage to their public reputations and good names in their communities, and is expressly recognized by the legislature as being worthy of protection under these circumstances. No legitimate purpose could possibly be served through the unrestricted public disclosure of these names.

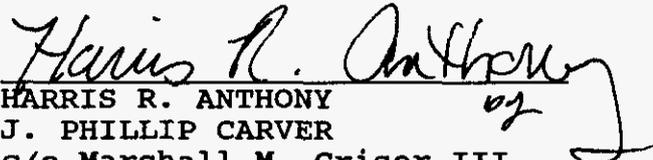
22. On the basis for the foregoing, it is clear that the statutes at issue reflect a legislative intent to avoid unnecessary and gratuitous disclosure of material concerning private individuals that would subject these individuals unnecessarily to scorn and embarrassment. It is likewise clear that the only reasonable interpretation of s. 364.183(f), Florida Statutes, must be a narrow one, i.e., the terms "duties, responsibilities, qualifications and compensation" should not be read broadly because this will unavoidably prompt the ultimate

result that virtually all personnel information will have to be disclosed. This result would obviously be inconsistent with the legislative intent, and would render ss. 364.183(f) and 119.14(4)(b), Florida Statutes, contradictory and essentially nonsensical.

WHEREFORE, Southern Bell respectfully requests the entry of an order from the Commission holding that the above-identified documents are entitled to be classified as containing proprietary confidential business information as requested by Southern Bell.

Respectfully submitted,

ATTORNEYS FOR SOUTHERN BELL
TELEPHONE AND TELEGRAPH COMPANY


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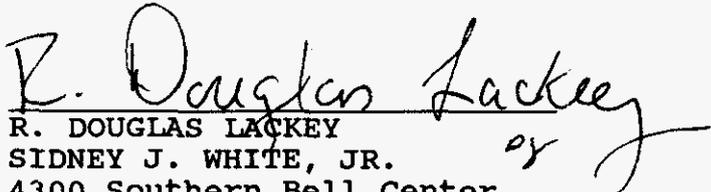

R. DOUGLAS LACKEY
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4300 Southern Bell Center
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EXHIBIT "A"

Harris R. Anthony
General Attorney-Florida

Southern Bell Telephone
and Telegraph Company
Legal Department
c/o Marshall Criser
Suite 400
150 South Monroe Street
Tallahassee, Florida 32301
Phone (305) 530-5555

July 22, 1991

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 Response to Public Counsel's Response and Opposition to Southern Bell's Motion for Confidential Treatment and Permanent Protective Order, 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,

Harris R. Anthony
Harris R. Anthony
(2X)

Enclosures

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

CERTIFICATE OF SERVICE
Docket No. 910163-TL

I HEREBY CERTIFY that a copy of the foregoing has been
furnished by United States Mail this *22nd* day of *July*, 1991,
to:

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

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

Harris K. Anthony

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Investigation into the)
Integrity of Southern Bell's)
Repair Service Activities and)
Reports)
_____)

Docket No. 910163-TL
Filed July 22, 1991

**SOUTHERN BELL'S RESPONSE TO PUBLIC COUNSEL'S RESPONSE
AND OPPOSITION TO SOUTHERN BELL'S MOTION FOR
CONFIDENTIAL TREATMENT AND PERMANENT PROTECTIVE ORDER**

COMES NOW Southern Bell Telephone and Telegraph Company ("Southern Bell" or "Company"), pursuant to Rule 25-22.037, Florida Administrative Code, and files its Response to the Office of Public Counsel's ("Public Counsel") Response and Opposition to Southern Bell's Motion for Confidential Treatment and Permanent Protective Order.

1. On February 18, 1991, Public Counsel filed its First Set of Requests for Production of Documents in which it requested Southern Bell's internal network review reports of installation and maintenance centers in Florida. On April 9, 1991, Southern Bell produced the internal review reports to Public Counsel. These documents were subject to a Motion for Temporary Protective Order, which Motion was based upon the confidential nature of the documents. Subsequent to that Motion, Public Counsel notified Southern Bell that it intended to use these documents during the hearing, whereupon Southern Bell filed, on June 24, 1991, its Motion for Confidential Treatment and Permanent Protective Order.

