

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Proposed Tariff Filing by) DOCKET NO. 890505-TL
 Southern Bell Telephone and Telegraph) ORDER NO. 22489
 Company to restructure and reprice) ISSUED: 2-1-90
 private line and special access services)
 and to waive nonrecurring charges for)
 high capacity services.)

ORDER GRANTING SOUTHERN BELL TELEPHONE AND TELEGRAPH
 COMPANY'S REQUEST FOR SPECIFIED CONFIDENTIAL
 CLASSIFICATION OF AND A PERMANENT PROTECTIVE ORDER
 FOR THE MATERIAL CONTAINED IN DOCUMENT NO. 7976-89

AND

REQUIRING SOUTHERN BELL TO PRODUCE THE DOCUMENTS
 REQUESTED BY PUBLIC COUNSEL REGARDING THE PRICE
 ELASTICITIES OF DEMAND FOR ITS PRIVATE LINE/
 SPECIAL ACCESS SERVICES IN THE OTHER THREE STATES IN WHICH
 SOUTHERN BELL OPERATES AND ITS INTERSTATE JURISDICTION

1. Background

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. On May 31, 1989, the Office of Public Counsel (Public Counsel) served a Request for Production of Documents on Southern Bell. In response, Southern Bell filed its Response and Objections to Public Counsel's Request for Production of Documents and Motion for Protective Order on June 30, 1989. In that Response, Southern Bell stated that it would produce, subject to its general and specific objections, all documents it considered to be "nonproprietary relevant documents" for inspection and copying on July 3, 1989. Southern Bell objected to producing some of the documents requested by Public Counsel because it asserts they are proprietary and confidential business information that, if disclosed, would cause the Company harm. Southern Bell also objected to producing some of the documents requested by Public Counsel regarding the price elasticity of demand for its private line and special access services in the three states other than Florida in which it operates and for its interstate jurisdiction because it states they are not relevant

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to this proceeding. On July 20, 1989, Public Counsel filed its Citizens' Motion to Compel and Request for In Camera Inspection of Documents requesting the Commission to require Southern Bell to produce the balance of the documents responsive to Public Counsel's POD. Southern Bell then filed a Motion for Preliminary Protective Order on July 21, 1989, requesting that the documents now included in Document No. 7976-89, which contain information on Southern Bell's intraLATA toll revenues and the price elasticity of Southern Bell's intrastate private line and special access services, be protected from public disclosure for a period of 21 days. This was to allow Public Counsel to obtain possession of the documents as quickly as possible, while Southern Bell had additional time to file a request for specified confidential classification. On August 1, 1989, Southern Bell filed a Response to Public Counsel's Motion for an Order Compelling Southern Bell to Produce Certain Documents. In its response, Southern Bell argues that the Commission should deny Public Counsel's motion to compel and request for an in camera inspection because the documents requested by Public Counsel are irrelevant to this proceeding and there is no need for an in camera inspection to determine this. Southern Bell asserts that, because these documents relate to the price elasticities of demand of their private line, special access, and toll and switched access services in three other states and their interstate operation, they are not relevant to this Florida tariff filing. Subsequently, on August 8, 1989, Southern Bell filed a Motion for a Permanent Protective Order providing more detailed justification for its request for a protective order for and specified confidential classification of highlighted portions of the documents included in Document No. 7976-89. On August 21, 1989, Public Counsel filed its Citizens' Response and Opposition to Southern Bell's Motion for a Permanent Protective Order stating its position that this information should not be exempt from the Public Records Law because this is "basic information needed to evaluate the revenue impact of Southern Bell's filing" and that Southern Bell did not request such confidential classification for this type of information in Docket No. 880069-TL.

2. Request for Specified Confidential Classification of Document No. 7679-86 and Permanent Protective Order for the Documents Contained Therein

Florida law provides, in Section 119.01, Florida Statutes,

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that documents submitted to governmental agencies shall be public records. The only exceptions to this law are specific statutory exemptions and exemptions granted by governmental agencies pursuant to the specific terms of a statutory provision. This law derives from 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 these documents 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 a protective order or specified confidential classification of documents submitted during a proceeding before this Commission is very high.

In support of its request for a permanent protective order and its request for specified confidential classification of the highlighted portions of these documents, Southern Bell asserts that this is proprietary, confidential business information containing sensitive market data. The Company states that the highlighted portions of these documents provide specific information regarding Southern Bell's intraLATA toll revenues and the price elasticity of Southern Bell's intrastate private line and special access services. Therefore, the Company has requested specified confidential classification for this information, pursuant to Section 364.183, Florida Statutes, and Rule 25-22.006, Florida Administrative Code.

