

FLORIDA PUBLIC SERVICE COMMISSION

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M E M O R A N D U M

SEPTEMBER 16, 1993

TO : DIRECTOR, DIVISION OF RECORDS AND REPORTING

FROM : DIVISION OF LEGAL SERVICES [PIERSON, GREEN] *RP*
DIVISION OF COMMUNICATIONS [NORTON] *Nov RMT*
DIVISION OF AUDITING AND FINANCIAL ANALYSIS [JOHE] *7/1*

RE : DOCKET NO. 920260-TL - COMPREHENSIVE REVIEW OF REVENUE
REQUIREMENTS AND RATE STABILIZATION PLAN OF SOUTHERN BELL
TELEPHONE AND TELEGRAPH COMPANY. *1993*

DOCKET NO. 900960-TL - SHOW CAUSE PROCEEDING AGAINST
SOUTHERN BELL TELEPHONE AND TELEGRAPH COMPANY FOR
MISBILLING CUSTOMERS.

DOCKET NO. 910163-TL - PETITION ON BEHALF OF CITIZENS OF
THE STATE OF FLORIDA TO INITIATE INVESTIGATION INTO
INTEGRITY OF SOUTHERN BELL TELEPHONE AND TELEGRAPH
COMPANY'S REPAIR SERVICE ACTIVITIES AND REPORTS.

DOCKET NO. 910727-TL - INVESTIGATION INTO SOUTHERN BELL
TELEPHONE AND TELEGRAPH COMPANY'S COMPLIANCE WITH RULE
25-4.110(2), F.A.C., REBATES.

AGENDA: 09/28/93 - CONTROVERSIAL AGENDA - PARTIES MAY
PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: I:\PSC\LEG\WP\920260.RCM

CASE BACKGROUND

This recommendation is before the Commission in order to address a number of motions for reconsideration or review of orders resolving a number of requests by BellSouth Telecommunications, Inc. d/b/a Southern Bell Telephone & Telegraph Company (Bell) for confidential classification of documents. Specific background is addressed, to the extent necessary, under the discussions of specific issues.

DOCUMENT NUMBER-DATE

10023 SEP 16 93

FPSC-RECORDS/REPORTING

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DISCUSSION OF ISSUES

ISSUE 1: Should the Commission reconsider Order No. PSC-93-0965-CFO-TL?

RECOMMENDATION: No. Bell has not identified any error or omission of fact or law in the decision.

STAFF ANALYSIS: On May 1, 1992, Bell filed its MFR Schedule E-1A, which was designated as Document No. 4326-92, along with a request for confidential classification of certain ESSX and switched access information included therein. The ESSX information was returned to Bell, obviating the need for any ruling. As for the switched access information, the Prehearing Officer determined that Bell had not satisfied its burden of demonstrating that such information qualified for confidential classification and, by Order No. PSC-93-0965-CFO-TL, issued June 28, 1993, denied its request.

On July 8, 1993, Bell filed a motion for reconsideration of Order No. PSC-93-0965-CFO-TL. According to Bell, the decision fails to consider certain arguments made with regard to this filing, as well as certain arguments made in Bell's motion for reconsideration of Order No. PSC-93-0876-CFO-TL and its request for confidential classification of its current MFR Schedule E-1A. Bell argues that, viewed in their "totality", these "collective arguments" satisfy Bell's burden of proof. Staff does not agree.

It should be noted that Bell filed its motion for reconsideration of Order No. PSC-93-0876-CFO-TL on June 21, 1993, over thirteen months after filing Document No. 4326-92. Bell filed its current request for confidential classification of MFR Schedule E-1A on July 2, 1993, fully fourteen months after filing Document No. 4326-92. Obviously, arguments contained in these filings could not have been incorporated by reference in Bell's request for confidential classification of Document No. 4326-92. Such arguments are, therefore, inappropriate as a basis for reconsideration.

In its original request for confidential classification of Document No. 4326-92, Bell barely even mentions the switched access information. Its sole justification for the materials being confidential is that "[i]f competitors for Southern Bell's services obtained such cost information, they could succeed in pricing their services below those of Southern Bell. Southern Bell's revenues

could well be diminished to the detriment of Southern Bell's ratepayers." The problem with this argument is that, at the present time, switched access is a monopoly service in Florida. There are no competitors in the switched access market. Therefore, Bell failed to satisfy its burden of demonstrating that the materials qualify for confidential classification.

