

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Investigation into the statewide) DOCKET NO. 880423-TP
offering of access to the local network)
for the purpose of providing information) ORDER NO. 21519
services)
_____) ISSUED: 7-7-89

The following Commissioners participated in the disposition of this matter:

MICHAEL McK. WILSON, Chairman
THOMAS M. BEARD
BETTY EASLEY
GERALD L. GUNTER
JOHN T. HERNDON

ORDER DENYING SOUTHERN BELL TELEPHONE AND
TELEGRAPH'S REQUEST FOR CONFIDENTIAL TREATMENT

BY THE COMMISSION:

During the deposition of Mr. Robert Boltz, held on December 12, 1988, Commission Staff requested that Southern Bell Telephone & Telegraph Company (Bell) provide data on its costs to provide the local access link to information services providers (ISP) from the central office. This request, which was to facilitate a comparison of the costs of the connection options available to ISPs, was identified as late-filed deposition exhibit no. 4. On February 2, 1989, Bell filed a report of the costs associated with the local loop element in its ESSX offering. Bell also filed a Request for Confidential Treatment in which it argued that this cost data was sensitive in the competitive ESSX service, and that its disclosure would allow competitors to derive Bell's ESSX service cost. Such disclosure, it was argued, would cause an unfair advantage to competitors of the ESSX service.

On February 15, 1989, the Prehearing Officer issued a tentative ruling in Order No. 20747 denying Bell's Request. That Order held that the local loop is an integral component of the monopoly local network and is provided solely by the local exchange company (LEC). Thus, there is no competition surrounding this service. It was held further that disclosure of this single cost element would not allow an unfair advantage to the competitors of the ESSX bundle.

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On March 1, 1989, Bell filed an official Protest of the tentative ruling in Order No. 20747. In this filing, Bell characterized the local loop, when incorporated in ESSX, as an atypical local access loop. Thus, Bell argued, this distinction, when combined with the competitive nature of the ESSX market, justified confidential treatment of this data. This matter now comes before the full Commission as the panel in this docket for review of the tentative ruling.

At issue is whether this data is proprietary, confidential information. Rule 25-22.006(4)(a), Florida Administrative Code, imposes upon Bell the burden of demonstrating how the information at issue falls within one of the exemptions from the Public Records statutes. See Section 119.07, Florida Statutes. Bell would characterize this information as proprietary and confidential, under the definition in Section 364.183(3) Florida Statutes, thereby invoking the exemption in Section 119.07(3)(a), Florida Statutes. We have generally required, under Section 364.183(3) Florida Statutes, a showing that disclosure of the data at issue would impair the company's ability to contract for services on favorable terms.

It stands without question that the basic access loop is a monopoly part of the regulated network, which Bell, as a LEC, holds the sole authority to provide in its service territories. When rates are set for elements of the regulated network, Bell is required to open its records for review, more specifically, its cost records. This information is essential to the determination of a just and fair rate for ratepayers, and must be open for public scrutiny. Additionally, Rule 25-4.034(4)(a) Florida Administrative Code, requires disaggregation of the price of the local access line in a LEC's tariff, indicative of its importance in the regulated network. Bell now argues that the cost of this essential element, which somehow becomes a "unique and detailed, service-oriented" element when it is incorporated into the ESSX offering, should now be viewed as crucial to its competitive future and should be kept confidential.

However critical to Bell's market ambitions, there is no justification for treating the local access loop any differently. To do so would be inconsistent with Bell's own testimony in the record of these proceedings. Bell witness Payne testified that a local loop is the same whether used for residential, business, ISP or ESSX services (See Transcript pages 514-515). By this testimony, inclusion of this element in a new "competitive" offering does not alter its basic function or treatment for regulatory purposes. Moreover, it is exactly within our jurisdiction to review the company's practices in costing and pricing basic regulated elements across product lines, to eliminate unjustly discriminatory treatment for customers of regulated services. See Sections 364.035(1) and 364.14(1) Florida Statutes. This authority also applies to contracts involving these elements. See Section 364.19, Florida Statutes. Therefore, we believe that Bell's ability to contract for ESSX is not impaired by its obligation to disclose the cost of this monopoly element. Any impairment on Bell's ability to contract comes from the statutory mandate that rates for regulated offerings be nondiscriminatory.

Similarly, Bell's derivative cost argument fails. We have discretion to determine, for regulatory purposes, the honest and prudent investment in regulated facilities. This discretion would be greatly limited if consideration were required for all end products of the facility, where its cost is prominent. A measure of the regulated component's investment should not be considered confidential. Yet, this is exactly the request of Bell in determining proper costs and rates for ISP local loops. Bell remains free to make strategic decisions in the accounting for its competitive services, and to maneuver its price as it pleases in bidding in the ESSX market.

Lastly, Bell implies that this data is irrelevant to this docket. However, the original filing of the data, viewed in tandem with the testimony cited above, clearly refute this argument. It is specifically relevant to analyze whether the

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buying patterns and thus pricing strategies related to ESSX customers are applicable to ISPs.

For all of the reasons stated above, we conclude that Bell has not demonstrated this information to be proprietary, confidential data. It is therefore

ORDERED that the tentative ruling of the Prehearing Officer is affirmed, and that Southern Bell Telephone & Telegraph Company's Request for Specified Confidential Treatment of local loop costs is denied. It is further

ORDERED that this docket shall remain open.

By ORDER of the Florida Public Service Commission,
this 7th day of JULY, 1989.


STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)

TH/JSR

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), Florida Statutes, to notify parties of any

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administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, 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.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) 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 sewer utility by filing a notice of appeal with the Director, Division of Records and Reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.