

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

March 23, 1993

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

Re: Docket No. 920260-TL - 900960-TL - 910163-TL - 910727-TL

Dear Mr. Tribble:

Enclosed please find an original and fifteen copies of Southern Bell Telephone and Telegraph Company's Reply to Public Counsel's Response and Opposition to Southern Bell's Motion for Temporary 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,

J. Phillip Carver
J. Phillip Carver
(62)

TACK _____
AFA 1 _____
APP 1 _____
CAF 1 _____
CMU _____
Enclosures

cc: All Parties of Record
A. M. Lombardo
EAG Harris R. Anthony
LEG 1 R. Douglas Lackey

LIN 6 _____

OPC _____

RCH 1 _____

SEC _____

WAS _____

OTH _____

A BELL SOUTH Company

DOCUMENT NUMBER-DATE
03217 MAR 23 88
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 *23rd* day of *March*, 1993 to:

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

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

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

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

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

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

Joseph Gillan
J. P. Gillan and Associates
Post Office Box 541038
Orlando, Florida 32854-1038

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

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

Peter M. Dunbar
Haben, Culpepper, Dunbar
& French, P.A.
306 North Monroe Street
Post Office Box 10095
Tallahassee, FL 32301
atty for FCTA

Laura L. Wilson, Esq.
Messer, Vickers, Caparello,
Madsen, Lewis & Metz, PA
Post Office Box 1876
Tallahassee, FL 32302
atty for FPTA

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
Assistant Attorney General
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

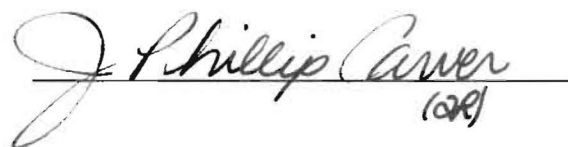
Mr. Cecil O. Simpson, Jr.
General Attorney
Mr. Peter Q. Nyce, Jr.
General Attorney
Regulatory Law Office
Office of the Judge
Advocate General
Department of the Army
901 North Stuart Street
Arlington, VA 22203-1837

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 Carter
(208)

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition on Behalf of)
Citizens of the State of Florida) Docket No. 910163-TL
to Initiate Investigation into)
the Integrity of SOUTHERN BELL) Filed: March 23, 1993
TELEPHONE AND TELEGRAPH COMPANY'S)
Repair Service Activities and)
Reports.)
_____)

**SOUTHERN BELL TELEPHONE AND TELEGRAPH COMPANY'S
REPLY TO PUBLIC COUNSEL'S RESPONSE AND OPPOSITION TO
SOUTHERN BELL'S MOTION FOR TEMPORARY PROTECTIVE ORDER**

COMES NOW BellSouth Telecommunications, Inc., d/b/a Southern Bell Telephone and Telegraph Company ("Southern Bell" or "Company"), and files its Reply to the Office of Public Counsel's ("Public Counsel") Response and Opposition to Southern Bell's Motion for Temporary Protective Order, and states as grounds in support thereof the following:

1. On June 6, 1991, and June 11, 1991, Public Counsel served upon Southern Bell its Third and Fifth Sets of Interrogatories in the above-captioned docket. These two sets of interrogatories requested information regarding the names and other personal information of employees who have knowledge of certain information related to trouble reports. In response thereto, Southern Bell asserted the attorney-client privilege.

2. Public Counsel subsequently moved to compel production, and this Motion was granted by the Prehearing Officer in Order No. 25054. Southern Bell filed a Motion for Reconsideration that was denied by the full Commission on December 19, 1991. Upon appeal, the Florida Supreme Court upheld the order of the Florida

DOCUMENT NUMBER-DATE
03217 MAR 23 8
FPSC-RECORDS/REPORTING

Public Service Commission ("Commission") and required Southern Bell to divulge this information.

3. Accordingly, Southern Bell supplied this information to Public Counsel in a response filed on February 26, 1993. Public Counsel responded in opposition to this Motion for Temporary Protective Order on March 10, 1993.

4. Southern Bell files this Reply to Public Counsel's response to address two specific issues raised in the response filed by Public Counsel.

