

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

| | | |
|--|---|--|
| In re: Comprehensive review of revenue requirements and rate stabilization plan of SOUTHERN BELL. |) | DOCKET NO. 920260-TL |
| |) | |
| |) | |
| |) | |
| |) | |
| In re: Investigation into the integrity of SOUTHERN BELL'S repair service activities and reports. |) | DOCKET NO. 910163-TL |
| |) | |
| |) | |
| |) | |
| |) | |
| In re: Investigation into SOUTHERN BELL'S compliance with Rule 25-4.110(2), F.A.C., Rebates. |) | DOCKET NO. 910727-TL |
| |) | |
| |) | |
| |) | |
| |) | |
| In re: Show cause proceeding against SOUTHERN BELL for misbilling customers. |) | DOCKET NO. 900960-TL |
| |) | |
| |) | |
| |) | |
| |) | |
| 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-94-0423-CFO-TL ISSUED: April 11, 1994 |
| |) | |
| |) | |

**ORDER GRANTING IN PART AND DENYING IN PART SOUTHERN BELL'S
REQUEST FOR CONFIDENTIAL CLASSIFICATION FOR PORTIONS OF
DOCUMENT NOS. 1759-93 AND 2302-93
(DOCKET NO. 900960-TL)**

I. BACKGROUND

On March 1, 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 the direct testimony and exhibits of Public Counsel's witness R. Earl Poucher. The Company seeks confidential classification for two copies of Poucher's testimony and exhibits on file with the Commission. The first copy of Poucher's testimony and exhibits, filed with the Commission's Division of Records and Reporting on February 15, 1993, was assigned Document No. 1759-93. The second copy of Poucher's testimony and exhibits, with the information for which the Company is requesting confidential treatment highlighted, was filed by the Company with the Commission's Division of Records and Reporting on March 1, 1993 as Attachment "C" to Southern Bell's motion. Attachment "C" to Southern Bell's motion was assigned Document No. 2302-93.

DOCUMENT NUMBER-DATE

03365 APR 11 8

FPSC-RECORDS/REPORTING

Documents filed by telecommunications companies with the Commission are public records subject to public disclosure under Section 119.07(1), Florida Statutes (1991) of Florida's Public Records Law. Section 119.07(3), Florida Statutes, however, exempts from public disclosure those public records that are provided by statutory law to be confidential or which are expressly exempted by general or special law. Pursuant to Section 364.183, Florida Statutes, and Florida Administrative 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, Florida Statutes, 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.

II. ANALYSIS

POUCHER EXHIBITS

Customer Specific Information

The Company seeks confidential classification for information found in Exhibit REP-14 to Poucher's testimony which is a document entitled "Inside Wire/Line Reconciliation". Southern Bell relies on the exemption from the disclosure requirements of Florida's Public Records Law found in Section 119.07(3)(w), Florida Statutes, for customer specific information.

In its motion, Southern Bell specifically seeks confidential classification for the names, addresses and telephone numbers of Southern Bell subscribers found in the document. Inconsistent with its motion, however, the Company requests confidential classification for all information found in the exhibit in its line-by-line request and highlighted version of the document. In addition, an in camera inspection of the document shows that it only discloses that the subscribers are located in Miami; the document does not disclose specific addresses of Southern Bell subscribers.

The Company's request for confidential status is granted only for the names of Southern Bell subscribers found in Exhibit REP-14. Southern Bell shall file with the Commission within 10 days from the issuance date of this Order a redacted version of Exhibit REP-14 with only the names of Southern Bell subscribers redacted.

Employee Personnel Related Information

Southern Bell requests confidential classification for the social security numbers of Southern Bell employees found in Exhibit REP-4 to Poucher's testimony. Exhibit REP-4 is a security report regarding the Orlando security investigation. The Company contends the information is exempt from public disclosure by Section 364.183(3)(f), Florida Statutes, which provides that "proprietary confidential business information" includes "employee personnel information unrelated to the employee's compensation, duties, qualifications or responsibilities."

