

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Review of Southern Bell)	DOCKET NO. 890256-TL
Telephone and Telegraph Company's)	ORDER NO. 21930
Capital Recovery Position)	ISSUED: 9-21-89
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TEMPORARY ORDER ON CONFIDENTIALITY

Various documents have been filed with the Commission by Southern Bell Telephone and Telegraph Company (Bell) in connection with discovery requests of the Office of the Public Counsel (OPC) dated December 9, 1988, February 1, 1989, and May 31, 1989. On September 18, 1989, a hearing was held by the Prehearing Officer to resolve confidentiality issues regarding these documents. Each of the documents was submitted to the Prehearing Officer in order to allow for an In Camera inspection to address Bell's requests that the documents be classified proprietary, confidential information. These documents are as follows:

- I. In response to the OPC's December 9, 1988 discovery request, the:
 1. Network Investment Program dated September, 1988, and
 2. Network Capital Deployment Planning Assumptions dated August, 1988.

- II. In response to the OPC's February 1, 1989 discovery requests, the:
 1. Fiber 1989 Cost Analysis and Graph Data,
 2. Fiber 1988 update/validation study executive summary,
 3. ISDN development strategy, and
 4. Tabular data for accounts with unit cost and maintenance data.

- III. In response to the OPC's May 31, 1989 discovery request, the:
 1. Memo from R. M. Wolfe to J. C. McPherson, Jr., dated May 19, 1989,
 2. Market Driven Demand Forecast Table dated April 3, 1989,

DOCUMENT NUMBER-DATE

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3. Response to Interrogatory No. 6,
4. Memo from J. R. Green to N. C. Baker dated July 18, 1988 through and including the attached paper entitled Catalyst for BISDN,
5. Memo from John Ebbert to Joe Green dated September 22, 1988,
6. CATV Business Plan dated April, 1988,
7. Memo from E. Wrigley to R. Hudson,
8. Memo from K. W. Kaplan to J. M. Gilman & R. D. Moran, dated January 12, 1989, and
9. Memo and accompanying Analog ESS Economic Study Guidelines dated December 21, 1988.

After a close review of the above documents, the Prehearing Officer determines that Bell has made a sufficient showing to warrant an initial finding that they should be classified as proprietary, confidential information. However, notice is given hereby that the Prehearing Officer has formed the opinion, based on the In Camera inspection, that the majority of the information contained within these documents appears not to merit this classification. Accordingly, it is the intention of the Prehearing Officer to issue a final ruling in accordance with the specific findings set forth below unless the parties show cause why this action should not be taken.

The initial classification rendered here is temporary, lasting until October 2, 1989, and the parties shall have until that date to present their final arguments on whether the initial determinations made below shall become permanent rulings. Until that time, all the documents listed above shall be treated as exempt from the requirements of the Public Records Act, Chapter 119, Florida Statutes (the Act).

This temporary classification is made in aid of discovery for the purpose of maintaining the confidentiality of all the subject documents until final rulings can be entered pursuant to Rule 25-22.006, Florida Administrative Code (the Rule). In the absence of an order exempting these documents from the requirements of the Act, they would be subject to disclosure

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when they enter the possession of OPC notwithstanding Bell's requests that they be classified as proprietary, confidential information under the Rule. Pursuant to the action taken here, OPC can take early possession of the subject documents in order to prepare for the hearing scheduled in this docket.

After reviewing the documents, the Prehearing Officer intends to make specific findings in a later order that the following documents (with exceptions as noted) are classified proprietary, confidential information under the Rule and exempt from disclosure under the Act:

A. In response to OPC's 12/9/88 Request for Production of Documents:

1. Network Investment Program, dated September, 1988;
2. Network Capital Deployment Planning Assumptions except pages C-1 thru C-10, and the cover sheet through T-8, dated August, 1988;

