

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Investigation into) DOCKET NO. 930330-TP
IntraLATA Presubscription.) ORDER NO. PSC-95-0252-CFO-TP
_____) ISSUED: February 23, 1995

ORDER GRANTING, IN PART, AND DENYING, IN PART,
REQUEST FOR CONFIDENTIAL CLASSIFICATION
OF DOCUMENTS NOS. 9064-94 AND 9067-94

On July 28, 1994, the staff of this Commission (staff) served its Third Request for Production of Documents and Sixth Set of Interrogatories upon BellSouth Telecommunications, Inc. d/b/a Southern Bell Telephone and Telegraph Company (Southern Bell or the Company). On September 1, 1994, Southern Bell filed a Request for Confidential Classification and Motion for Permanent Protective Order for the Company's responses to Items Nos. 6, 8, 11, 12, 13, 15, 16, and 17 of Staff's Third Request for Production of Documents (Document No. 9064-94) and its responses to items 90 and 91 of Staff's Sixth Set of Interrogatories (Document No. 9067-94). No response in opposition to the requests has been filed.

It should be noted that Southern Bell's responses to Items Nos. 15, 16 and 17 and its responses, found on pages 143, 144, 149, 162 and 171-177, to Items 11, 12 and 13 of Staff's Third Request for Production of Documents are not ruled upon in this Order since the information has been returned to the Company pursuant to Section 364.183(2), Florida Statutes.

The information being ruled upon consists of vendor pricing, network deployment plans in Florida and data regarding intraLATA toll distribution. Southern Bell contends that this information meets the statutory criteria (Section 364.183 (3)(d) and (e), Florida Statutes), and should, therefore, be afforded confidential classification.

Pursuant to Section 119.01, Florida Statutes, documents submitted to this Commission are 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.

Pursuant to the provisions of Section 364.183, Florida Statutes, and Rule 25-22.006, Florida Administrative Code, Southern Bell has the burden of demonstrating that the materials qualify for specified confidential classification. According to Rule 25-22.006, Florida Administrative code, Southern Bell must meet this

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burden by demonstrating that the materials fall into one of the statutory examples set forth in Section 364.183, Florida Statutes, or by demonstrating that the information is proprietary confidential business information, the disclosure of which will cause Southern Bell or its ratepayers harm.

The first category for which Southern Bell requests confidentiality contains vendor specific contractual information. Specifically, the Company requests confidential classification of the following:

Document 9064-94

Items 11,12,13:

P. 156 Lines 7-12, 15-20, 23-28 (Cols. A, C&F)

Document 9067-94

Item 90

P. 1 Lines 13,15,17,19 (Cols. C-D)
 Line 27

Item 91

P. 7 Line 18

The Company asserts that this information is entitled to confidential classification pursuant to Section 364.183 (3)(d), Florida Statutes. According to Southern Bell, the material submitted contains plans for vendor specific equipment requirements, vendor-specific pricing negotiated by Southern Bell, and details of competitive contracts. Further, that public disclosure of this information would impair its ability to contract for similar goods and services in the future on favorable terms. The Company also asserts that if this information were subject to public disclosure, its vendors could withhold valuable information regarding proprietary product or service capabilities which Southern Bell must evaluate in order to analyze its vendors' proposals in future negotiations. Finally, it claims that vendors require contractual arrangements to be kept confidential to avoid pressures from other customers to reduce prices or to give them similar terms and conditions in their contracts.