The social security numbers of Southern Bell employees is information unrelated to the employees' compensation, duties, qualifications or responsibilities and, therefore, is information exempt from public disclosure by Section 364.183(3)(f), Florida Statutes. Southern Bell's request for confidential status for the following highlighted information found in Exhibit REP-4 is, therefore, granted.

| <u>Exhibit No.</u> | <u>Page No.</u> | <u>Line No.</u> |
|--------------------|-----------------|-----------------|
| REP-4 | 6 | 33 |
| | 10 | 2 |
| | 11 | 29 |
| | 13 | 8 |
| | 16 | 17 |
| | 19 | 9 |
| | 22 | 2 |
| | 23 | 34 |
| | 25 | 25 |
| | 27 | 12 |
| | 28 | 33, 34 |
| | 30 | 24 |

Reports of Southern Bell Internal Auditors

Southern Bell contends that numerous exhibits to the direct testimony of Poucher are exempt under Section 364.183(3)(b), Florida Statutes, which is the statutory provision that excludes from public disclosure reports of internal auditors. Southern Bell claims that each exhibit, in its entirety, is entitled to confidential status on the basis that the document is an internal audit report or is information derived from an internal audit report.

Having examined the exhibits in camera, a few of the exhibits are found to be reports of internal auditors. Exhibits REP-5,

REP-12 and REP-25 contain Southern Bell internal audit reports. REP-22, REP-23 and REP-24 are audit workpapers.

However, with regard to a majority of the exhibits, the results of an in camera inspection of the documents shows that these documents are not reports of internal auditors. This is the case for Exhibits REP-7A, 7B, 7C, 7D, 8A, 8B, 9, 10A, 10B, 10C, 10D, 16, 18A, 18B, 19 and 21. Attachment I to this Order is a chart which shows the findings regarding the contents of these exhibits as a result of an in camera inspection of the documents.

Moreover, in addition to the internal audit reports, Exhibit REP-5, REP-12 and REP-25 contain transmittal letters from the auditing department to Southern Bell management that request management's response to the audit findings. Likewise, REP-13 is memoranda to a Southern Bell attorney from a Southern Bell General Internal Auditor regarding the audit. Exhibit REP-15 is a memorandum to various Assistant Vice Presidents from a Southern Bell General Internal Auditor regarding the audit. Exhibit REP-5 also contains a page of handwritten notes.

Southern Bell has not met its burden of showing how the exhibits described in Attachment I, the transmittal letters, memoranda or handwritten notes are entitled to confidential status under the exemption for reports of internal auditors, Section 364.183(3)(b), Florida Statutes. Since our findings shown in Attachment I demonstrate that these documents obviously are not reports of internal auditors, the burden is on the Company to demonstrate that information found in these exhibits is derived from an internal audit report. See Florida Administrative Code Rule 25-22.006.

A request for confidential status for an entire document, brought under the exemption for reports of internal auditors, is justified for a document which is an internal audit report. Such a wholesale request is not appropriate for documents which might contain information derived from an internal audit report.

The mere allegation that these documents contain information derived from reports of Southern Bell internal auditors is not sufficient to support a request for confidential status under the exemption for internal audit reports. The Company is required to provide a line-by-line justification in support of its request for confidential classification. The burden is not on the Prehearing Officer to highlight the information that appears to have been extracted from a Southern Bell internal audit report, to number the lines of the documents and offer a line-by-line justification for confidentiality. On the contrary, the burden is on Southern Bell

to provide such a line-by-line justification. See Florida Administrative Code Rule 25-22.006. Southern Bell should be well aware of this Commission rule as it applies to "second generation" internal audit report information since the concept has been articulated to Southern Bell by this Commission.

While second, and in this case third, generation internal audit material may be entitled to protection, it must be specifically identified in the Company's pleading. Bulk requests for confidential treatment of derivative documents will be denied absent a line by line justification which allows this Commission to meaningfully differentiate among the claimed material based upon the arguments propounded by the Company.

In Re: Petition of Citizens of the State of Florida to Investigate Southern Bell Telephone and Telegraph Company's Cost Allocation Procedures, 91 F.P.S.C. 5:548b, 548c (1991).