5. First, Public Counsel contends, in an apparent attempt to convince this Commission that it need not consider the substance of Southern Bell's request, that Southern Bell has previously conceded that the employee names for which it seeks confidential classification are not confidential. Specifically, Public Counsel makes the patently inaccurate statement that "Southern Bell itself previously recognized that the names of employees in similar circumstances are not confidential. See, Southern Bell Telephone and Telegraph Company's Amendment to its Response and Objections to Public Counsel's Request for Production of Documents and Motion for a Temporary Protective Order (May 6, 1991, Docket No. 900960-TL)." Response at p. 2. Southern Bell's amendment, however, stated only that after filing a Motion for Protective Order, it subsequently negotiated with the other parties to the docket and, as a result of that negotiation, elected to withdraw its Motion. There is nothing contained in this amendment that should be read as a concession

by Southern Bell that the employee-specific information in question was not entitled to confidential classification.¹ Public Counsel's contention to the contrary is simply wrong.

6. Of even greater concern, however, is the fact that Public Counsel's action of opposing Southern Bell's Motion for Temporary Protective Order is come in itself, a subversion of the process that is clearly contemplated out in the applicable rule. Rule 25-22.006(5)(c), Florida Administrative Code, reads in its entirety as follows:

(c) When a utility or other person agrees to allow Public Counsel to inspect or take possession of utility information for the purpose of determining what information is to be used in a proceeding before the Commission, the utility may request a temporary protective order exempting the information from Section 119.07(1), F.S. If the information is to be used in a proceeding before the Commission, then the utility must file a specific request for a protective order under paragraph (a) above. If the information is not to be used in a proceeding before the Commission, then Public Counsel shall return the information to the utility in accordance with the record retention requirements of the Department of State.

7. On its face the rule is crystal clear as to what it requires. Public Counsel is to request information for the purpose of inspecting it to determine if it intends to use it. If Public Counsel notifies the utility providing the information

¹ Moreover, even if this amendment could be conceivably read as a concession, that fact would have no relevance here, despite Public Counsel's contention that the amendment involved "similar circumstances." The specific employee related information here concerns the identifies of employees who were disciplined. The employees referred to above in the amendment were identified in a markedly different context.

that it intends to use it in a hearing, then -- and only then -- is it appropriate for the party to make a more detailed request for confidentiality in the form of a Motion for Permanent Protective Order. The rule provides just as clearly that if Public Counsel elects not to use the information, then it must return the information. The obvious purpose of this rule is to allow Public Counsel the opportunity to inspect information while the party providing that information maintains an essentially unchallenged claim of confidentiality. If Public Counsel elects to use the information, and there is some attendant necessity to make it public, then only at that point will the utility and Public Counsel need to argue the issue of whether confidential treatment is appropriate.

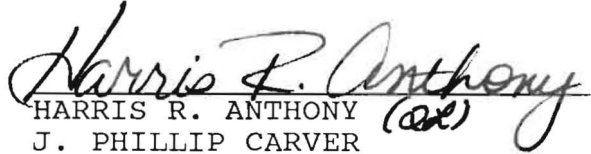
8. Instead, in this instance Public Counsel has engaged in a clear abuse of the purpose of this rule. Specifically, Public Counsel has not informed Southern Bell of any intent to use the information at the hearing in this matter. Yet, Public Counsel is seeking to have the Commission declare this information public, even though it may ultimately elect not to use the information at the hearing. This rule was clearly not intended to be utilized by Public Counsel as a subterfuge to force public disclosure of information that may, in fact, prove to be irrelevant to the docket. Public Counsel's effort is thus improper and it should not be allowed by this Commission.

WHEREFORE, Southern Bell respectfully requests the entry of an order granting its Motion for Temporary Protective Order for

it's responses to Public Counsel's Third and Fifth Sets of Interrogatories, filed in the above-referenced docket.

Respectfully submitted,

ATTORNEYS FOR SOUTHERN BELL
TELEPHONE AND TELEGRAPH COMPANY


HARRIS R. ANTHONY (at)

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



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