

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Comprehensive review of revenue requirements and rate stabilization plan of SOUTHERN BELL.)	DOCKET NO. 920260-TL
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In re: Investigation into the integrity of SOUTHERN BELL'S repair service activities and reports.)	DOCKET NO. 910163-TL
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In re: Investigation into SOUTHERN BELL'S compliance with Rule 25-4.110(2), F.A.C., Rebates.)	DOCKET NO. 910727-TL
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In re: Show cause proceeding against SOUTHERN BELL for misbilling customers.)	DOCKET NO. 900960-TL
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In re: Request by Broward Board of County Commissioners for extended area service between Ft. Lauderdale, Hollywood, North Dade and Miami.)	DOCKET NO. 911034-TL ORDER NO. PSC-94-0135-CFO-TL ISSUED: February 3, 1994
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ORDER DENYING SOUTHERN BELL'S MOTION FOR CONFIDENTIAL CLASSIFICATION FOR PORTIONS OF DOCUMENT NO. 12745-93 (DOCKET NO. 910163-TL)

On November 29, 1993, BellSouth Telecommunications, Inc. d/b/a Southern Bell Telephone and Telegraph Company (Southern Bell or the Company) filed a Request for Confidential Classification for portions of its answer to Staff's 16th Interrogatories, No. 262. (Southern Bell's motion). Southern Bell's answer to that interrogatory, with the information for which the Company is requesting confidential treatment highlighted, was filed with the Commission's Division of Records and Reporting on November 29, 1993 as Attachment "C" to Southern Bell's motion. Attachment "C" was assigned Document No. 12745-93.

Documents filed by telecommunications companies with the Commission are public records subject to public disclosure under Section 119.07(1), Fla. Stat. (1991) of Florida's Public Records Law. Section 119.07(3), Fla. Stat., however, exempts from public disclosure those public records that are provided by statutory law

DOCUMENT NUMBER-DATE

01110 FEB-3 1994

FPSC-RECORDS/REPORTING

to be confidential or which are expressly exempted by general or special law. Pursuant to Section 364.183, Fla. Stat., and Fla. Admin. Code Rule 25-22.006, Southern Bell has the burden of demonstrating that information is qualified for confidential classification. Rule 25-22.006 provides that Southern Bell may fulfill its burden of showing that the information is "proprietary confidential business information," as defined in Section 364.183, by showing that the information is one of the statutory examples set forth therein or by demonstrating disclosure of the information will cause harm to Southern Bell or its ratepayers. In the absence of a specific statutory exemption, the Commission may not deny disclosure based upon a judicially created privilege of confidentiality¹ or based upon public policy considerations which attempt to weigh the benefits to be derived from public disclosure against the detriment to an individual institution resulting from such disclosure.²

In the instant motion, Southern Bell seeks confidential classification for the names and job titles of disciplined employees found in the Company's answer to Staff's interrogatory. The names and job titles were provided along with the reason the employee was disciplined by the Company. Southern Bell does not object to public disclosure of the fact that an employee was disciplined for the reason stated. Southern Bell requests confidential classification only for the identities and job titles of the employees who are associated with the reason for the discipline.

Southern Bell argues that the identities of employees who were disciplined by the Company is "employee personnel information unrelated to compensation, duties, qualifications or responsibilities" and, therefore, it is "proprietary confidential business information" exempt from public disclosure by Subsection (f) of Section 364.183(3), Fla. Stat. Moreover, Southern Bell argues that the information is "proprietary confidential business

¹ Wait v. Florida Power & Light Co., 372 So.2d 420 (Fla. 1979).

² Id.; News-Press Publishing Co., Inc. v. Gadd, 388 So.2d 276 (Fla. 2d DCA 1980); Gadd v. News-Press Publishing Co., 412 So.2d 894, 895 (Fla. 2d DCA 1982); Douglas v. Michel, 410 So.2d 936 (Fla. 5th DCA 1982); State ex rel. Veale v. City of Boca Raton, 353 So.2d 1194 (Fla. 4th DCA 1977), cert. denied, 360 So.2d 1247 (Fla. 1978).

information" in that disclosure would harm the Company's business operations. Southern Bell contends that public disclosure of the identities of the disciplined employees would "publicly shame" the employees involved. This situation, the Company argues, will result in morale problems which, in turn, will have a chilling effect on the employees' willingness to cooperate with the Company's efforts to police its operations in the future and the managers' willingness to discipline employees in the future.

In Final Order No. PSC-94-0059-FOF-TL, the Commission upheld on reconsideration the Prehearing Officer's conclusion that the identities of employees who were disciplined by Southern Bell and the nature of the discipline is information related to the performance of the employee's jobs and, therefore, it is employee personnel information which is related to duties or responsibilities. As such, it was determined that this information is not "proprietary confidential business information" as defined by the legislature in Subsection (f) of Section 364.183(3) and, hence, it is information not exempt from public disclosure by that provision. Accordingly, the identities of the disciplined employees found in Document No. 12745-93 are not "proprietary confidential business information" under Section 364.183(3)(f). Moreover, with regard to Southern Bell's contention that the information is "proprietary confidential business information" under Section 364.183(3), in that disclosure will cause harm to the Company's business operations, the Commission rejected embarrassment of employees and the potential impact on Company operations as the type of harm contemplated by Section 364.183(3).

Finally, the Commission has declined Southern Bell's invitation to apply a balancing test which weighs the benefits to be derived from public disclosure against the detriment to the Company and its employees. In the absence of a specific statutory exemption, we may not deny disclosure based upon public policy considerations that attempt to weigh the relative significance of the public's interest in disclosure with the damage to an individual institution resulting from such disclosure.

Accordingly, it is, therefore,

³ Id. at note 2.

ORDER NO. PSC-94-0135-CFO-TL

DOCKETS NOS. 920260-TL, 910163-TL, 910727-TL, 900960-TL, 911034-TL

PAGE 4

ORDERED by Commissioner Susan F. Clark, as Prehearing Officer, that Southern Bell's Motion for Confidential Classification for Document No. 12745-93 is denied as set forth in the body of this Order.

By ORDER of Commissioner Susan F. Clark, as Prehearing Officer, this 3rd day of February, 1994.



SUSAN F. CLARK, Commissioner and
Prehearing Officer

(S E A L)
JRW

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), Fla. Stat. (1991) to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Fla. Stat. (1991 & 1992 Supp.) 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 Fla. Admin. Code Rule 25-22.038(2), if issued by a Prehearing Officer; (2) reconsideration within 15 days pursuant to Fla. Admin. Code Rule 25-22.060, 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 wastewater utility. A motion for reconsideration shall be filed with the Director, Division of Records and Reporting, in the form prescribed by Fla. Admin. Code Rule 25-22.060. 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 Fla. R. App. P. 9.100.