On July 8, 1991, Public Counsel filed its Response in Opposition to Southern Bell's Motion for Confidential Treatment and Permanent Protective Order.

2. Public Counsel argues in its July 8th Response that there is no "privilege for critical self-analysis" in Florida and that "the law concerning claims for privilege does not determine whether a document is confidential under Florida's Public Records Law." (Public Counsel's Motion, par. 6) Public Counsel also argues that while the Legislature, by enacting Section 364.183(3)(b), Florida Statutes, specifically excluded reports of internal auditors from disclosure to the public, the Legislature did not intend to exempt all self-critical documents from public disclosure.

3. Public Counsel's effort to construe Southern Bell's Motion as requesting a "privilege" for the network internal reviews is misplaced. Southern Bell has never requested that the documents in question be treated as privileged nor has it ever requested that the Commission apply the federal common law privilege in this case. Southern Bell discussed these privilege cases merely to demonstrate, by analogy, the especially sensitive nature of this type of document.

4. What Southern Bell did argue in its Motion was that the internal reviews are conducted for the same purpose that internal

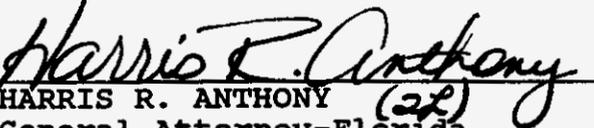
audits are performed. The Commission should therefore treat these documents as confidential for the same reasons that the Legislature included internal audits in the Section 364.183, Florida Statutes, examples of confidential material. As Southern Bell noted in its Motion for Confidential Treatment, and as Public Counsel admits in its Response, the list of types of confidential documents found in Section 364.183(3), Florida Statutes, "is not necessarily an exhaustive list of such documents". (emphasis added) (Public Counsel's Response, par. 7) Thus, the Legislature gave the Commission the authority to determine in its discretion that other documents, such as the internal reviews, are confidential even though the documents are not specifically enumerated in Section 364.183.

5. As Southern Bell explained in its Motion, the difference between the network internal reviews and "internal audits" is that the internal reviews are performed by a network department review staff rather than a group of employees denominated as "auditors". Under these circumstances, and for the reasons set forth in more detail in Southern Bell's Motion for Confidential Treatment, the Commission should hold these reviews to be confidential.

WHEREFORE, Southern Bell requests that the Commission grant its June 24, 1991 Motion for Confidential Treatment and Permanent Protective Order.

Respectfully submitted,

SOUTHERN BELL TELEPHONE AND
TELEGRAPH COMPANY


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Southern Bell Telephone
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Legal Department
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Suite 400
150 South Monroe Street
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Phone (305) 530-5555

June 24, 1991

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 Motion for Confidential Treatment and Permanent Protective Order, 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,

Harris R. Anthony
Harris R. Anthony

Enclosures

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

CERTIFICATE OF SERVICE
Docket No. 910163-TL

I HEREBY CERTIFY that a copy of the foregoing has been
furnished by United States Mail this *24* day of *June*, 1991,
to:

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

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

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

Harris R. Anthony

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Investigation into the)
Integrity of Southern Bell's)
Repair Service Activities and)
Reports)
_____)

Docket No. 910163-TL
Filed: June 24, 1991

**SOUTHERN BELL TELEPHONE AND TELEGRAPH
COMPANY'S MOTION FOR CONFIDENTIAL TREATMENT
AND PERMANENT PROTECTIVE ORDER**

COMES NOW Southern Bell Telephone and Telegraph Company ("Southern Bell" or the "Company"), pursuant to Rule 25-22.006, Florida Administrative Code, and files its Motion for Confidential Treatment and Permanent Protective Order.

