

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Proposed Tariff Filing by ) DOCKET NO. 890505-TL  
Southern Bell Telephone and Telegraph ) ORDER NO. 22465  
Company to restructure and reprice ) ISSUED: 1-24-90  
private line and special access services )  
and to waive nonrecurring charges for )  
high capacity services. )  
\_\_\_\_\_)

ORDER DENYING SOUTHERN BELL TELEPHONE AND TELEGRAPH  
COMPANY'S REQUEST FOR SPECIFIED CONFIDENTIAL  
CLASSIFICATION OF MATERIAL

Southern Bell Telephone and Telegraph Company (Southern Bell or the Company) filed, on March 31, 1989, revisions to its Access and Private Line Tariffs which restructure both private line and special access line services. The Company has subsequently requested specified confidential classification, pursuant to Section 364.183, Florida Statutes, and Rule 25-22.006, Florida Administrative Code, for the following documents filed with this Commission in response to our Staff's request for additional demand and cost information to support these proposed tariff revisions.

1) Document No. 4127-89 - This document is a summary of the unit costs of providing virtually any type of dedicated telephone service. For intraLATA private line it contains the proposed costs, rates and resulting contribution of both recurring and nonrecurring rate elements, including the nonrecurring costs for initial and subsequent units. For special access it contains 1991 units and a couple of ratios titled, "% increase rate/cost" and "% increase revenue/cost" as well. This is summary data of the cost information derived using this Commission's Private Line/Special Access Cost Manual, which is a forward looking incremental cost study.

2) Document No. 4756-89 - Synchronet Service 1989 Level Costs (Economic Costs)

3) Document No. 4757-89 - Digital Data Access Service 1989 Level Costs (Economic Costs)

4) Document No. 4758-89 - Special Access Service 1989 Level Costs (Economic Costs)

DOCUMENT NUMBER-DATE

00719 JAN 24 1990

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5) Document No. 4759-89 - Private Line Service 1989 Level Costs (Economic Costs)

6) Document No. 6108-89 - Highlighted Pages from Synchronet and Digital Data Access Service

7) Document No. 6109-89 - Highlighted Pages from Private Line Service

8) Document No. 6110-89 - Highlighted Pages from Special Access Service

Pursuant to Section 364.183, Florida Statutes, and Rule 25-22.006, Florida Administrative Code, it is the Company's burden to show that the material submitted is qualified for specified confidential classification. Section 364.183, Florida Statutes, provides several statutory examples of proprietary confidential information, of which one is trade secrets. Rule 25-22.006, Florida Statutes, provides that demonstrating that material submitted falls into one of those statutory examples will satisfactorily justify specified confidential classification of such material. Southern Bell asserts that these documents fall into the category of trade secrets because the Company has expended a great deal of time and money producing them and because the Company zealously guards their confidentiality.

Trade secrets are defined in Sections 688.002 and 812.081, Florida Statutes. Section 688.002, Florida Statutes, states that information that is not readily ascertainable by persons who could obtain economic value from its disclosure is a trade secret. Section 812.081, Florida Statutes, states that information that would provide a business with an advantage over those who do not possess it is a trade secret. Southern Bell has not demonstrated, in any detail, how any particular competitor could benefit from the material it has submitted. The Company has not provided specific benefits that could be realized by any specific competitor from each of the specific costs or the overall cost design of these documents. In fact, the entire design for this cost study is set out in a public document entitled the Private Line/Special Access Cost Manual produced by this Commission.

Besides asserting that these documents fall into the statutory category of trade secrets, Southern Bell has also

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stated that this information is proprietary business information and that disclosure of it will cause the Company substantial harm by giving information on its pricing strategy, including pricing floors, to its competitors. The Company also states that disclosure of its cost information will give an unfair advantage to customers negotiating contract pricing arrangements with Southern Bell. However, this cost study information represents average costs. Contract pricing customers generally have lower than average costs, therefore, they will know that Southern Bell could go below that average costs in pricing the contract service arrangement. Because all of these concerns are founded on the basic proposition that there is a competitive market for these services, the Company's request is flawed. It simply has not demonstrated that there is a competitive market for these services in which it could be harmed by the disclosure of such information. The mere mention of competitors such as Intermedia and Metromedia, as well as interexchange companies which offer private line and special access type facilities, does not constitute a showing of a competitive market for these services.

