

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Proposed tariff filing by ) DOCKET NO. 890505-TL  
SOUTHERN BELL TELEPHONE AND TELEGRAPH )  
COMPANY to restructure and reprice ) ORDER NO. 23027  
private line and special access services) )  
and to waive nonrecurring charges for ) ISSUED: 6-5-90  
high capacity services. )  
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The following Commissioners participated in the disposition of this matter:

MICHAEL McK. WILSON, Chairman  
BETTY EASLEY  
GERALD L. GUNTER

FINAL ORDER DENYING MOTION FOR  
RECONSIDERATION OF ORDER NO. 22501

BY THE COMMISSION:

Southern Bell has moved that the full Commission reconsider Order No. 22501, issued by the Prehearing Officer in this Docket. In its motion, Southern Bell has argued that we reverse the Prehearing Officer's finding that the information contained in Document No. 6091-89 does not qualify for specified confidential classification. Document No. 6091-89 is a document entitled "Capital Cost Analysis System" that contains algorithms for the calculation of cost components. Southern Bell has asserted that this Commission should grant the highlighted portions of this document specified confidential classification because it has contracted with its affiliate, Bellcore, to use these algorithms and to maintain their confidentiality. Southern Bell has stated that Bellcore has received \$1.8 million over the last five years by its licensing of the algorithms contained in this document and, if this Commission does not grant it specified confidential classification, Southern Bell will be put in a position of violating its contract with Bellcore. Southern Bell argues that such a violation of its contract may subject it to legal action by Bellcore resulting in damages that would need to be recovered from Southern Bell's ratepayers.

Southern Bell has also stated that these algorithms are copyrighted and, as such, are the property of Bellcore. Their copyrighted status, argues Southern Bell, reflects that these

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algorithms have resulted from a good deal of effort and expense and expertise on the part of Bellcore. Discussion regarding the availability to the public of these algorithms, in their copyrighted status, indicated that there are provisions in the Code of Federal Regulations for "blocking out" portions of computer programs and other documents under certain conditions if a special request is made meeting those conditions. Based on the Memorandum of Law submitted by Southern Bell May 1, 1990, the Company's assertions that the CAPCOST computer program is "copyrighted" simply means that Bellcore created this computer program. Bellcore has not pursued the legal protections provided by the registration of its copyright under the provisions of Title 17 of the U.S. Code. In other words, because Bellcore has not registered its copyright of this computer program, it does not, at this time, have the right to sue anyone for damages for infringement of this copyright. It would appear that, if Bellcore were seriously concerned with the protection of this copyrighted material, it would have already availed itself of all of the legal protections provided under U.S. law.

We have considered the potential liability of Southern Bell's ratepayers for damages resulting from a lawsuit by Bellcore on the basis of Southern Bell breaching its agreement to maintain the confidentiality of these algorithms. It is our view that entering into an agreement to maintain the confidentiality of the basis for calculating possibly the most significant body of costs that Southern Bell incurs in its provision of telephone service raises a very serious question of prudence. Therefore, in the event that Bellcore were to take any action against its affiliate for such a breach, any liability of Southern Bell's ratepayers for such damages would be highly questionable, especially in light of Bellcore's decision not "to elect" to register this copyright, but, instead, to rely on requiring both affiliated (and, in the future, non-affiliated) regulated telephone companies to maintain its confidentiality. It is this Commission which determines what type of information submitted by a utility in a proceeding for rate increases is entitled to specified confidential classification, and not the utility and not the utility's affiliates.

Based on the foregoing, we find, as the Prehearing Officer did, that this information contains formulas that are widely used and recognized for the calculation of depreciation, taxes,

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and other components of the costs of buried cable incurred in Southern Bell's provision of telephone service. All of the arguments raised in this Motion for Reconsideration by Southern Bell were addressed by the Prehearing Officer's Order. Since no error in law or fact has been established by Southern Bell, we find it appropriate to affirm the Prehearing Officer's Order No. 22501.

Based on the foregoing, it is, therefore,

ORDERED that Southern Bell Telephone and Telegraph Company's Motion for Reconsideration of Order No. 22501 is hereby denied.

By ORDER of the Florida Public Service Commission,  
this 5th day of JUNE, 1990.

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STEVE TRIBBLE, Director  
Division of Records and Reporting

( S E A L )

SFS

by: Kay Hegan  
Chief, Bureau of Records