The second category for which Southern Bell requests confidentiality consists of network deployment plans. Specifically, the Company requests confidential classification of the following:

Document No. 9064-94

Items 11,12,13

P. 151	Lines	16,30,35,38-40,48	(Cols. B-E)
152	Lines	4,6,8,20,27,36,39,44,47	(Cols. B-E)
153	Lines	14,15,24,26,27,30,32,34, 36,41,43,44,46	(Cols. B-E)
154	Lines	5,10,15,17,19,26,50	(Cols. B-E)
155	Lines	2,4	(Cols. B-E)
157	Lines	9-11,13,15,18	(Cols. B-D)
158	Lines	11,47,48,50	(Cols. B-D)
159	Lines	4,6,20-25,28-30	(Cols. B-D)
160	Lines	41,44,46,47	(Cols. B-D)
161	Lines	2-17, 20-24,27	(Cols. B-D)

Document No. 9067-94

Item 91

P. 3	Lines	12,20,22-24,26,32,34,38,40	(Cols. C-D)
P. 4	Lines	12,19,20,26,29,33,41,42	(Col. D)
P. 5	Lines	14,16,17,22,24,26,28,31, 32,34,35,39	(Col. D)
P. 6	Lines	7,10,14,18,21,23,39,40,41	(Col. D)

The Company asserts that this information consists of network specific deployment plans, including the Company's efforts to research and develop specific technologies, the deployment of specific network technologies, information disclosing when such technologies may be deployed, and market strategies associated with future deployment. Southern Bell asserts that disclosure of this information would cause the Company significant harm. It believes that a competitor could make educated predictions regarding applications of this technology, and, in turn, initiate counter strategies or accelerated developmental projects aimed at the same market applications. In essence, the Company believes that this information provides an internal view of its strategic network planning and development program that forms the infrastructure for its continuing evolution of the network and how that network will be used to provide services in the future. The Company contends that this information meets the statutory criteria (Section 364.183 (3) (e), Florida Statutes) and should, therefore, be afforded confidential classification.

The final area for which Southern Bell requests confidentiality consists of data regarding intraLATA toll distribution. The information consists of the following:

Document No. 9064-94

Items 6 and 8

PP. 69-72 Col B-E

The Company asserts that disclosure of this information would harm its competitive efforts in the intraLATA market. The information reflects specific intraLATA toll usage and demand analyses, as well as the associated revenue by billing range for Southern Bell. The information also shows the percent of usage and percent of accounts that fall into each billing range. The Company believes that disclosure of this information would provide its competitors with an unfair advantage. It argues that competitors would be given free market analyses of the specific distribution of intraLATA toll revenues for residence and business accounts developed and compiled by the Company in the course of making competitive decisions related to the intraLATA market. The Company also believes that its competitors should not be able to procure this information since it cannot obtain the same information about them. Thus, Southern Bell concludes that this information meets the statutory criteria (Section 364.183 (3) (e), Florida Statutes) and should, therefore, be afforded confidential classification.

Upon consideration, I agree with Southern Bell regarding the confidentiality of vendor-specific contractual information and intraLATA toll distribution data and that this type of information is entitled to confidential treatment pursuant to Section 364.183 (3)(d), Florida Statutes. However, I do not agree with the Company regarding the confidentiality of the network deployment plans. Either identical or similar information is available from public sources such as the Schedule 20 that the Company files with this Commission on a quarterly basis. Also, I do not believe that competitors could determine the types of services and/or applications the Company is planning based on information that consists of switch type and year of deployment.

It is, therefore,

ORDERED by Commissioner J. Terry Deason, as Prehearing Officer, that BellSouth Telecommunications, Inc. d/b/a Southern Bell Telephone and Telegraph Company's September 1, 1994 request for Specified Confidential Classification of portions of Documents Nos. 9064-94 and 9067-94 regarding vendor specific contractual

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information and intraLATA toll distribution data is granted as set forth in the body of this Order. It is further

ORDERED that Southern Bell's September 1, 1994 request for Specified Confidential Classification for those portions of Documents Nos. 9064-94 and 9067-94 regarding network deployment plans is denied as set forth in the body of this Order. It is further

ORDERED that pursuant to Section 364.183, Florida Statutes and Rule 25-22.006, Florida Administrative Code, 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, Florida Statutes. It is further

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 J. Terry Deason, as Prehearing Officer, this 23rd day of February, 1995.

A handwritten signature in black ink, appearing to read "J. Terry Deason", is written over a horizontal line.

J. TERRY DEASON, Commissioner and
Prehearing Officer

(S E A L)

MMB

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 wastewater 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.