

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of the Citizens of the) DOCKET NO. 890190-TL
 State of Florida to investigate SOUTHERN)
 BELL TELEPHONE AND TELEGRAPH COMPANY'S) ORDER NO. 24320
 cost allocation procedures)
) ISSUED: 4/3/91

ORDER GRANTING IN PART AND DENYING IN PART
CONFIDENTIAL TREATMENT OF PORTIONS
OF DOCUMENT NUMBER 2360-90

Southern Bell Telephone and Telegraph Company

On March 8, 1991, Southern Bell Telephone and Telegraph Company (Southern Bell, the Company) filed its Request for Confidential Classification and Motion for a Permanent Protective Order. The information which the Company seeks to protect is contained in the prefiled testimony of the Office of Public Counsel's (OPC) witness, Kimberly Dismukes. Southern Bell asserts generally that the information at issue is treated as confidential by the Company.

Southern Bell specifically asserts the following.

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Dismukes Testimony	21	20-22, 24-25
	22	1-6

Southern Bell asserts that this information reflects data for which the Company has a pending motion for confidential treatment before this Commission. Therefore, the Company argues that pursuant to Rule 25-22.006, Florida Administrative Code, such information is classified as confidential business information pursuant to Section 364.183, Florida Statutes, and is exempt from the Open Records Act pending resolution of Southern Bell's pending motion for confidential treatment. This is the Benchmark material and is the same information which is at issue on reconsideration of Order No. 23634 in this Docket.

DOCUMENT NUMBER-DATE

03198 APR -3 1991

FSC-RECORDS/REPORTING

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Southern Bell argues that this information relates to competitive interests and/or unregulated operations, the disclosure of which would impair the competitive business and/or unregulated operations of Southern Bell. As such, the Company asserts that this information is classified as confidential business information pursuant to Section 364.183, Florida Statutes, and is exempt from the Open Records Act.

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Dismukes Testimony	41	1-9, 13-25
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	43	1-8, 11-22

Southern Bell asserts that this information relates to internal and external auditing controls and reports of auditors and includes information consisting of, or which incorporates, materials from audits and/or workpapers of auditors. Therefore, the Company concludes that such information is classified as confidential business information pursuant to Section 364.183, Florida Statutes, and is exempt from the Open Record Act.

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Dismukes Testimony Schedule 3	1	2-32	C, E, F, G

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	2	26, 30, 34, 38, 42	A-H
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	3	25, 30, 34, 38, 42	A-D
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	3	26, 31, 35, 39, 43	A-H
	4	3, 8, 12, 16	A-D
	4	4, 9, 13, 17	A-H
	4	18, 19	F, G, H

Southern Bell asserts that this information relates to competitive interests and/or unregulated operations, the disclosure of which would impair the competitive business and/or unregulated operations of Southern Bell. As such, the Company argues that this information is classified as confidential business information pursuant to Section 364.183, Florida Statutes, and is exempt from the Open Record Act.

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Office of Public Counsel

On March 11, 1991, OPC filed its Response and Opposition to Southern Bell's Motion for a Permanent Protective Order. Except for that portion of Ms. Dismukes' testimony discussing the reports of internal auditors, OPC opposes Southern Bell's request for confidentiality. OPC recognizes that the portions of Ms. Dismukes' testimony redacted by Southern Bell at page 40, line 25, through the bottom of page 43 appear to fit within the exception to public access contained in Section 364.183(3)(b), Florida Statutes. However, OPC does not believe any harm would strike Southern Bell from revealing this specific information.

OPC asserts that at the bottom of page 21 through the middle of page 22 of the testimony, Ms. Dismukes describes a portion of a report commissioned by Southern Bell to maximize its profits from the recombination of its CPE services with the regulated telephone company. OPC contends that a dispute between Southern Bell and OPC concerning the confidentiality of these reports has been going on for years and that the Prehearing Officer ruled in favor of OPC, but Southern Bell requested reconsideration by the full Commission. OPC continues its opposition to Southern Bell's claim of confidentiality regarding this report because OPC asserts that it is not a report of internal auditors.