B. In response to OPC's 2/1/89 Request for Production of Documents

1. Fiber '89 Cost Analysis - Graph Data,
2. ISDN Deployment Strategy except for pages I-3 through I-6 in Chapter V,

C. In response to OPC's 5/31/89 Request for Production of Documents:

1. Memo from R. M. Wolfe to J. C. McPherson, Jr., dated May 19, 1989;
2. Market Driven Demand Forecast Tables, dated April 3, 1989;
3. Memo from John Ebbert to Joe Green, dated September 22, 1988,

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After reviewing the documents, the Prehearing Officer intends to make specific findings in a later order that the following documents (with exceptions as noted) are not classified proprietary, confidential information under the Rule and not exempt from disclosure under the Act:

A. In response to OPC's 12/9/88 Request for Production of Documents:

1. Fiber 1988/Validation Study Executive Summary;
2. The Tabular data for accounts with unit cost & maintenance data, beginning with the pole line;

B. In response to OPC's 5/31/89 Request for Production of Documents:

1. Response to Interrogatory No. 6 except the highlighted figures on pages 7500P001712C-3 and 7500P001712C-4;
2. Memo from J. R. Green to N.C. Baker, including the attached paper called Catalyst for BISSDN, dated July 18, 1988, except the Ebbert/Green memo;
3. CATV Business Plan, dated April 1988, except page 2 and Section III Alternative & Analysis pages 19-35;
4. Memo from E. Wrigley to R. Hudson, dated April 18, 1988, except pages 6 & 9;
5. Memo from K. W. Kaplan to J. M. Gilman & R. D. Moran, titled "Broadband Service Concepts for the Operation Case," dated January 12, 1989;
6. Memo and accompanying analog ESS Economic Study Guidelines, dated December 21, 1988;

Moreover, Bell asserts that certain portions of the documents discussed above contain irrelevant information and also objects to furnishing them to OPC for this reason. In addition, two documents sought by OPC were not provided based

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on this objection although Bell makes no claim of confidentiality regarding them. These additional documents are: (1) Florida Sector Network Operating Expenses (Part 32) dated June 10, 1988; and (2) December 30, 1988 memorandum regarding BellSouth Maintenance Cost Models for Local Switching Systems. The Prehearing Officer hereby determines that all of the documents identified above and these two additional documents appear relevant for the purposes of discovery and denies Bell's objection that they are irrelevant.

Now therefore it is

ORDERED by Commissioner John T. Herndon, as Prehearing Officer, that the documents identified in the body of this Order are initially determined to be classified as proprietary, confidential information pursuant to Rule 25-22.006, Florida Administrative Code, until a final ruling can be rendered by the Prehearing Officer or the Commission on Southern Bell Telephone and Telegraph Company's requests for confidentiality. It is further

ORDERED that the documents identified in the body of this Order are determined to be relevant for purposes of discovery in this proceeding. It is further

ORDERED that Southern Bell Telephone and Telegraph Company shall deliver copies of all documents identified in the body of this Order to the Office of the Public Counsel. It is further

ORDERED that the Office of the Public Counsel shall not disclose the contents of the documents determined in the body of this Order to be exempt from disclosure under Chapter 119, Florida Statutes, until a final ruling can be rendered by the Prehearing Officer or the Commission on Southern Bell Telephone and Telegraph Company's requests for confidentiality. It is further

ORDERED that the parties shall file their exceptions to the initial determinations made in this Order no later than October 2, 1989, and appear on that date at a hearing to be held by the Prehearing Officer in the Commission's offices for the purpose of presenting their arguments on whether Southern Bell Telephone and Telegraph Company's requests for confidentiality should be granted as a final decision.

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By ORDER of Commissioner John T. Herndon, as Prehearing
Officer, this 21st day of September, 1989.

John T. Herndon
JOHN T. HERNDON, Commissioner
and Prehearing Officer

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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 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 this order, which is preliminary, procedural or intermediate in nature, may request: 1) reconsideration within 10 days pursuant to Rule 25-22.038(2), Florida Administrative Code, if issued by a Prehearing Officer; 2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, 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 sewer utility. A motion for reconsideration shall be filed with the Director, Division of Records and Reporting, in the form prescribed by Rule 25-22.060, Florida Administrative Code. 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 Rule 9.100, Florida Rules of Appellate Procedure.