

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Comprehensive review of revenue requirements and rate stabilization plan of SOUTHERN BELL TELEPHONE AND TELEGRAPH COMPANY.)	DOCKET NO. 920260-TL
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In re: Investigation into the integrity of SOUTHERN BELL TELEPHONE AND TELEGRAPH COMPANY's repair service activities and reports.)	DOCKET NO. 910163-TL
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In re: Investigation into SOUTHERN BELL TELEPHONE AND TELEGRAPH COMPANY's compliance with Rule 25-4.110(2), F.A.C., Rebates)	DOCKET NO. 910727-TL
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In re: Show cause proceeding against SOUTHERN BELL TELEPHONE AND TELEGRAPH COMPANY for misbilling customers.)	DOCKET NO. 900960-TL
)	ORDER NO. PSC-93-1044-CFO-TL
)	ISSUED: July 19, 1993
)	
)	

**ORDER GRANTING IN PART AND DENYING IN PART SOUTHERN BELL'S
REQUEST FOR CONFIDENTIAL CLASSIFICATION FOR PORTIONS OF
DOCUMENT NO. 1766-93
(DOCKET NO. 910163-TL)**

Introduction

On February 15, 1993, BellSouth Telecommunications Inc. d/b/a Southern Bell Telephone and Telegraph Company (Southern Bell or the Company) filed a Request for Confidential Classification for portions of documents produced in response to Staff's Twenty-Seventh Request for Production, nos. 4, 5 and 6. (Southern Bell's motion). A copy of the Company's response to request nos. 4, 5 and 6, with the information for which the

¹ Southern Bell filed a Notice of Intent to seek confidential classification for its response to Staff's Twenty-Seventh Request for Production, nos. 4, 5, 6 and 9 on January 25, 1993. In its Request for Confidential Classification, Southern Bell withdrew its Notice of Intent to seek confidential classification for portions of documents produced in response to request no. 9.

DOCUMENT NUMBER-DATE

07670 JUL 19 93

FPCO-RECORDS/REPORTING

Company is requesting confidential treatment highlighted, was filed by Southern Bell with the Commission's Division of Records and Reporting on February 15, 1993, as Attachment "C" to Southern Bell's motion. Attachment "C" to Southern Bell's motion was assigned Document No. 1766-93. Southern Bell seeks confidential classification for employee personnel information (request no. 4), subscriber information (request no. 5) and computer software information (request no. 6).

Documents filed with the Commission are public records subject to public disclosure under Section 119.07(1), Fla. Stat. (1991). Section 119.07(3), however, exempts from public disclosure those public records that are provided by statutory law to be confidential or which are expressly exempted by general or special law. In the absence of a specific statutory exemption, the Commission may not deny disclosure based upon a judicially created privilege of confidentiality² or based upon public policy considerations which attempt to weigh the benefits to be derived from public disclosure against the detriment to an individual institution resulting from such disclosure.³

Section 364.183, Fla. Stat. (1991) defines "proprietary confidential business information" as information which is one of the statutory examples set forth therein or information the disclosure of which will cause harm to Southern Bell or its ratepayers. Pursuant to Section 364.183 and Fla. Admin. Code Rule 25-22.006, Southern Bell has the burden of demonstrating that information is qualified for confidential classification under Section 364.183.

² Wait v. Florida Power & Light Co., 372 So.2d 420 (Fla. 1979).

³ Id.; News-Press Publishing Co., Inc. v. Gadd, 388 So.2d 276 (Fla. 2d DCA 1980); Gadd v. News-Press Publishing Co., 412 So.2d 894, 895 (Fla. 2d DCA 1982); Douglas v. Michel, 410 So.2d 936 (Fla. 5th DCA 1982); State ex rel. Veale v. City of Boca Raton, 353 So.2d 1194 (Fla. 4th DCA 1977), cert. denied, 360 So.2d 1247 (Fla. 1978).

Employee Personnel Information

Southern Bell seeks confidential classification for portions of documents produced in response to request no. 4, which contain employee personnel information. In response to request no. 4, Southern Bell produced a copy of the Company's answer to Public Counsel's First Set of Interrogatories, no. 9, wherein Southern Bell provided a list of employees who filed grievances after the Company disciplined them and grievance forms. The information for which Southern Bell seeks confidential classification is the identity of current and former employees who filed grievances and the employees' names and home addresses shown on the grievance forms.

Southern Bell points out that these documents contain the "names of employees and facts surrounding . . . personnel-related actions that may have been taken regarding such individuals."⁴ Southern Bell contends that these documents include records of personnel actions relating to employee activities that fall outside normal and acceptable duties and responsibilities. Hence, Southern Bell argues that the identity of the employees who filed grievances and whose names appear on the grievance forms is "[e]mployee personnel information unrelated to compensation, duties, qualifications or responsibilities" and, therefore, it is "proprietary, confidential business information" exempt from public disclosure by subsection (f) of Section 364.183(3), Fla. Stat.