Southern Bell has not met its burden of establishing that the exhibits described in Attachment I, the transmittal letters, memoranda or handwritten notes found in Exhibits REP-5, REP-12, REP-13, REP-15 and REP-25 warrant confidential treatment under the exemption for reports of internal auditors found in Subsection (b) of Section 364.183(3), Florida Statutes.

Accordingly, Southern Bell's request for confidential status for the following pages of the exhibits to Poucher's testimony, which are reports of internal auditors or audit workpapers, is granted.

| <u>Exhibit No.</u> | <u>Page No.</u> | <u>Line No.</u> |
|--------------------|-----------------|-----------------|
| REP-5 | 4-20 | ALL |
| REP-12 | 2-10 | ALL |
| REP-22 | ALL | ALL |
| REP-23 | ALL | ALL |
| REP-24 | ALL | ALL |
| REP-25 | 3-10 | ALL |

Southern Bell has not met its burden of establishing that the following information is exempt from public disclosure under Section 364.183(3)(b), Florida Statutes. Hence, the Company's request for confidential status for the highlighted information found in the following exhibits is denied.

| <u>Exhibit No.</u> | <u>Page No.</u> | <u>Line No.</u> |
|--------------------|-----------------|-----------------|
| REP-5 | 1-3, 21 | ALL |

| <u>Exhibit No.</u> | <u>Page No.</u> | <u>Line No.</u> |
|--------------------|-----------------|-----------------|
| REP-12 | 1 | ALL |
| REP-13 | ALL | ALL |
| REP-25 | 1-2 | ALL |

Competitive Harm

In addition to Southern Bell's argument that Exhibits REP-7A, 7B, 7C, 7D, 8A, 8B, 9, 10A, 10B, 10C, 10D, 15, 16, 18A, 18B, 19 and 21 contain information derived from reports of internal auditors, the Company argued, in the alternative, that public disclosure of the information found in the exhibits will cause competitive harm to Southern Bell. Southern Bell contends that disclosure of the information would interfere with Southern Bell's competitive interests in that it discloses the Company's "overall strategic views and planning." (Motion at p. 4) If Southern Bell's competitors had access to this information, the Company argues, "they could construct reactive plans to impede or even thwart Southern Bell's competitive initiatives" and "their marketing efforts could easily be focused and specifically designed and targeted to take full advantage of Southern Bell's assessment of competitive alternatives." (Motion at p. 5). Any advantage gained through such use of Southern Bell's information would cause a "concomitant adverse effect on the Company's business." (Motion at p. 5). For these reasons, the Company claims that the information is exempt under Section 364.183, Florida Statutes, in that public disclosure will cause competitive harm to Southern Bell.

In addition, Southern Bell contends that these exhibits contain information relating to a competitive market since they contain information relating to the sale of inside wire maintenance plans. The Company contends that "knowledge of discrete elements in a competitor's cost structure, such as current investment costs in the context of the inside wire business, would make it easier to estimate the competitor's overall costs" which "could help in setting strategic advertising rates in certain markets subject to the greatest competition." (Motion at p. 6).

With regard to Southern Bell's argument that public disclosure of the information found in the exhibits will cause competitive harm to Southern Bell, it is noted that with the exception of sales related to Customer Premises Equipment (CPE) or inside wire, the vast majority of the services involved in the sales campaigns described in the exhibits are in non-competitive markets. Moreover, each of these sales programs are no longer in existence. Hence, none of the information, even as it relates to CPE or inside wire, would provide a competitor with Southern Bell's "strategic views and planning" regarding sales of these services to which a

competitor could "construct reactive plans to impede or even thwart Southern Bell's competitive initiatives." (Motion at pp. 4-5).

With regard to Southern Bell's contention that these exhibits disclose the costs associated with the sale of inside wire maintenance plans by Southern Bell, it is noted that the cost information disclosed in the exhibits is limited to expense associated with the prizes awarded to Southern Bell employees for the sale of the maintenance plans and other services. Moreover, these exhibits appear to relate to the sales of services by "non-contact sales" employees in the Network organization. Southern Bell's memorandum regarding "Comparisons of Interdepartmental Sales Incentive Programs", which is Exhibit REP-16 to Poucher's testimony, states:

[T]hese rewards are not part of the pricing of a 'product' since the plans come after the fact. The pricing people take into account Marketing and Customer Services expense associated with sales, but sales expense in the Network organization is unexpected and as such is not built into the price of a product.