There is a presumption in the law of the State of Florida that documents submitted to governmental agencies shall be public records. The only exceptions to this presumption are the specific statutory exemptions provided in the law and exemptions granted by governmental agencies pursuant to the specific terms of a statutory provision. This presumption is based on the concept that government should operate in the "sunshine." In the instant matter, the value of the examination and utilization of the information contained in this cost study for these four services by all parties must be weighed against the legitimate concerns of this Company regarding the disclosure of business information that it considers proprietary. It is our view that the burden to be met by one requesting specified confidential classification of documents submitted during a proceeding before this Commission is very high.

For these reasons, and because of recent events, the Prehearing Officer has concluded that utilities must be more specific in identifying the precise material believed to be proprietary and in supporting their arguments with relevant reasons justifying non-disclosure. Southern Bell is reminded that our confidentiality rule is explicit in requiring that each request for specified confidential classification be fully

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justified by a showing sufficient to meet the burden of proving harm through public disclosure. The Prehearing Officer will grant the requested specification only in individual instances where Southern Bell has met that burden with a sufficient showing to support its request. The Company is expected to limit its requests for confidential treatment to only those discrete portions of documents that would truly be harmful if disclosed.

In order to assure that it has sufficiently identified and justified its individual requests for specified confidential classification, Southern Bell shall follow the steps explained below. The Commission's practice is to assign a Document Number (DN) to each document or set of documents accompanying an individual request for specified confidential classification. In the case of two or more documents being submitted for consideration under one DN, the identification of the specific portions of each document has been totally inadequate in some recent cases. Accordingly, if Southern Bell submits more than one document under a single request pursuant to the confidentiality rule, an index of all documents must accompany the request. This index shall assign a letter to each document, and all references to that document in the request shall refer to that document by the letter assigned to it in the index. Thereafter, all pleadings filed by the parties shall refer to that specific document by the DN and the letter assigned to it in the index.

This Commission must be presented with a specific itemized listing of information, by page, line and column number, with a specific justification for confidentiality for each item. The pages shall be numbered consecutively in each discrete document and the lines on each page shall be numbered. Merely highlighting numbers and words on a page as a means of indicating the portion considered proprietary by the utility is insufficient because it leads to difficulty in describing this material in the order ruling on the request. References in the request and in related pleadings to the material sought by the Company to be granted specified confidential classification shall be by item, page, column and line numbers.

Upon review of the Company's request and the material submitted, we find that Southern Bell has failed to carry its burden of showing that the material submitted is qualified for specified confidential classification pursuant to Section 364.183, Florida Statutes, and Rule 25-22.006, Florida

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Administrative Code. Accordingly, these documents shall not be exempt from the requirements of Section 119.07(1), Florida Statutes.

Based on the foregoing, it is, therefore,

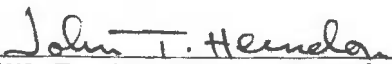
ORDERED by Commissioner John T. Herndon, as Prehearing Officer, that the request for specified confidential classificaiton filed by Southern Bell Telephone and Telegraph Company for the documents identified in the body of this Order is hereby denied. It is further

ORDERED that the documents identified in the body of this Order shall not be kept confidential, pursuant to Section 364.183, Florida Statutes, and shall not be exempt from the requirements of Section 119.07(1), Florida Statutes. It is further

ORDERED that if a protest is filed within 14 days of the date of this Order, it will be resolved by the appropriate Commission panel pursuant to Rule 25-22.006(3)(d), Florida Administrative Code. It is further

ORDERED that if no timely protest is filed, this ruling shall become final pursuant to Rule 25-22.006(2)(f) & (3)(d), florida Administrative Code.

By ORDER of Commissioner John T. Herndon, as Prehearing Officer, this 24th day of JANUARY, 1990.

  
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JOHN T. HERNDON, Commissioner  
and Prehearing Officer

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