

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

ORIGINAL  
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Comprehensive Review of the )  
Revenue Requirements and Rate )  
Stabilization Plan of Southern )  
Bell Telephone & Telegraph Company )

Docket No. 320250-TL  
Filed: 2/16/93

RESPONSE OF THE ATTORNEY GENERAL

The Attorney General of the State of Florida, Robert A. Butterworth ("Attorney General"), by and through his undersigned counsel, hereby files his Response to Southern Bell Telephone and Telegraph Company's Request for Confidential Classification and Motion for a Permanent Protective Order. In support thereof, the Attorney General states as follows:

1. Southern Bell alleges it has provided the Attorney General and the Statewide Prosecutor with documents and information for their use in an ongoing criminal investigation. Southern Bell further alleges the Attorney General and Statewide Prosecutor have interviewed Southern Bell employees in connection with the ongoing investigation.

2. Southern Bell alleges the Attorney General has used certain documents and information in this proceeding as part of the testimony and exhibits of the Attorney General's witness, Michael R. Maloy.

3. Southern Bell takes the position that certain portions of the testimony and exhibits of witness Michael R. Maloy were derived from information discovered from information gathered pursuant to a criminal investigation in Florida. Southern Bell

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argues, as such, this information is classified as confidential business information pursuant to Section 119.073(3) (d) (sic), Florida Statutes, and is exempt from the Open Records Law.

4. Southern Bell apparently asks the Prehearing Officer, Commissioner Clark, to rule the indicated portions of Mr. Maloy's testimony to be confidential proprietary business information and, thus, not subject to public disclosure.

5. Southern Bell's argument reveals a significant misunderstanding of the purpose of the Public Records Law and a certain confusion between the Public Records Law and other Florida Law allowing certain utility information to be excluded from public disclosure upon a finding that it meets certain statutory prerequisites.

6. In short, Section 119.07, Florida Statutes, provides the public shall be permitted to inspect and examine all "public records" at reasonable times and conditions. All such records must be made available to the public unless there is a specific statutory exemption stating they do not have to be made available to the public for inspection and examination. Subsection 119.07(3) (d), Florida Statutes, states:

(d) Active criminal intelligence information and active criminal investigative information are exempt from the provisions of subsection (1).

7. Assuming, for the sake of argument, that Witness Maloy's testimony and exhibits were derived from either active criminal intelligence information or active criminal investigative information, Subsection 119.07(3) (d), Florida

Statutes does not say, nor does it mean, that active criminal intelligence information or active criminal investigative information is either "proprietary confidential business information" or that it cannot be disclosed to the public upon the election of the custodian.

8. Subsection 119.07(3) (d), Florida Statutes is intended to protect the integrity of on-going criminal investigations by providing that the custodians of the exempt information do not have to make it available for public inspection and examination. The law does not say the custodian of such exempt information cannot disclose it publicly, if doing so would be in the public interest and the disclosure would not compromise the integrity of the active investigation.

9. Section 364.183(3), Florida Statutes, provides the Commission may, upon a proper showing, find certain telephone company information to be proprietary confidential business, which entitles the information to confidential status and exemption from the provisions of Section 119.07, Florida Statutes. Although not inclusive, an expansive list of what is proprietary confidential business information is contained in the statute. Including such things as "trade secrets", and "security measures", the exclusions are clearly intended to encompass information described in the statutory definition, which is:

364.183(3) The term "proprietary confidential business information" means information ... owned or controlled by the person or company, is intended to be and is treated by the person or company as private in

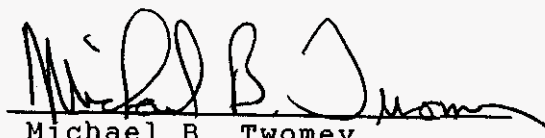
that the disclosure of the information would cause harm to the ratepayers or the person's or company's business operations ....

Aside from the fact that Southern Bell attempts to "bootstrap" proprietary confidential business information status to the allegation that information was derived from an active criminal investigation, the complained-of portions of Mr. Maloy's testimony are not remotely related to the type of information for which legitimate confidential classification could be obtained under Section 364.183, Florida Statutes.

10. The information in Mr. Maloy's testimony was offered to assist the Commission in carrying out its responsibilities for seeing that Southern Bell honestly reports its compliance with the Commission's quality of service regulations. The information is not remotely entitled to protection as proprietary confidential business information and no statute prohibits the Attorney General from disclosing the information even if, as alleged by Southern Bell, it is information which may be withheld from public inspection and examination pursuant to the exemption provided by Section 119.07(3) (d), Florida Statutes.

WHEREFORE, the Attorney General of the State of Florida respectfully requests that the Prehearing Officer deny Southern Bell's Request and Motion insofar as it relates to the testimony and exhibits of Michael R. Maloy.

Respectfully submitted this 16th day of February, 1993.



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**CERTIFICATE OF SERVICE  
DOCKET NO. 920260-TL**

I HEREBY CERTIFY that a copy of the foregoing has been furnished by U.S. Mail or hand-delivery to the following parties on this 16th day of February, 1993.

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