In its motion for reconsideration, however, Bell argues that there is potential competition to switched access service in the forms of alternative special access service, pending FCC action on special and switched access collocation and inter-connection, and the pending Intermedia application before this Commission for collocation and interconnection of special access and private line services.

The switched access information includes both average unit cost data for local switching, as well as distance-sensitive (grouped by mileage band) local transport cost information. While Staff does not believe that potential competitors could derive anything of value from the average cost data, Staff might have been persuaded with regard to the distance sensitive information, had Bell not made this argument for the first time in its motion for reconsideration. It is Bell's burden to demonstrate, in its initial request for confidential classification, that materials qualify for such classification. The burden does not fall upon the Commission or its Staff to peruse other documents looking for arguments to support an unsubstantiated claim. Since Bell failed to satisfy its burden, Staff recommends that the Commission deny its motion for reconsideration of Order No. PSC-93-0965-CFO-TL.

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ISSUE 2: Should the Commission reconsider Order No. PSC-93-0876-CFO-TL?

RECOMMENDATION: No. Bell has not identified any error or omission of fact or law in the decision.

STAFF ANALYSIS: On February 17, 1993, Bell filed corrections to its MFR Schedule E-1A, along with a request for confidential classification of certain information contained therein. The material was designated as Document No. 1900-93. By Order No. PSC-93-0876-CFO-TL, the Prehearing Officer found that the material was unit or average cost data for switched access service, that actual costs could not be determined from the data as presented, and that no harm could, therefore, result. Accordingly, Bell's request for confidential classification was denied.

On June 21, 1993, Bell filed a motion for reconsideration of Order No. PSC-93-0876-CFO-TL. Bell argues that the order should be reconsidered because the information consists of unit incremental costs and that the actual costs can be derived therefrom. Bell further argues that, although there is no direct competition for switched access service, there is potential competition to such service in the forms of alternative special access service, pending FCC action on special and switched access collocation and interconnection, and the pending Intermedia application before this Commission for collocation and interconnection of special access and private line services.

Even assuming that potential competition rises to the level of harm required under Section 364.183(3), Florida Statutes, the information involved here is average unit cost data for local switching. Staff does not believe that the disclosure of this average unit cost data would provide any benefit, even to potential competitors. Accordingly, Staff recommends that the Commission deny Bell's motion for reconsideration of Order No. PSC-93-0876-CFO-TL.

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ISSUE 3: Should the Commission reconsider Order No. PSC-93-1062-CFO-TL?

RECOMMENDATION: The Commission should deny Bell's request for reconsideration except insofar as it relates to page 61, lines 12 through 21 of the Documents Nos. 14888-92 and 692-93. The Commission should grant confidential classification for this information.

STAFF ANALYSIS: During 1992, Staff conducted an audit related to Bell's rate case, as well as an audit of its Cost Allocation Manual Supplement (CAMS). On December 2, 1992, Staff held an audit exit conference, during which it identified documents to be included in its audit workpapers. On December 23, 1992, Bell filed highlighted copies of the CAMS audit workpapers, which were designated by this Commission as Document No. 14888-92, and the rate case audit workpapers, which were designated by this Commission as Documents Nos. 14890-92 through 14898-92, along with a request for confidential classification of certain of these materials. Bell mistakenly omitted part of the workpapers in its December 23, 1992 filing. Accordingly, on January 18, 1993, Bell submitted the remaining workpapers, which were designated as Document No. 692-93, along with a request for confidential classification of certain of the materials contained therein.

By Order No. PSC-93-1062-CFO-TL, issued July 21, 1993, the Prehearing Officer granted, in part, and denied, in part, Bell's requests for confidential classification of these documents. On August 2, 1993, Bell filed a motion for reconsideration of Order No. PSC-93-1062-CFO-TL.