Moreover, Southern Bell incorporates by reference the arguments it raised in its Request for Confidential Classification filed on September 9, 1992 in this docket, wherein the Company sought confidential classification for the identities of employees disciplined by Southern Bell. The Company argued in that motion, as it does here, that information concerning alleged non-performance of an employee's duties and responsibilities is information unrelated to that employee's duties and responsibilities. In ruling on that motion, it was held that the fact that an employee had been disciplined by Southern Bell is information related to performance of the employee's job and, therefore, it is employee personnel information which is related

⁴ Southern Bell's motion at p. 3.

to duties or responsibilities.⁵ Here, the fact that an employee filed a grievance or the fact that an employee's name appears on a grievance form along with information which shows that the employee had been disciplined by the Company is information related to that employee's performance of his duties or responsibilities. As such, this information is not "proprietary confidential business information" as defined by the legislature in Section 364.183(3)(f), Fla. Stat. and, therefore, it is information not exempt from public disclosure by that provision. In so ruling, it is noted that Section 364.183(3)(f) does not distinguish personnel information relating to current employees from personnel information relating to former employees.

Southern Bell further argues, as it did in its previous motion filed on September 9, 1992, that public disclosure of the identities of employees who filed grievances and the identities of employees shown on the grievance forms would embarrass those employees. It was noted in ruling on that motion that once it is concluded that the information at issue is employee personnel information related to duties or responsibilities, it appears that the information is subject to public disclosure under Section 364.183(3)(f), Fla. Stat. Section 364.183(3)(f) provides that "proprietary confidential business information" includes "employee personnel information unrelated to compensation, duties, qualifications or responsibilities." It follows that employee personnel information related to compensation, duties, qualifications or responsibilities is not "proprietary confidential business information" and, therefore, not exempt from public disclosure under Section 364.183(3)(f). Nonetheless, with regard to Southern Bell's suggestion that the information is "proprietary confidential business information" under 364.183(3), Fla. Stat., in that disclosure of the employees' identities will embarrass those employees, the Prehearing Officer's prior ruling rejects the embarrassment of employees and the potential impact

⁵ Order No. PSC-93-0905-CFO-TL.

⁶ Order No. PSC-93-0978-CFO-TL; Cf. Gadd v. News-Press Publishing Company, Inc., 412 So.2d 894 (Fla. 2d DCA 1982) (newspaper entitled under Ch. 119 to inspect the personnel files of past and present medical staff physicians of a public hospital).

on Company operations as the type of harm contemplated by Section 364.183(3).

Lastly, it appears that the home addresses of current and former employees is employee personnel information unrelated to their compensation, duties, qualifications or responsibilities as a Southern Bell employee. Therefore, this information is "proprietary confidential business information" exempt⁸ from public disclosure by Section 364.183(3)(f), Fla. Stat.

Accordingly, Southern Bell's request for confidential classification is granted for the home addresses of current and former employees found in Document No. 1766-93 at the following page nos. and line nos.:

⁷ Order No. PSC-93-0978-CFO-TL; Order No. PSC-93-0905-CFO-TL (extensively discusses the issue); Southern Bell Telephone and Telegraph Company v. Beard, 597 So.2d 873 (Fla. 1st DCA 1992) (held that the Commission did not abuse its discretion by declining to afford proprietary confidential business status for Southern Bell documents despite Company's contention that disclosure might result in embarrassment to Company's managers); In re Investigation into the Integrity of Southern Bell Telephone and Telegraph Company's Repair Service Activities and Reports, 92 F.P.S.C. 9:470 (1992) (Prehearing Officer's prior ruling in this docket rejects embarrassment of employees and its potential impact on Company operations as the type of harm contemplated by Section 364.183(3), Fla. Stat., with regard to internal self-critical reports of Company operations); See Order No. PSC-93-0979-CFO-TL; Cf. News-Press v. Wisher, 345 So.2d 646, 648 (Fla. 1977) ("No policy of the state protects a public employee from the embarrassment which results from his or her public employer's discussion or action on the employee's failure to perform his or her duties properly.").

⁸ Order No. PSC-93-0978-CFO-TL (Prehearing Officer's prior ruling in this docket that the home addresses and home telephone numbers of former employees who were disciplined by the Company is employee personnel information unrelated to their duties or responsibilities as a Southern Bell employee and, therefore it is information not exempt from public disclosure by Section 364.183(3)(f)).

