

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint of FLORIDA TELEMESSAG-) DOCKET NO. 900687-TL
 ING COALITION against SOUTHERN BELL)
 TELEPHONE AND TELEGRAPH COMPANY for) ORDER NO. 23920
 alleged unfair marketing and technical)
 practices) ISSUED: 12-21-90
)

ORDER GRANTING IN PART AND DENYING IN PART
A REQUEST FOR SPECIFIED CONFIDENTIAL CLASSIFICATION OF
DOCUMENT NO. 10470

On August 13, 1990, the Florida Public Service Commission served a Complaint by the Florida Teleessaging Association (FTMA) on Southern Bell Telephone and Telegraph Company (Southern Bell or Company). The Complaint alleges that Southern Bell's unregulated MemoryCall service is unfairly competing with the answering services operated by FTMA's members.

At the October 2, 1990 Agenda Conference, Southern Bell committed that it would suspend marketing of MemoryCall to certain business customers. The Commission set the FTMA's Complaint for an expedited hearing to be held November 26, 1990. During that period of time, Southern Bell and FTMA conducted settlement discussions and reached a mutually agreeable Settlement Agreement, which they presented to the Commission on November 26, 1990. In addition, the parties submitted a Joint Request and Motion for Confidential Classification and Motion for Permanent Protective Order regarding certain specified portions of the terms and conditions of the Settlement Agreement.

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 public disclosure of all the terms of the agreement must be weighed against the legitimate concerns of the parties as to how disclosure of the terms would affect their ability to contract for goods and services in the future.

Pursuant to Section 364.183, Florida Statutes, and Rule 25-22.006, Florida Administrative Code, it is the Company's burden to show that material submitted to this Commission is entitled to specified confidential classification. Rule 25-22.006 provides that the burden may be fulfilled by demonstrating that the

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documents fall into one of the statutory examples set out in Section 364.183, or by showing that the information is confidential and proprietary, the disclosure of which will cause the Company or the ratepayers harm.

To this end Southern Bell and the FTMA believe the specified portions of the Settlement Agreement are entitled to confidential treatment on the following grounds:

1. Pursuant to Section 364.183(3)(d), Florida Statutes, the information contained in the Settlement Agreement is entitled to confidential treatment because the Settlement Agreement contains contractual data the disclosure of which will impair the ability of Southern Bell to contract for goods and/or services on favorable terms in the future. The public disclosure of the Settlement Agreement, which relates to Southern Bell's unregulated MemoryCall service, will impair Southern Bell's ability to contract for goods and/or services on favorable terms in the future because other parties, whether voice messaging providers or other information service providers, will have access to the terms of this Settlement Agreement and may seek the same or similar terms for their businesses. As for the FTMA and its members, the terms of the Settlement Agreement constitute, essentially, vendor specific pricing and other information which, if publicly disclosed, may impair their ability to contract for goods and/or services on favorable terms in the future.

2. Pursuant to Rule 25-22.006, Florida Administrative Code, and the provisions of Section 364.183, Florida Statutes, even if information asserted to be confidential does not fall within one of the express statutory examples of confidential information, such information may nevertheless be granted confidential treatment if it can be shown that the business operations of the party requesting confidential treatment will be harmed by disclosure. This is particularly so in the case of an unregulated service such as MemoryCall. As recently stated in Order No. 23634, issued October 18, 1990, at 2, "Unregulated businesses are not required to make all their records public documents. . . [because such records] are not generally disclosed outside the Company." See also, Order No. 22461, issued January 24, 1990 and Order No. 19754, issued August 3, 1988. As for Southern Bell, its business operations will be harmed by public disclosure of the terms of the Settlement Agreement because Southern Bell will be unable to manage

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either the scope of its commitments or the cost which the Settlement Agreement will ultimately impose on Southern Bell since, rather than a discrete agreement with a limited number of parties, the Settlement Agreement will essentially become an open-ended commitment to an untold number of parties each of whom may expect to receive the same or similar rights as have been accorded by Southern Bell to the FTMA and its members under the Settlement Agreement. Therefore, public disclosure of the Settlement Agreement would harm Southern Bell's business operations as well as its ratepayers by greatly expanding the potential scope and cost of Southern Bell's commitment under the Settlement Agreement. As for the FTMA and its members, the public disclosure of the terms of the Settlement Agreement will harm their business operations because it will allow their competitors as well as their customers to determine their revenues and may undermine their ability to market their products, thus, potentially denying them the benefits of the Settlement Agreement.

3. Finally, as a matter of public policy, the Settlement Agreement should be treated as confidential, proprietary business information which is exempt from the Open Records Act in order to facilitate the settlement of disputes in an expeditious manner without the need for Commission intervention. The inability to settle disputes among private parties, particularly where, as here, such agreements involve unregulated, competitive businesses, would ultimately harm the business operations of Southern Bell and its ratepayers as well as of the FTMA and its members by unnecessarily increasing their costs.

The actual terms and conditions of the joint Settlement Agreement are contained in 18 numbered paragraphs. The parties have requested confidential classification of part of paragraph 1, and paragraphs 4, 5, 7, 8 and 10 in their entirety. We agree that the information contained in paragraphs 1, 4, 5 and 8 constitute proprietary confidential business information and should be given the requested confidential classification. Public disclosure of this information could impair both Southern Bell's and FTMA's ability to contract for goods or services in the future. Consistent with the provisions of Rule 25-22.006(8)(a), the duration of this confidential classification shall be no longer than 18 months.

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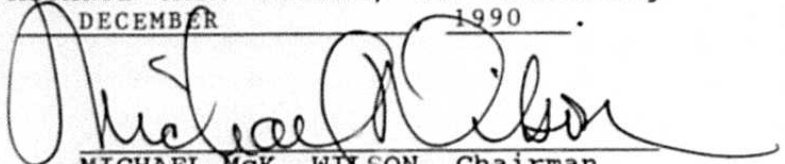
However, we do not believe that the information contained in paragraphs 7 and 10 require confidential classification. The parties based this request on ground number 3. We do not believe that the parties have shown how confidential classification of paragraphs 7 and 10 would facilitate the settlement of disputes in an expeditious manner. Therefore, the information in paragraphs 7 and 10 is not entitled to confidential classification and will be regarded as public record.

Based on the foregoing, it is

ORDERED by Chairman Michael McK. Wilson, as Prehearing Officer, that certain portions of the joint Settlement Agreement between Southern Bell Telegraph and Telephone Company and the Florida Telemessaging Association, 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 portions of the joint Settlement Agreement between Southern Bell Telegraph and Telephone Company and the Florida Telemessaging Association, 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.

By ORDER of Chairman Michael McK. Wilson, as Prehearing Officer, this 21st day of DECEMBER 1990.


MICHAEL MCK. WILSON, Chairman
and Prehearing Officer

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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 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.