Some of the information for which Bell has requested reconsideration involves private line and toll settlement data. In its original request for confidential classification, Bell argued that the materials are confidential because they were provided to Bell by interexchange carriers (IXCs) pursuant to nondisclosure agreements. Bell further argued that companies would be reluctant to provide such information in the future if they knew that it would be publicly disclosed. In its motion for reconsideration, Bell reiterated the above argument, as well as that the data qualifies for confidential classification because it is customer-specific. In that regard, Bell cites Order No. 24531, issued May 14, 1991, by which information regarding the percentages of Bell

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pay telephones presubscribed to various IXCs was held to be customer specific information, and thus, confidential.

Bell's argument that the information is confidential due to the nondisclosure agreements has already been rejected by the Commission in its decision regarding Bell's motions for reconsideration of Orders Nos. PSC-93-0823-CFO-TL and PSC-93-0388-CFO-TL. The Commission found that such agreements are not self-actuating, but merely indicate that Bell had satisfied the first prong of a two-prong test. Bell was still required to articulate the harm that would result from disclosure. According to Bell, the harm that would result from disclosure of this information is that IXCs would be reluctant to provide such information in the future. This argument has also been rejected by the Commission, on the basis that IXCs are required to supply this information.

As for Bell's argument that the information is entitled to confidential classification because it is customer-specific, Bell did not make this argument in its initial request. It is, therefore, inappropriate as a basis for reconsideration. Further, this is not the type of customer-specific information that the Commission has routinely held to be confidential, such as the names and addresses of subscribers or information which could affect specific customers' competitive interests.

For the reasons set forth above, Staff recommends that the Commission deny Bell's motion for reconsideration of the Prehearing Officer's decision in this regard.

Bell also requested reconsideration of certain information from the CAMS audit. The Prehearing Officer denied Bell's original request because the information consisted of "miscellaneous facts which could not be used to any meaningful purpose." In its motion for reconsideration, Bell argues, as it did in its original request, that the material was derived from internal audit reports. Under Section 364.183(3)(b), Florida Statutes, internal auditing controls and reports of internal auditors are entitled to confidential classification. Since the information at issue was derived from internal auditing reports, Staff recommends that the Commission reconsider this portion of Order No. PSC-93-1062-CFO-TL and grant confidential classification for page 61, lines 12 through 21 of the CAMS audit workpapers (Documents Nos. 14888-92 and 692-93).

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ISSUE 4: Should the Commission reconsider Order No. PSC-93-0964-CFO-TL?

RECOMMENDATION: The Commission should reconsider Order No. PSC-93-0964-CFO-TL only with regard to page F01B14Y 000019 of Document No. 3916-93. The Commission should deny Bell's motion as it relates to all other pages.

RECOMMENDATION: On April 9, 1993, Bell filed its response to item 372 in Staff's fourteenth set of interrogatories, which was designated as Document No. 3916-93, along with a request for confidential classification of some of these materials. By Order No. PSC-93-0964-CFO-TL, issued June 28, 1993, the Prehearing Officer granted Bell's request for confidential classification with regard to most of the information. However, the Prehearing Officer found that six pages for which Bell had requested confidential classification consisted of data that was aggregated, to some degree or another, and denied Bell's request for these pages.

On July 8, 1993, Bell filed a motion for reconsideration of five of the six pages for which confidential classification was denied. Four of these pages involve historical and projected revenue data for a number of services, some competitive, offered by Bell. In its motion for reconsideration, Bell argues that the data discloses revenue growth trends for these individual services, not aggregated revenues. The level of revenues reported for these services, however, are clearly aggregated in one regard or another. Moreover, Bell has disclosed much more detailed information regarding revenues for these services in its MFR Schedule E-1A. Staff, therefore, recommends that the Commission reject Bell's motion for reconsideration of these pages.

Bell also requested that the Commission reconsider one page, F01B14Y 000019, on the basis that it consists of customer-specific information. A review of page F01B14Y 000019 reveals that it does, indeed, consist of customer-specific information. Staff, therefore, recommends that the Commission reconsider Order No. PSC-93-0964-CFO-TL, insofar as it relates to page F01B14Y 000019, and grant Bell's request for confidential classification, but only for column 1, which lists the customer names.

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ISSUE 5: Should these dockets be closed.

RECOMMENDATION: No.

STAFF ANALYSIS: Regardless of the Commission's decision regarding the previous four issues, these cases are an ongoing concern. Accordingly, these dockets should not be closed at this time.