It appears that the expense of prizes awarded for sales by non-contact employees is not even a part of the pricing decision. Hence, Southern Bell's suggestion, that disclosure of costs with regard to the sales of these services by Network employees would enable a competitor to advertise at a price which undercuts Southern Bell, is contradicted by documents produced by the Company.

In light of the foregoing, Southern Bell's motion for confidential status for the following pages of the exhibits to Poucher's testimony is denied.

| <u>Exhibit No.</u> | <u>Page No.</u> | <u>Line No.</u> |
|--------------------|-----------------|-----------------|
| REP-7A | ALL | ALL |
| REP-7B | ALL | ALL |
| REP-7C | ALL | ALL |
| REP-7D | ALL | ALL |
| REP-8A | ALL | ALL |
| REP-8B | ALL | ALL |
| REP-9 | ALL | ALL |
| REP-10A | ALL | ALL |
| REP-10B | ALL | ALL |
| REP-10C | ALL | ALL |
| REP-10D | ALL | ALL |
| REP-15 | ALL | ALL |
| REP-16 | ALL | ALL |

| <u>Exhibit No.</u> | <u>Page No.</u> | <u>Line No.</u> |
|--------------------|-----------------|-----------------|
| REP-18A | ALL | ALL |
| REP-18B | ALL | ALL |
| REP-19 | ALL | ALL |
| REP-21 | ALL | ALL |

POUCHER TESTIMONY

Southern Bell seeks confidential classification for portions of Poucher's testimony on the basis that the testimony quotes or paraphrases information from Southern Bell internal audits. An examination of the testimony in camera reveals that some of the highlighted information can be characterized as quotations or information derived from the Company's audit reports or audit workpapers. Hence, the Company's request for confidential classification for the highlighted information located at the following pages and lines in Poucher's testimony is granted.

| <u>Testimony</u> | <u>Page No.</u> | <u>Line Nos.</u> |
|------------------|-----------------|--|
| | 9 | 3-13 |
| | 10 | 3-12 |
| | 19 | 14-18, 20-25 |
| | 20 | 4-8 |
| | 22 | 1-3 |
| | 23 | line 14 through the 1st word on line 16, 21-24 |
| | 24 | 2-14 |
| | 28 | 13-21 |
| | 29 | 1-7, 9-14, 17-24 |
| | 30 | line 5 through the 1st word on line 7 |
| | 31 | 2-5, 18-25 |
| | 32 | 1-18 |
| | 35 | 2-9 |
| | 41 | the last 2 words on line 16 |
| | 42 | starting after the 1st sentence through line 24 |
| | 43 | 1-11, 1st 7 words on line 13; line 16 starting with the 4th word through line 19 |
| | 48 | 2-3, 17-20 |

Whereas the following portions of Poucher's testimony quote or paraphrase information from an exhibit which has been denied confidential status in Part I of this Order or quote information from an exhibit or testimony for which the Company did not request

confidential status, this information is not entitled to confidential status in Poucher's testimony.

| <u>Testimony</u> | <u>Page No.</u> | <u>Line Nos.</u> |
|------------------|-----------------|---|
| | 12 | 12-21 |
| | 13 | 7-11 |
| | 14 | 5-8 |
| | 15 | 6-15 |
| | 23 | starting with the 2nd word on line 16 through line 19 |
| | 30 | 1-4, line 7 starting after the 1st word through line 9 |
| | 32 | 22-25 |
| | 33 | 1-24 |
| | 34 | 1-12 |
| | 38 | 16-23, 25 |
| | 39 | 1-3 |
| | 41 | line 1 through the 1st word on line 16 |
| | 42 | 1st sentence line 6 |
| | 43 | line 13 starting after the 7th word through the 3rd word on line 16 |

Accordingly, it is, therefore

ORDERED by Commissioner Susan F. Clark, as Prehearing Officer, that Southern Bell's Motion for Confidential Classification for Document Nos. 1759-93 and 2302-93 is granted in part and denied in part as set forth in the body of this Order. It is further