I. Item No. 1 of the Office of Public Counsel's
First Request for Production of Documents

1. On February 18, 1991, the Office of Public Counsel ("Public Counsel") filed its First Set of Requests for Production of Documents. Public Counsel's Item No. 1 requested the following documents:

Please provide the two most recent internal review reports for each of your installation and maintenance centers in Florida, and please provide each document in your possession, custody or control responding to, evaluating, or following up on each such internal review.

On April 9, 1991, Southern Bell produced to Public Counsel the documents requested. The documents were produced on a confidential basis to Public Counsel pursuant to Southern Bell's

April 9, 1991 Motion for Temporary Protective Order. Subsequent to that Motion, Public Counsel notified Southern Bell that it intended to use the documents during the hearing. Pursuant to Rule 25-22.006, Florida Administrative Code, Southern Bell now files its Motion for Confidential Treatment and Permanent Protective Order with regard to the documents produced in response to Public Counsel's Request No. 1 of Public Counsel's First Set of Requests for Production of Documents.

2. The documents responsive to Item No. 1 for which Southern Bell has requested confidential treatment are listed in Attachment "A". The documents consist of internal, self-evaluative review reports of Southern Bell's network operations in Florida as well as of follow ups to such reports. As discussed below, the internal review reports are the equivalent of internal audits and it would harm the ratepayers and the Company if they were disclosed. Therefore, they should be treated as confidential in their entirety. The internal review reports are appended hereto in a sealed container marked as Attachment "B".

3. In the event that the Commission were to find that these internal review are not confidential in their entirety, Southern Bell has also filed a highlighted version of these internal review reports. In accord with the Commission's rules,

Southern Bell is identifying all specific information that is confidential on a line-by-line basis. The specific information contained within the internal reviews that has been highlighted is customer specific information which is exempt from public disclosure pursuant to Section 119.07(w), Florida Statutes. Appended hereto as Attachment "C" is a highlighted version of those documents in a sealed container. Until the Commission rules whether or not these documents in their entirety are proprietary, Southern Bell will not file a redacted version. If it becomes necessary to do so, Southern Bell will file a redacted version.

4. With regard to the network reviews in their entirety, these consist of internal reviews performed by employees of the Company's network operations in Florida. The purpose of each of these reviews and the follow-up material associated with them is to provide self-evaluative and self-corrective analysis of the operations of Southern Bell. The reviews are conducted for the very purpose that internal audits are conducted and therefore should be treated as proprietary confidential business information. Indeed, the only difference between these reviews and "internal audits" is that the reviews are performed by a network department review staff rather than a group of employees denominated as "auditors".

5. Section 364.183, Florida Statutes, provides that "the term 'proprietary confidential business information' means information...which...is treated by the person or company as private in that the disclosure of the information would cause harm to the ratepayers or the person's or company's business operations...." (Emphasis added.) If the information contained in Southern Bell's internal network reviews is disclosed to the public, Southern Bell and its ratepayers would be harmed because similar self-critical and self-corrective analysis may not be performed with the same candor and openness by Southern Bell's network managers in the future, thereby preventing Southern Bell from receiving meaningful self-corrective constructive analysis. Such analysis is absolutely necessary in order to assure compliance with the Company's internal standards and to improve the methods by which it conducts business.

6. Section 364.183(3), Florida Statutes, provides guidelines for determining what type of records would harm Southern Bell if disclosed. The statute specifically states that the "...term [proprietary confidential business information] includes, but is not limited to..." certain categories of information. Thus, the Florida Legislature specifically, expressly, and in no uncertain terms, intended that proprietary confidential business information not be limited to the examples

provided for in the statute but rather include all documents which "if disclosed would harm" the ratepayers or the Company's business operations. As one of several examples, the Florida Legislature provided that "internal auditing controls and reports of internal auditors" shall be treated as confidential. Southern Bell asserts that, although its internal reviews reports were not performed by internal auditors, the reports were created for the very same purpose and in the same manner as internal audits. Therefore, just as internal audits are proprietary confidential business information, so too are the internal reviews reports. Thus, the Commission has the prerequisite statutory authority to grant and should grant confidential treatment of the critical reviews.

