

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Proposed Tariff Filing by) DOCKET NO. 890505-TL
 Southern Bell Telephone and Telegraph) ORDER NO. 22501
 Company to restructure and reprice) ISSUED: 2-6-90
 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 THE MATERIAL
CONTAINED IN DOCUMENT NO. 6091-89

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 June 20, 1989, Southern Bell requested specified confidential classification of certain highlighted portions of its "Capital Cost Analysis System" filed with this Commission in response to our Staff's request for additional information regarding the cost studies performed by the Company for its private line and special access services. Southern Bell asserts that the highlighted portions of this 200 page document contain proprietary, confidential information consisting of a copyrighted mathematical formula or model. According to Southern Bell, the disclosure of this information would be inappropriate because Southern Bell purchased the right to use this model from BellCore and is ". . . contractually bound to utilize the model only for its own internal use." Southern Bell states that this information is a trade secret because it is copyrighted, intellectual property which has economic value and has not been publicly disclosed. Indeed, Southern Bell states that it zealously guards the confidentiality of this information. The fact that BellCore is offering the model for sale to other independent telephone companies and to other Bell Operating Companies (BOCs), the Company asserts, supports this information's trade secret status.

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

DOCUMENT NUMBER-DATE

01110 FEB -6 1990

FPSC-RECORDS/REPORTING

ORDER NO. 22501
DOCKET NO. 890505-TL
PAGE 2

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 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 specified confidential classification of documents submitted during a proceeding before this Commission is very high.

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 documents fall 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.

Southern Bell has alleged that the highlighted portions of this document fall into the statutory category of trade secrets. "Trade secret" is defined in Sections 688.002 and 812.081, Florida Statutes. Section 688.002 defines it basically as information that is not readily ascertainable by persons who could obtain economic value from its disclosure. Section 812.081 defines it as information that would provide a business with an advantage over those who do not possess it. The principal thrust of these definitions is the disclosure of information held by a company to another entity which may derive economic benefit from the information to the detriment of the company. These two statutory definitions of "trade secrets" are provided in the context of one person or business enterprise wrongfully capitalizing upon the proprietary business information of another person or business. These statutes, one providing criminal sanctions (a third degree felony), and the other civil penalties (double damages and, in cases of bad faith, attorney's fees) were written broadly to include all misappropriation in the context of competing businesses. They cannot be blindly applied in the context of a government created and protected monopoly.

This Commission is authorized by Section 364.183, Florida

ORDER NO. 22501
DOCKET NO. 890505-TL
PAGE 3

Statutes, to grant confidential treatment to proprietary confidential business information. That Section lists several statutory categories of information deemed to be confidential proprietary information, one of which is "trade secrets." Inherent in this finding is the Commission's obligation to balance the conflict between the demands of the Public Records Act and the nature of proprietary business information. This conflict stems from the strong policy of this state that documents utilized by the Commission in making its decisions should be public information and the policy that parties have a right to have their confidential proprietary business information protected. This balancing process requires the Commission to make a very careful examination, leading to determinations of whether information is a "trade secret" within the terms of Sections 688.02 and 812.081 and whether those definitions control our decisions in the context of the "trade secrets" as listed in Section 364.183. In view of our Public Records responsibilities and the broad nature of these Sections we take a narrower view of "trade secret" than contemplated in the purely competitive context. Purely competitive entities are not faced with the public disclosure demands placed upon us by the Public Records Act.

While we do not view these definitions as strictly controlling, we do see them as instructive as to the nature of information which the Legislature authorized us to protect from disclosure. The public interest demands that we make an independent determination of whether the information is a "trade secret" in the context of utilities regulated by this Commission. As discussed above the basic test is whether the information, if disclosed, would cause harm to the company.

Upon review of the Company's request and the information, we find that the Company has not demonstrated that this information meets the criteria of a "trade secret." This is because the highlighted information said here to be a trade secret simply represents the mathematical formula for the calculation of the Company's costs for buried cable that is used in providing these services. This formula is no more a trade secret than is the formula for the calculation of the volume of a cylinder. Any telephone company would have to utilize a formula extremely close, if not identical, to this to calculate its capital costs. In addition, the fact that the Company has not requested specified confidential classification for the actual figures generated by the formula creates some difficulty in accepting the Company's argument. Without much

ORDER NO. 22501
DOCKET NO. 890505-TL
PAGE 4

difficulty, one could easily derive the formula from which these figures spring.

The fact that this formula is copyrighted does not mean that it, in any way, meets the criteria for a trade secret or that it is even proprietary, confidential information. Versions of the Bible and all sorts of dictionaries are copyrighted materials, but these copyright owners cannot claim that the information contained therein is theirs alone and is, therefore, legally nondisclosable. This is not to suggest that anyone may violate the legal rights of the copyright owner of the instant capital cost analysis system, but to clarify that the copyrighted status of any information is not dispositive of the trade secret or proprietary, confidential business information criteria that this Commission must apply. Upon consideration, we find that the highlighted information contained in Document No. 6091-89 is not qualified for specified confidential classification pursuant to Section 364.183, Florida Statutes, and Rule 25-22.006, Florida Administrative Code. Accordingly, this information shall not be exempt from the requirements of Section 119.07(1), Florida Statutes, and, the Company's request for a permanent protective order is denied.

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 Document No. 6091-89 is hereby denied. It is further

ORDERED that the highlighted information in Document No. 6091-89 shall be public record pursuant to 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.

ORDER NO. 22501
DOCKET NO. 890505-TL
PAGE 5

By ORDER of Commissioner John T. Herndon, as Prehearing Officer, this 6th day of FEBRUARY, 1990.

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

(S E A L)

SFS

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.