OPC contends that all of the remaining arguments by Southern Bell appear to be based on its objection to allowing the public record to contain figures showing the relative percentage of costs allocated between regulated and unregulated operations in certain aggregated accounts and that Southern Bell claims that such information relates to competitive interests and/or unregulated operations, the disclosure of which would impair the competitive business and/or unregulated operations of Southern Bell. OPC concludes that Southern Bell's motion is completely devoid of any explanation that would show how the disclosure of aggregated percentages of expenses allocated between regulated and unregulated operations would impair its competitive businesses and thus OPC concludes that we should deny all such requests by Southern Bell.

Conclusion

After a review of the Parties' positions and the information found in the Dismukes testimony, we find the following for each group of items set forth above, for which Southern Bell has

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requested confidential treatment:

Pages 21-22

These pages refer to the Benchmark report which is under reconsideration in this Docket. We hold the determination of the confidentiality of this material in abeyance. The confidentiality of the Benchmark material will be addressed in the Order resulting from reconsideration of Order No. 23634. That Order also will specifically address the issue of the confidentiality of the Benchmark material as it exists in the Dismukes testimony.

Pages 29-39

These pages of Ms. Dismukes testimony refer to information which has been released in the ARMIS report of the FCC. The ARMIS report contains only the regulated and non-regulated amounts by primary account and does not contain the subaccount information. However, the ARMIS report does disaggregate the primary account by subcategories which include directly assigned, attributed, generally allocated, and other information. Ms. Dismukes' testimony and schedules are derived from responses to Public Counsel's interrogatories. The amounts listed on pages 29-39 contain a category called "direct," these amounts are not the same on the ARMIS report as on Ms. Dismukes' testimony because cost pools were changed during the course of the year and the assignment was different as the allocations relate to subaccounts. The primary account information is the same for both ARMIS and the schedules supporting Ms. Dismukes testimony. Because the primary account information is already public information, as is the category entitled "directly assigned," and because Southern Bell has made no case for differentiating between account and subaccount information, we find that these pages shall be denied confidential treatment.

Pages 40-43

These pages refer to internal audits which we find are entitled to confidential treatment.

Schedule 3, Page 1

This schedule refers to affiliated transactions which involve non-regulated entities. We find that disclosure of this schedule could give competitors an unfair advantage in knowing the amounts paid to non-regulated operations. Thus, this schedule shall be accorded confidential treatment.

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Schedule 4, Pages 1-4

This schedule consists of information which has already been disclosed in ARMIS reports. Thus, this schedule shall not be accorded confidential treatment.

Schedule 5, Pages 1-4

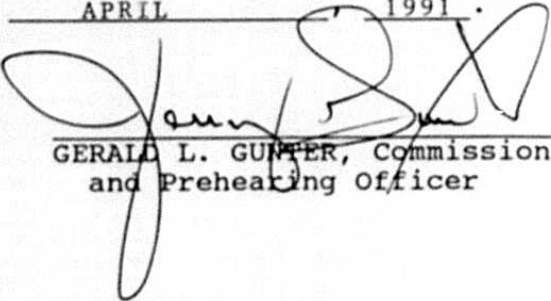
This schedule consists of information which has already been disclosed in ARMIS reports. Thus, this schedule shall not be accorded confidential treatment.

Therefore, based upon the foregoing, it is

ORDERED by Commissioner Gerald L. Gunter, as prehearing Officer that the confidentiality of the Benchmark material in Document No. 2360-90, which is reflected in the Dismukes Testimony at pages 21 and 22, will be set forth in the Order resulting from reconsideration of Order No. 23634 as discussed in the body of this Order. It is further

ORDERED that the confidentiality of all other information in Document No. 2360-90 is hereby granted in part and denied in part as set forth in the conclusion of this Order.

By ORDER of Commissioner Gerald L. Gunter, as Prehearing Officer, this 3rd day of APRIL, 1991.


GERALD L. GUNTER, 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.