<u>Page nos.</u>	<u>Line nos.</u>
F03B27Z0000014	4
F03B27Z0000015	4
F03B27Z0000016	4
F03B27Z0000026	4
F03B27Z0000036	4
F03B27Z0000039	4

Southern Bell's request for confidential classification is denied for the names of the current and former Southern Bell employees found in Document No. 1766-93 at the following page nos. and line nos.:

<u>Page nos.</u>	<u>Line nos.</u>
F03B27Z0000012	26, 28
F03B27Z0000013	2, 6, 10, 14, 18, 22, 24
F03B27Z0000014	3
F03B27Z0000015	3
F03B27Z0000016	3, 9
F03B27Z0000026	3, 8
F03B27Z0000036	3, 9
F03B27Z0000037	2
F03B27Z0000038	3
F03B27Z0000039	3
F03B27Z0000040	3

Customer Specific Information

Southern Bell seeks confidential classification for customer specific information found in documents produced in response to request no. 5. Southern Bell provided a document which contains the names, addresses and phone numbers of subscribers. The Company requests confidential treatment only for the subscribers' names and addresses.

Section 119.07(w), Fla. Stat., the exemption relied on by Southern Bell, excludes from public disclosure "all records supplied by a telecommunications company to a state . . . governmental agency which contain the name, address, and telephone number of subscribers" Hence, Southern Bell's request for confidential classification is granted for the subscribers' names and addresses found in Document No. 1766-93 at the following page nos. and line nos.

<u>Page nos.</u>	<u>Line nos.</u>
F03B27Z0000044	2-4, 6, 7, 9, 10, 12, 13, 15, 16, 18, 19, 21, 22, 24, 25, 27-29, 31, 32, 34, 35, 37, 38, 40, 41, 43, 44
F03B27Z0000045	2, 3, 5-7, 9-11, 13, 14, 16, 17, 19, 20, 22, 23, 25, 26, 28, 29, 31, 32, 34, 35, 37, 38, 40, 41, 43-45
F03B27Z0000046	2, 3, 5, 6, 8-10, 12-14, 16-18, 20, 21, 23, 24, 26, 27, 29-31, 33, 34, 36-38
F03B27Z0000050 & F03B27Z0000051	2-4, 6-8, 10-12, 14-16, 18-20, 22-24, 26-28, 30-32, 34-36
F03B27Z0000052	2-5, 7-9, 11-13, 15-17, 19-21, 23-25, 27-29, 31-33, 35-37
F03B27Z0000055	2, 4, 6, 8, 10, 12, 14, 16, 18, 20, 22, 24

Computer Software Information

Southern Bell seeks confidential classification for portions of a document entitled "LMOS Job 2 Manual and Procedures," which was produced in response to request no. 6. The LMOS manual is the user's guide for the LMOS software supplied by the vendor.

Southern Bell contends that, if the LMOS manual were publicly disclosed, a person gaining access to the system could manipulate the program causing harm to the Company's operations. The Company relies on the exemption found in Section 364.183(3) which provides that "confidential proprietary information" includes information "the disclosure [of which] would cause harm to the . . . Company's business operations" Based on Southern Bell's averment in its pleading that public disclosure of the LMOS manual could threaten the security of the LMOS system and a review of the LMOS manual, Southern Bell's motion for confidential treatment of the manual is granted. Specifically, Southern Bell's motion is granted for the document entitled "LMOS Job 2 Manual and Procedures" found in Document No. 1766-93 at the following page nos. and line nos.

<u>Page nos.</u>	<u>Line nos.</u>
F03B27Z0000056-0000101	all

Based on the foregoing, it is, therefore,

ORDERED by Commissioner Susan F. Clark, as Prehearing Officer, that Southern Bell's Request for Confidential Classification for Document No. 1766-93 is granted in part and denied in part as set forth in the body of this Order. It is further

ORDERED that pursuant to Section 364.183, Fla. Stat., and Fla. Admin. Code Rule 25-22.006, any confidentiality granted to the document specified herein shall expire eighteen (18) months from the date of issuance of this Order in the absence of a renewed request for confidentiality pursuant to Section 364.183. It is further

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ORDERED that this Order will be the only notification by the Commission to the parties concerning the expiration of the confidentiality time period.

By ORDER of Commissioner Susan F. Clark, as Prehearing Officer, this 19th day of July, 1993.



SUSAN F. CLARK, Commissioner and
Prehearing Officer

(S E A L)
JRW

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), Fla. Stat. (1991) to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Fla. Stat. (1991 & 1992 Supp.) as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

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Any party adversely affected by this Order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Fla. Admin. Code Rule 25-22.038(2), if issued by a Prehearing Officer; (2) reconsideration within 15 days pursuant to Fla. Admin. Code Rule 25-22.060, if issued by the Commission; or (3) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of Records and Reporting, in the form prescribed by Fla. Admin. Code Rule 25-22.060. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Fla. R. App. P. 9.100.