7. If self-critical analysis is not encouraged by the Commission, areas directly related to the quality of service rendered by Southern Bell might remain unexamined and unimproved. For instance, the internal review reports, which analyze the Company's compliance with its own internal standards, might be "toned down" by the Company's managers if those managers believed that their reviews might be publicly disclosed during a Commission proceeding. Frank, critical analysis of the implementation of internal standards is absolutely necessary in order to assure the Company's management that its various

operations properly comply with all pertinent standards. Such analysis protects both the Company and its ratepayers from inefficient operations. Not all this analysis can be performed by the Company's internal auditors nor should it be so required by the Commission. If the Commission refuses to treat as confidential any internal reviews other than those performed by persons with the specific title of "internal auditor", it will discourage other Company employees, acting in their official capacity, from reviewing the operations of their departments. Surely the Legislature did not intend such a result.

8. Moreover, in a different yet nonetheless instructive context, federal courts have held self-critical to be privileged. See, Plough Incorporated v. National Academy of Sciences, 530 A2d 1152 (D.C. 1987). (The Plough court held that allowing the discovery of a report of "internal deliberations" would have a "chilling" effect on the ability of an internal company committee to discuss freely a scientific matter, thus inhibiting its research.) While Southern Bell is not suggesting that the federal common law be used as precedent with regard to the issue of privilege, Southern Bell does believe that the federal courts' decisions demonstrate that harm will occur if the internal reviews reports are disclosed and thus should be kept confidential. As set forth in the federal cases, self-critical

documents are privileged¹ because, if the documents were disclosed to the public, businesses would not perform open, critical analysis in the future. This would, in turn, harm the businesses and their customers. See Bredice v. Doctors Hospital, Inc., 50 F.R.D. 249 (D.C. 1970), affirmed, 479 F2d 920 (D.C. 1973). (Holding the reports of a hospital staff meeting privileged, the Bredice court stated that "[t]here is an overwhelming public interest in having those staff meetings held on a confidential basis so that the flow of ideas and advice can continue unimpeded." Id at p. 250. The Bredice court also noted that, "[t]he propose of these staff meeting is the improvement, through self-analysis, of the efficiency of medical procedures and techniques." Id. at p. 250) In like fashion, improvement of the efficiency of Southern Bell's operations was the purpose of Southern Bell's internal reviews.

9. In a 1983 Harvard Law Review article entitled "The Privilege of Self-Critical Analysis", several pertinent comments are made regarding the balancing of various interests when discovery of critical self-analysis has been requested.

¹ Southern Bell does not assert a privilege against providing these documents to Public Counsel. Rather, Southern Bell asserts that these documents should be held as proprietary confidential business information.

Explaining the Bredice v. Doctors Hospital, Inc., supra, case the Harvard article states:

The Bredice court emphasized that confidentiality is often essential to the free flow of information and that the free flow of information is essential to promote recognized public interests.

(emphasis added.) Note, "The Privilege of Self-Critical Analysis", 96 Harvard Law Review 1083, 1087. Analyzing the privilege, the article states:

Implicit in any application of the privilege is an acknowledgment of the self-defeating nature of allowing discovery of frank self-analyses: in the long run, denying protection will stifle more information than applying the privilege. Refusing to recognize the privilege will thus hinder the flow of information not only to the parties seeking protection, but also to the courts themselves.

(Emphasis added.) Id. at 1088. The reason that disclosure of critical self-analysis would "stifle" more information in the future is because of the disclosure would result in a chilling effect.

The chilling effect of disclosure of self-critical analysis has a twofold nature. First, if a plaintiff obtains discovery, there may be a direct chilling effect on the institutional or individual self-analyst; this effect operates to discourage the analyst from investigating thoroughly and frankly or even from investigating at all.

(Emphasis added) Id.

10. Fearing the embarrassment the internal report might cause for a manager or his company if it were publicly disclosed, the manager may not prepare the report with frankness, openness, or candor.

