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Attorney

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Division of Appeals
FL Public Service Commission

Southern Bell

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Suite 400
150 So. Monroe Street
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Phone (305) 530-5558

January 26, 1990

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

Re: Docket No. 890252-PU - Confidential Rule

Dear Mr. Tribble:

Enclosed please find an original and fifteen copies of Southern Bell Telephone and Telegraph Company's Post-Hearing Comments on Proposed Final Version of the Confidential Rule, 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,

E. Barlow Keener
E. Barlow Keener

Enclosures

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

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FL Public Service Commission

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FPSC-RECORDS/REPORTING

A BELL/SOUTH Company

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Amendment of Rule 25-22.006,) Docket No. 890252-PU
FAC, pertaining to confidential)
information) Filed: January 26, 1990
_____)

SOUTHERN BELL'S POST-HEARING COMMENTS ON
PROPOSED FINAL VERSION OF THE CONFIDENTIAL RULE

Pursuant to Rule 22.016(5), Florida Administrative Code, and the post-hearing schedule prescribed by the Hearing Officer, Southern Bell Telephone and Telegraph Company ("Southern Bell" or "Company") submits its Post-Hearing Comments on the Proposed Final Version of Rule 25-22.006, Florida Administrative Code, (the "Confidential Rule") issued on January 12, 1990, by the Florida Public Service Commission Director of Appeals.

1. Southern Bell believes that the Hearing Officer has in general incorporated the suggestions of the substantially affected parties into the Proposed Final Version of the Confidential Rule issued on January 12, 1990. While Southern Bell believes that most of the revisions will assist the parties and the Commission in resolving matters regarding confidential documents, Southern Bell suggests that the Commission amend a portion of the Proposed Final Version of the Confidential Rule.

2. In the section of the Confidential Rule regarding documents obtained by the Commission outside of an inquiry, the

CERTIFICATE OF SERVICE
Docket No. 890252-PU

I HEREBY CERTIFY that a copy of the foregoing has been
furnished by United States Mail this 16th day of Jan. , 1990 to:

Bill Bakstran
Division of Legal Services
Florida Public Service Commission
101 East Gaines Street
Tallahassee, Florida 32399-0863

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Proposed Revised Rule 25-22.006(3)(a), Florida Administrative Code, states:

To maintain ~~obtain~~ continued confidential handling of the material the utility or other person must, within 21 days after staff has obtained ~~takes possession of~~ the material..., file a request for confidential classification with the Division of Records and Reporting. Failure to file such a request within 21 days shall constitute a waiver of confidentiality.

Southern Bell is concerned that such an absolute penalty for failing to file a request within the required time may harm not only a regulated company, but possibly unsuspecting third parties whose documents have been provided to the Commission. For instance, if the documents include confidential information regarding a customer, national security secrets, or law enforcement secrets, the proposed final version of the rule would not provide the flexibility to allow the Commission to declare the information confidential. In order to provide the Commission with this flexibility, Southern Bell recommends that the rule be amended to read as follows:

Absent good cause shown, failure to file such a request within 21 days shall constitute a waiver of confidentiality.

This was the language that was proposed by the Commission Staff at the rulemaking hearing and was agreed by the parties to be the most effective approach to avoid such a draconian result. (See, Rule Hearing, November 17, 1989 Transcript, pp. 48-57) Such a

change would not remove a company's incentive, provided by the penalty, to timely file its request; however, it would allow the Commission to make exceptions to the rule when required to protect a customer, the safety of law enforcement personnel, or national security.

3. In addition, the Proposed Final Version of the Confidential Rule 25-22.006(6)(a), Florida Administrative Code, incorporates conditions permitting any person to petition to inspect documents which the Commission has ruled exempt from the "Public Records Act", Section 119.07, Florida Statutes. During the November 17, 1989 Rule Hearing, the issue was raised regarding Rule 25-22.006(6)(a), Florida Administrative Code, as to whether the utility continued to carry the burden of proving confidentiality even after the material had been ruled confidential by the Commission. Obviously, a ruling by the Commission that certain information is confidential is evidence of the Commission finding that the utility has met its burden of proving confidentiality. Thus, the person wishing to inspect the confidential information should carry the burden of proof and show why the Commission's order is no longer applicable. Therefore, Southern Bell suggests that the Proposed Final Version of Rule 25-22.006(6)(a), Florida Administrative Code, amended to read:

Any person may file a petition to inspect and examine any material the Commission.... The petitioner carries the burden of proving that the person should be permitted to examine such material.

This amended rule would assist the petitioner in seeking to make a proper showing.

Respectfully submitted,

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