

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of the Citizens) DOCKET NO. 890190-TL
of Florida to investigate)
SOUTHERN BELL's Cost Allocation) ORDER NO. 23634
Procedures)
_____) ISSUED: 10-18-90

ORDER GRANTING IN PART AND DENYING IN PART
MOTION FILED IN RESPONSE TO ORDER NO. 22461

On January 24, 1990, the Prehearing Officer issued Order No. 22461 disposing of numerous discovery motions relative to the Office of Public Counsel's (OPC's) First Set of Requests for Production of Documents to Southern Bell Telephone and Telegraph Company (Southern Bell or the Company), BellSouth Services, Inc., Bellcore, Southern Bell Advanced Systems, Inc., and BellSouth Advanced Systems, Inc., and First Set of Interrogatories to Southern Bell, filed November 18, 1988. On February 6, 1990, Southern Bell filed a Response to Order No. 22461 and Motion for Clarification. On February 14, 1990, OPC filed the Citizens' Response to Southern Bell's Motion for Clarification of Order No. 22461 (OPC Response).

Order No. 22461 addressed issues of relevancy and confidentiality raised in the various motions filed in response to OPC's November 18, 1988, discovery requests. Additionally, Order No. 22461 directed Southern Bell to submit certain documents for the Prehearing Officer's review. The instant Order is primarily directed toward Southern Bell's claims that various documents submitted in response to Order No. 22461 are confidential.

There is a presumption in the law of the State of Florida that documents submitted to governmental agencies shall be public records. The only exceptions to this presumption are the specific statutory exemptions provided in the law and exemptions granted by governmental agencies pursuant to the specific terms of a statutory provision. This presumption is based on the concept that government should operate in the "sunshine." In the instant matter, the value of the examination and utilization by all parties of the information contained in these documents must be weighed against the legitimate concerns of the Company regarding the disclosure of business information that it considers proprietary. It is this Commission's view that the burden to be met by one requesting specified confidential classification of documents submitted during a proceeding before us is very high.

Pursuant to Section 364.183, Florida Statutes, and Rule 25-22.006, Florida Administrative Code, it is the Company's burden to show that any material submitted to this Commission is qualified

DOCUMENT NUMBER-DATE

09317 OCT 18 1990

FPC-RECORDS/REPORTING

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for specified confidential classification. Rule 25-22.006, Florida Administrative Code, provides that the Company may fulfill its burden by demonstrating that the documents fall into one of the statutory examples set out in Section 364.183, Florida Statutes, or by demonstrating that the information is proprietary confidential information, the disclosure of which will cause the Company or its ratepayers harm. Southern Bell has requested that specified confidential treatment be accorded to several different categories of documents.

In Order No. 22461, the Prehearing Officer rejected Southern Bell's claim that information regarding its operations in states other than Florida is irrelevant to this proceeding. In so holding, the Prehearing Officer directed Southern Bell to provide information on other states that had been excised from the thirty-one (31) documents filed under Commission Document No. 3357-89. Southern Bell subsequently provided the requested information to the Commission, which is filed under Commission Document No. 1117-90. Southern Bell has requested that this data be granted confidential treatment. The Company's rationale for requesting confidential treatment for this data is that the information relates to unregulated lines of business. Unregulated businesses are not required to make all their records public documents. These types of records are not generally disclosed outside the Company. In Order No. 22461, the Prehearing Officer held that certain information pertaining to unregulated lines of business in Florida was confidential. These rulings are contained in Appendix I to that Order. In all instances where confidential status is granted here, the information concerning operations in other states is the same type of information held to be proprietary in Order No. 22461. In the listing below, the number appearing at the left of the document title reflects its number as one of the thirty-one (31) documents filed under Commission Document No. 3357-89, now being examined under Commission Document No. 1117-90. The material listed below is proprietary confidential information for the reasons stated above. The remaining data in the documents will be public record, with the exception of that data already granted specified confidential treatment by Order No. 22461.