... If an individual self-analyst is asked by his superiors to conduct an internal analysis, the individual may temper his criticism out of a fear that reprisals will result if the analysis ultimately leads to liability or adverse publicity for the employer.

(emphasis added.) Id. at 1092. Not only would the fear of disclosure have a chilling effect on the analyst, but it would also have a chilling effect on those that supply the analyst with what is intended to be frank, critical, and confidential information. The Harvard article explains:

...[C]ourts should be concerned about the ability of the self-analyst to gather that information that it needs to make an evaluation. Knowledge that a final report may be disclosed will often discourage individuals from coming forward with relevant information.

(Emphasis added.) Id.

11. In the current docket, Southern Bell is not asserting that the network reviews are privileged. To the contrary, they have already been produced to Public Counsel. What Southern Bell does assert is that, for the same reasons that courts have held

such reports to be privileged, this Commission should hold the reviews to be confidential, proprietary business information.

II. Interrogatory No. 7 of Public Counsel's
First Set of Interrogatories

12. Public Counsel also notified Southern Bell that it intended to use at the hearing the information provided by Southern Bell in response to Public Counsel's Interrogatory No. 7. In accord with Rule 25-22.006, Florida Administrative Code, Southern Bell is appending hereto as Attachment "D" two edited copies of Southern Bell's response to Interrogatory No. 7. In addition, a copy of the response to Interrogatory No. 7 with the confidential information highlighted is appended hereto as Attachment "E" in a sealed envelope. The confidential information is identified on a line-by-line basis on Attachment "A".

13. Public Counsel's Interrogatory No. 7 requested the names of employees who were disciplined as a result of improper practices related to the falsification of service records. The request also asked for certain other information, including why the employees had been disciplined and how they were disciplined. Section 364.183(3)(f), Florida Statutes, states that "proprietary confidential business information" includes employee personnel information unrelated to "...compensation, duties,

qualifications, or responsibilities." In this instance, Southern Bell requests that the employees' names only be treated as proprietary confidential business information. Southern Bell has not requested that information related to the discipline imposed or the reasons for the discipline be treated as confidential.

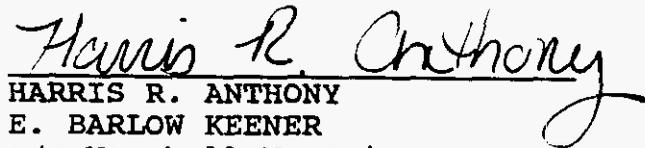
14. The treatment of the employees' names as confidential is entirely appropriate since the identification of the employees in question in this context does not relate to their compensation, duties, qualifications, or responsibilities. Indeed, Southern Bell would further note that this position is consistent with the position of the Commission Staff set forth in its letter, dated December 13, 1990 (asking for similar information), where the Staff instructed Southern Bell to use codes in identifying the employees about whom the Staff was seeking information.

15. All of the information for which Southern Bell is requesting confidential treatment is intended to be treated as confidential and has not been disclosed except pursuant to statutory provisions or private agreement that provides that the information will not be released to the public.

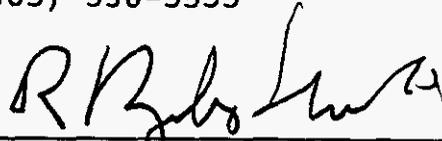
WHEREFORE, Southern Bell requests that the Commission grant its Motion for Confidential Treatment and Permanent Protective Order.