Document No. 7976-89 consists of two documents. The first, Document No. 1 (Estimation of Service Demand and Revenue), provides information on the effect of the private line/special access restructure on the demand for private line services as well as other services which are cross-elastic with private line. Southern Bell claims that its competitors could benefit from this specific market data because this would be tantamount to providing free market research for them.

Document No. 2 consists of specific customer studies on intraLATA toll service customers' calling habits and the message toll service (MTS) revenues Southern Bell expects to be produced by the reduced rates Southern Bell will propose in this docket. Southern Bell states that the highlighted information is a trade secret and that Southern Bell would be providing free market research to its competitors.

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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. Rule 25-22.006, Florida Statutes, provides that the Company may fulfill its burden by demonstrating that the information falls into one of the statutory examples set out in Section 364.183, Florida Statutes, or by demonstrating that the information is proprietary confidential information the disclosure of which will cause the Company or its ratepayers harm.

Regarding Document No. 1, the Company has demonstrated that it is experiencing some degree of competition in the markets for these services which are cross-elastic with private line. Public disclosure of this information would harm Southern Bell, the Company asserts, by providing the benefits of its market research related to these services to its nascent competitors. Therefore, its allegations that it would suffer harm from disclosure of this research are reasonable.

Regarding Document No. 2, the Company has asserted that this market research data is a trade secret. Trade secrets are one of the statutory examples set out in Section 364.183, Florida Statutes. Southern Bell asserts that the highlighted portions of these documents fall into the category of trade secrets because the Company has expended a great deal of time and money producing them, because the Company guards its confidentiality, and because this data would be of value to its competitors.

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. This type of market research data does not fall into the category of a trade secret because any company could, if it chose to, perform this type of market research. In this sense, this information is "readily ascertainable." Although we do not find the Company's assertion that this information constitutes a trade secret to be persuasive, we will grant this information specified confidential classification because the Company has demonstrated that it is proprietary confidential business information, the disclosure of which would cause the

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Company harm.

Upon review of the Company's request and the documents, we find that Southern Bell has carried its burden of showing that the highlighted portions of the material contained in Document No. 7976-86 is qualified for specified confidential classification pursuant to Section 364.183, Florida Statutes, and Rule 25-22.006, Florida Administrative Code. Accordingly, the highlighted portions of those documents shall be exempt from the requirements of Section 119.07(1), Florida Statutes. Therefore, Southern Bell's request for a permanent protective order is granted. However, Public Counsel shall be provided this information on the condition that it maintains its confidentiality.

3. Public Counsel's Request for In Camera Inspection of Documents Not Yet Produced by Southern Bell for Determination of Relevancy

Public Counsel has requested that this Commission perform an in camera inspection of the documents that Southern Bell has not yet produced on the basis of their irrelevance to this proceeding. An in camera inspection is not necessary for this Prehearing Officer to make a decision regarding the relevance of these documents. Based upon the pleadings that have been filed, it appears that information regarding the elasticity of demand for Southern Bell's private line/special access services in the other three states and in its interstate jurisdiction may have relevance to the reasonableness of the Company's decision not to consider this factor in the instant tariff filing. Therefore, Southern Bell shall produce these documents within the next 20 days. If Southern Bell believes that a request for specified confidential classification is necessary, it may file such a request. However, all further requests for confidential treatment of material in this proceeding shall be consistent with the requirements set out in Order No. 22465, issued January 24, 1990, in this matter.

Based on the foregoing, it is, therefore,

ORDERED by Commissioner John T. Herndon, as Prehearing Officer, that the request for specified confidential classification filed by Southern Bell Telephone and Telegraph Company for the highlighted portions of the documents contained in Document No. 7976-89 is hereby approved. It is further

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ORDERED that, by implication, Southern Bell's motion for a permanent protective order is hereby granted regarding the highlighted portions of the documents contained in Document No. 7976-89 and, therefore, the highlighted portions of those documents shall be kept confidential, pursuant to Section 364.183, Florida Statutes, and shall be exempt from the requirements of Section 119.07(1), Florida Statutes. It is further

ORDERED that Public Counsel shall be provided the information contained in Document No. 7976-89 on the condition that it maintain the confidentiality of the highlighted portions thereof. It is further

ORDERED that Southern Bell shall produce the documents requested by Public Counsel regarding the price elasticities of demand for its private line/special access services in the other three states in which it operates and in its interstate jurisdiction within 20 days from the issuance of this Order. It is further

ORDERED that, by implication, Public Counsel's motion to compel is hereby granted. 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 1st day of FEBRUARY, 1990.

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 from the full Commission within 14 days pursuant to Rule 25-22.006(3), Florida Administrative Code, for rulings on confidentiality issued by a Prehearing Officer; 2) reconsideration within 10 days pursuant to Rule 25-22.038(2), Florida Administrative Code, for any rulings on issues other than confidentiality if issued by a Prehearing Officer; 3) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or 4) 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.