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COMMISSION DOCUMENT NO. 1117-90

6. Southern Bell Status of 1989 Net Income Commitment (2 pages) - The inside wire information located on page 32 at line 21 and on page 33 at line 24 shall be treated as confidential.
7. ASI/Southern Bell Reintegration (16 pages) - The CPE information located on page 48 at lines 39-40 and page 49 at lines 43-45 shall be treated as confidential, except for the column labeled "PCF DIFF or % DIFF."
10. Southern Bell Analysis of ASI Part X Effects (1 page) - The inside wire information located on page 67 at lines 17-34 shall be treated as confidential.
16. Status of 1989 Net Income Commitment (1 page) - The inside wire information located on page 82 at lines 45-46 shall be treated as confidential.
17. Southern Bell Commitment View of 1989-1993 Proposed Expense Adjustments (15 pages) - The unregulated information located on page 83 at lines 33 and 36, page 87 at lines 29 and 32, and page 88 at lines 32 and 35 shall be treated as confidential.
20. Incremental Expense for 1989 (1 page) - The unregulated information located on page 101 at lines 10, 12, 14, 31, and 33 shall be treated as confidential.
21. Incremental Expenses (1 page) - The CPE information located on page 102 at lines 16-32 and 51-66 shall be treated as confidential.

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- 22. 8701 Distribution for ASI (2 pages) - The CPE information located on page 104 at lines 28-40 shall be treated as confidential.
- 26. Preliminary Draft of Proposed ASI Reintegration Balance Sheet and Corporate Expense Commitment View Procedures (41 pages) - The CPE information located on page 123 at lines 24-52 and page 144 at lines 25-53 shall be treated as confidential.
- 29. BCI Budget Activity and BCI Charges to Southern Bell and South Central Bell in 1988 (9 pages) - The CPE information located on page 160 at lines 19-61, page 163 at lines 22-41, page 164 at lines 29 and 48, page 165 at lines 32 and 35, and page 166 at line 26 shall be treated as confidential.
- 30. Memo to T. Ruck from J. Benton 10-4-88 (2 pages) - The CPE information located on page 168 at lines 7-22 shall be treated as confidential.

In Order No. 22461, the Prehearing Officer also directed Southern Bell to furnish for the Prehearing Officer's review certain documents which the Company claims are internal audits and thus proprietary, pursuant to the specific exemption granted by Section 364.183(3)(b), Florida Statutes. These are the documents identified as "A" and "B" in Section IV of Order No. 22461.

The document referred to as "A" in Order No. 22461 is a 29 page document entitled "Report of the Operations Review Team on the Part 64 Cost Allocation Process." This report has been filed with the Commission under Document No. 497-90. Southern Bell has requested that this entire report be granted confidential treatment because it is "like an internal audit." Basically, this report presents a review of the apportionment of costs between regulated and unregulated lines of business for Quarter 1 of 1988. A team of employees was assembled to review and analyze certain Southern Bell and South Central Bell reports and to form an opinion as to the reasonableness of the costs and degree of compliance of the Cost

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Separations System's (CSS's) methodology with the Cost Allocation Manual (CAM). This document is not an internal audit and, therefore, cannot be granted confidential status through the specific exemption granted by Section 364.183(3)(b), Florida Statutes. It is our belief that the specific statutory exemptions to the public records requirements of Section 119.07(1), Florida Statutes, are meant to be construed narrowly in order to further the strong concept of "government in the sunshine" in the State of Florida. To hold otherwise, we believe, would only serve to thwart what we see as a clear legislative mandate regarding public records in Florida.

The documents referred to as "B" in Order No. 22461 have not been filed with this Commission due to their sheer volume. Southern Bell has, however, made them available for Commission review in order to allow the Commission to evaluate the Company's claim that these documents are internal audits and, therefore, pursuant to Section 364.183(3)(b), Florida Statutes, exempt from Section 119.07(1), Florida Statutes. The collection of documents under discussion are those responsive to OPC's Document Production Request No. 12 in the November 18, 1988, discovery request, which seeks "each internal audit . . . discussing, analyzing, or otherwise critiquing any allocation of costs based upon either positive time reporting or exception time reporting." Our examination of these documents reveals that they are in fact internal audits and entitled to specified confidential treatment in their entirety.

The final category of documents for which a ruling is required are those documents identified as "D" in Section IV of Order No. 22461. Southern Bell states that while these documents have been generally categorized as the "Benchmark" documents, they actually consist of two sets of unrelated documents. The first of these two sets is the group of documents filed under Commission Document No. 7790-89, which consists of three handwritten, unnumbered pages relating to, among other things, Southern Bell's "mark-up" on certain customer premises equipment (CPE) products. The Company has highlighted all of the numbers on these three pages, except for the very last number on unnumbered page three of the set. Southern Bell has requested that the highlighted data be granted specified confidential treatment because it relates to costs and revenue for unregulated lines of business. As stated in an earlier portion of

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this Order, unregulated businesses are not required to make all their records public documents. Accordingly, the rationale for granting confidential status to certain portions of Commission Document No. 1117-90 applies also to those highlighted portions of Commission Document No. 7790-89 discussed above.