Respectfully submitted,

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ATTACHMENT "A"

Item No. 1 of Public Counsel's First Request for Production of Documents

	<u>Document</u>	<u>Customer Specific Information</u>	
		<u>Page #</u>	<u>Line #(s)</u>
1.	Operational Review, Central Dade, December 1990 (pages 1-58)	43	7,10
2.	Key Results Review, Central Dade, July 19, 1990 (pages 59-82)		
3.	Key Results Review, Central Dade, July 19, (pages 83-124)		
4.	Memo from April Ivy to Whisett dated July 23, 1990, Central Dade (pages 125-126)		
5.	Operational Review, Miami Metro, October 1990 (pages 127-185)	167 182	7,9,11,13,17,19 21,23,25,27,29,31 14,19,25
6.	Key Results Review, Miami Metro, February 9, 1990 (pages 186-207)		
7.	Operational Review, North Dade, September, 1990 (pages 208-273)	218 219 225 226 230 231 245 247	1-3,8,11,13,26,30,42 1-3,8,23,27,47 1-3,8,12,23,26,28, 31,32,37,46 1-4,8,23,28,32,37 1-4,8,12,19,26,29,30 1-3,8,13,21,25, 31,35,42 1-3,8,12,24,27,43 1-3,8,23,26,27,34,41,42

8.	Operational Review, North Dade, September, 1990 (pages 274-463)	333 334 341 342 347 348 366 368	1-3, 8, 11, 13, 26, 30, 42 1-3, 8, 23, 27, 47 1-3, 8, 12, 23, 26, 28, 31, 32, 37, 46 1-4, 8, 18, 22, 23, 28, 31, 32, 37 1-4, 8, 12, 19, 26, 29, 30 1-3, 8, 13, 21, 25, 31, 35, 42 1-3, 8, 12, 24, 27, 43 1-3, 8, 23, 26, 27, 34, 41, 42
9.	Key Results Review, North Dade, June 15, 1990 (464-512)		
10.	Operational Review, South Dade, October 1990 (pages 513-564)	517 518	38, 42 2
11.	Operational Review, South Dade, August 1990 (pages 565-649)		
12.	Key Results Review, South Dade, August 3, 1990 (pages 650-718)	642	8, 12
13.	Procedure and Statusing Review, South Sector, South Broward, July 1990 (pages 719-764)	723	20, 22, 27
14.	Procedure and Statusing Review, South Sector, West Palm Beach, October 15, 1990 (765-792)	771 772	1-3, 8, 12, 27, 30 1-3, 8, 12, 19, 27, 30
15.	Southeast, Jacksonville, November 12, 1987 (pages 793-829)		
16.	Southeast, Jacksonville, July 1985 (pages 830-856)	843 844 848 849 850	11, 22, 32, 36 1, 5, 9, 18, 22, 33, 41 17, 40 22 34

	852	8,22,37
17. Northwest, Jacksonville, November 2, 1987 (pages 857-893)		
18. Northwest, Jacksonville, May 1985 (pages 894-920)	912 913 914 916	10,22 10,28,36 13 23,25
19. Standardization of Procedures, Brevard, April 1985 (pages 921-948)	933 935 936 939 940 943 944	24 6,12,16,27 2,9,13,15,31 20 16 16,20,22 8,10,14,22,28,32
20. Standardization of Procedures, Daytona Beach, July 1985 (pages 949-981)	961 965 966 967 968 969 970 971 975	27 12 29,38,42 12,21,27 13,18,22,32,37,43 1,6,22,27,32,43 6,18,34,41 1,6 12
21. Standardization of Procedures, Gainesville, July 1985 (pages 982-1007)	991 995 999	14 14,21 9,19,24
22. Standardization of Procedures, Orlando, October 1985 (pages 1008-1030)	1023	18,35
23. Standardization of Procedures, Orlando, June 1985 (pages 1031-1063)	1039 1040	22 2

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24. Standardization of Procedures, Panama City, August 1985 (pages 1064-1086)	1077	24
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25. Standardization of Procedures, Pensacola, August 1985 (pages 1087-1109)	1097	9
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26. Standardization of Procedures, Sandlake, June 1985 (pages 1110-1136)	1116	8
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	1126	18, 25, 33
	1127	12, 21, 26, 33, 39
	1128	3
	1130	1, 9, 46
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27. Standardization of Procedures, Sandlake, November 1985 (pages 1137-1156)	1142	13
	1151	27, 28, 33
	1152	3, 7, 12

Interrogatory No. 7 of Public Counsel's First Set of Interrogatories

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