ORDERED that Southern Bell's request for confidential status is granted for the names of Southern Bell subscribers found in Exhibit REP-14. Southern Bell shall file with the Commission within 10 days from the issuance date of this Order a redacted version of Exhibit REP-14 with only the names of Southern Bell subscribers redacted. It is further

ORDERED that pursuant to Section 364.183, Florida Statutes, and Florida Administrative Code Rule 25-22.006, any confidentiality granted to the documents specified herein shall expire eighteen (18) months from the date of issuance of this Order in the absence of a renewed request for confidentiality pursuant to Section 364.183. It is further

ORDER NO. PSC-94-0423-CFO-TL
DOCKETS NOS. 920260-TL, 910163-TL, 910727-TL, 900960-TL, 911034-TL
PAGE 10

ORDERED that this Order will be the only notification by the Commission to the parties concerning the expiration of the confidentiality time period.

By ORDER of Commissioner Susan F. Clark, as Prehearing Officer, this 11th day of April, 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), Florida Statutes (1991) 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 (1991 & 1992 Supplement) 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 Florida Administrative Code Rule 25-22.038(2), if issued by a Prehearing Officer; (2) reconsideration within 15 days pursuant to Florida Administrative 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 Florida Administrative 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 Florida Rules of Appellate Procedure 9.100.

ATTACHMENT I

| Poucher Exhibit | Documents |
|------------------------------------|---|
| REP-7A, REP-7D | Several memoranda to Operations Managers regarding the sales levels of various employees in various regions throughout Florida. |
| REP-7B | Document entitled "One Million Dollar Challenge Winners" which lists the names, locations, sales revenue generated by each employee and the prizes received by the employees during the "One Million Dollar Challenge" Sales Campaign. |
| REP-7C | Document entitled "Interim Monthly Sales Results" which lists sales revenues generated by various Southern Bell employees. |
| REP-8A, REP-8B | Both exhibits are documents entitled "Top Individual Sales" which lists the total sales for the top ten sellers during the month of August, a document entitled "District Sales Report - Network Florida League" which lists the total monthly revenue generated for the Orlando district. REP-8A also contains documents showing the total number of network employees and a calculation of the average sales dollars per employee; and documents entitled "2nd Level's Report" which summarizes the sales results by employee and the average sales per employee for the month of August. |
| REP-9 | Chart of the various non-contact sales awards programs including the names of the various programs, the effective dates, the non-management participants, the products involved and the method of tracking sales. |
| REP-10A, REP-10B, REP-10C, REP-10D | All exhibits are documents describing specifics of various non-contact sales programs, including the products involved, the participants, the method of tracking sales and the method for calculating awards or prizes, the expected revenue and estimated cost of awards or prizes. REP-10B and REP-10C also contains three memoranda, all from a Southern Bell operations manager to various General Managers - Network, to the Operations Manager Customer Services and to the Vice-President - Network Florida, regarding various non-contact sales programs. |
| REP-16 | Memorandum to the Company's Director of Customer Services from an Operations Manager regarding a study which examined what differences existed between how Network employees were compensated in the past for their sales efforts and how they are compensated under the Florida Goldline Program. The exhibit also contains copies of overheads prepared for presentation to the Florida Tier 1 Managers that make up the Revenue Enhancement Committee. |
| REP-18A | Memorandum to Florida Tier 1 Managers from the Florida General Manager of Personnel regarding the review and approval procedures for special awards programs. |

| Poucher Exhibit | Documents |
|-----------------|--|
| REP-18B | Memorandum to all BellSouth Telecommunications Executive Vice Presidents, Senior Vice Presidents and state Presidents and Vice-Presidents. The memorandum discussed the phasing out of the existing Florida non-contact employee sales campaign called Goldline and the Georgia CLOUT! program and the beginning of state specific, product specific "spot campaigns" to be administered by Customer Services. |
| REP-19 | Documents containing BellSouth Practice guidelines and evaluation forms relating to managers' appraisals of employee service/sales performance. |
| REP-21 | Documents containing procedures and forms relating to the Florida Centralized Observing Team, which is the Company's organization that conducts random observations of Southern Bell employee contacts with customers. |