The second of the two sets of unrelated documents identified as "D" in Order No. 22461 is a compilation of extractions from the so-called "Benchmark" reports and Southern Bell's response to those reports. In Order No. 22461, the Prehearing Officer declined to rule on Southern Bell's claim that these documents are "like internal audits." Rather, the Prehearing Officer directed the Company to resubmit these documents, with any asserted confidential information identified by highlighting, accompanied by justification for the requested confidential status. Southern Bell has not done so. Instead, Southern Bell has submitted one entire Benchmark report as a sample, under Commission Document No. 1118-90. The Company's stated rationale for so doing is that this should assist the Prehearing Officer in reaching the conclusion that these reports "are the equivalent of internal audits" and, therefore, confidential as a whole. Southern Bell states that "[u]sing the same procedure used to create an internal audit, Benchmark was retained to provide outside advice regarding the recombination of the regulated and CPE operations of Southern Bell." Southern Bell's Response to Order No. 22461, at page 4. Southern Bell characterizes this report as a "critical self-analysis." OPC's Response to this claim points to the fundamental factor which must be considered here: that "[h]ad the legislature intended to exempt from public disclosure every document critical of the company, it would have done so." OPC Response, at page 2. That is the position of this Commission. Accordingly, the rationale for denying confidential treatment to Commission Document No. 497-90 applies with equal force to Commission Document No. 1118-90. The specific statutory exemption from Section 119.07(1), Florida Statutes, contained in Section 364.183(3)(b), Florida Statutes, does not apply to this report and, therefore, confidential treatment cannot be accorded on this basis.

Finally, Southern Bell has requested that the Prehearing Officer reconsider the requirement in Order No. 22461 that the Company number each page and each line on every page that contains confidential material. Instead, Southern Bell has suggested that

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it only be required to assign line numbers to those particular lines on which alleged confidential information appears. The Prehearing Officer has no objection to this modification of the identification requirement, as long as every page is numbered consecutively and the line numbers used on a page represent the actual number of the line, counting down from the top of the page.

In accordance with the rulings contained herein, Southern Bell must now provide to OPC each and every document it has withheld from the November 18, 1988, discovery request based upon the claim that the responsive documents were pending rulings from the Commission regarding their confidentiality. These documents shall be provided within ten days of the date of this Order. The parties shall take all necessary steps to protect that information which has been granted specified confidential treatment.

Based on the foregoing, it is

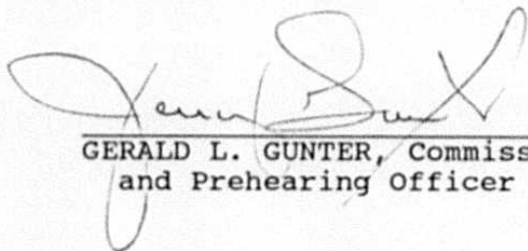
ORDERED by Commissioner Gerald L. Gunter, as Prehearing Officer, that certain documents and portions of documents of Southern Bell Telephone and Telegraph Company as described in the body of this Order constitute proprietary confidential business information pursuant to Section 364.183, Florida Statutes, and Rule 25-22.006, Florida Administrative Code. It is further

ORDERED that certain documents and portions of documents of Southern Bell Telephone and Telegraph Company as described in the body of this Order do not constitute proprietary confidential business information pursuant to Section 364.183, Florida Statutes, and Rule 25-22.006, Florida Administrative Code. It is further

ORDERED that Southern Bell Telephone and Telegraph Company shall provide the materials discussed in the body of this Order to the Office of Public Counsel within ten days of the date of this Order.

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By ORDER of Commissioner Gerald L. Gunter, as Prehearing
Officer, this 18th day of OCTOBER . 1990 .



GERALD L. GUNTER, Commissioner
and Prehearing Officer

(S E A L)

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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 from the full Commission within 14 days pursuant to Rule 25-22.006(3), Florida Administrative Code, for rulings on confidentiality issued by a Prehearing Officer; 2) reconsideration within 10 days pursuant to Rule 25-22.038(2), Florida Administrative Code, for any rulings on issues other than confidentiality if issued by a Prehearing Officer; 3) reconsideration within 15 days

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pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or 4) 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.