

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of the Citizens of) DOCKET NO. 890190-TL
Florida to Investigate Southern Bell's)
Cost Allocation Procedures.) ORDER NO. 22461
)
) ISSUED: 1-24-90

ORDER ON CONFIDENTIALITY AND RELEVANCY

I. The Pleadings

On November 18, 1988, the Office of Public Counsel (OPC) filed Citizens First Set of Requests for Production of Documents to Southern Bell Telephone and Telegraph Company (Southern Bell), BellSouth Services, Inc., Bellcore, Southern Bell Advanced Systems, Inc. and BellSouth Advanced Systems, Inc., and First Set of Interrogatories to Southern Bell. On January 10, 1989, OPC filed a Motion to Compel Southern Bell to Provide Interrogatory Responses under oath in the same docket. On January 18, 1989, Southern Bell filed its response and objections to Public Counsel's First Set of Requests for Production of Documents and, in the alternative, Motion for Protective Order. OPC filed a Motion to Compel and Request for In Camera Inspection of Documents on January 25, 1989. Southern Bell responded on February 6, 1989. Southern Bell sought a Preliminary Protective Order on March 14, 1989. Southern Bell filed a Request for Oral Argument and Supplemental Response and Objections to Public Counsel's First Set of Requests for Production of Documents and, in the alternative, Motion for Permanent Protective Order on April 4, 1989. OPC filed a Motion to Compel and Response to Southern Bell's Motion for a Permanent Protective Order on April 17, 1989. Southern Bell responded to this Motion on May 1, 1989. After Public Counsel review of more documents, Southern Bell filed a Motion for Preliminary Protective Order on July 12, 1989, which was followed by a Southern Bell Motion for Permanent Protective Order on August 2, 1989 and a Supplement thereto on August 9, 1989. OPC filed its opposition to Southern Bell's Motion for Permanent Protective Order on August 14, 1989.

II. Scope of This Order

Each of the pleadings listed above relate to the November 18, 1988, OPC First Set of Requests for Production of Documents and First Set of Interrogatories. The docket number on the

DOCUMENT NUMBER-DATE

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requests has changed, and a decision on the November 18, 1988, request is appropriate in this docket. The pleadings raise a number of issues concerning confidentiality for specific documents as well as general objections. This Order will rule upon the confidentiality of various documents, the relevancy objections relating to data from other states, deregulated operations, interstate operations, and various procedural matters. This Order does not rule upon the propriety of discovery upon parties other than Southern Bell.

III. Procedural Matters

OPC's January 10, 1989, Motion concerning responses under oath is dismissed as moot. Responses under oath were provided on February 16, 1989. I am certain that OPC will bring to our attention any future deviations from the Florida Rules of Civil Procedure. The motions for preliminary protective orders, filed March 14, 1989 and July 12, 1989 have now merged into the requests filed April 4, 1989 and August 2, 1989, respectively. Southern Bell has requested oral argument, specifically citing confidentiality issues. This motion is denied as I do not believe it will add to understanding of the pleadings.

IV. Confidentiality Issues

The convoluted nature of the pleadings make general statements about this material difficult. As I understand these pleadings the following documents require a ruling on confidentiality:

- A. Report of the Operations Review Team on the Part 64 Cost Allocations Process (Twenty-nine page document);
- B. The internal audits and workpapers responsive to Public Counsel's Request No. 12;
- C. Thirty-one (31) documents identified by OPC as documents they wish to take possession of (Commission Document Number 3357-89); and
- D. The "Benchmark" documents identified in the August 2, 1989, and the August 9, 1989, pleadings. (Commission Document Numbers 7789-89, 7790-89, and 8012-89).

I am not able to rule upon A and B above because those documents have not been filed with this Commission. Southern

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Bell shall provide these documents within ten (10) days of the date of this Order for the Prehearing Officer's review. Southern Bell has claimed that the report in A above is an internal audit pursuant to Section 364.183(3)(b), Florida Statutes, which expressly provides for confidential treatment of such reports. The confidentiality decision on both A and B above can come only after the Prehearing Officer determines whether they are in fact "internal audits." If, in fact, these documents constitute internal audits, the entire document would be confidential without the winnowing process normally applicable to confidential materials. Thus, Southern Bell may submit these materials unedited, recognizing that a finding that these materials do not constitute an internal audit will result in the documents being a public record.

I am also not prepared to rule upon D above. Southern Bell argues that these documents are similar to internal audits and also contain trade secrets. These documents need to have any confidential material highlighted because if these documents are not found to be within the internal audit classification, it will be necessary to discern which parts of the documents contain confidential material. Accordingly, Southern Bell shall submit highlighted copies of these documents within ten (10) days of the date of this Order.

Appendix I contains rulings on the confidential requests contained with the 31 documents in C above. The rationale for keeping the data indicated confidential is that the information relates to unregulated business. Unregulated businesses are not required to make all their records a public document. This type of record is not generally disclosed outside the company. In Order No. 19754, issued August 3, 1988, in Docket No. 880069-TL, the Commission ruled that certain information relating to deregulated services constituted a trade secret pursuant to the statute. I see no reason to depart from that decision on the facts of this case. I therefore find that the information listed in Appendix I constitutes confidential business information. The parties shall take all necessary steps to insure the proprietary nature of the information. Southern Bell shall file redacted copies for the public record consistent with this ruling within ten (10) days of the date of this Order. Identification of some of the material has been hampered by the lack of page numbers. Southern Bell shall number each page of these documents in the future to facilitate identification of specific sections.

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V. Relevancy

Southern Bell has argued that data concerning interstate operations, other states' information, and unregulated businesses, are irrelevant to this proceeding. See January 18, 1989, pleading at page 1-2, 4; February 6, 1989, pleading at page 3-5; April 4, 1989, pleading at page 3; May 1, 1989, pleading at page 3-4. I categorically reject these arguments. This docket concerns cost allocations between the interstate and state jurisdictions as well as allocations between regulated and unregulated businesses. It is specious to argue that because this Commission lacks jurisdiction to regulate interstate operations it may not inquire as to how a telephone company chooses to allocate costs between the intrastate and interstate jurisdictions. That allocation has a direct, material effect on the rates charged for intrastate services and discovery will be allowed in this area.

Southern Bell has similar arguments concerning data from other states and data on unregulated operations. This argument is also unpersuasive. We generally held other states' data irrelevant in Docket No. 880069-TL. The Georgia information, for example, had little applicability to the Florida earnings examination in that docket. Here, the other states' information may be quite relevant. No analysis can be performed on relative percentages from one year to the next for other states, in the absence of this data. Also in the absence of other states' information there is no way to total the amounts to see if the parts equal the whole. Information concerning audits in other states may be relevant because the same procedures are followed in the various states. I therefore find that Southern Bell shall provide the information on other states previously excised from documents within ten (10) days of the date of this Order.

This docket also concerns the allocation of costs between unregulated and regulated operations. This allocation may affect what Florida consumers pay for regulated telephone service. Although I have no problem treating this material as confidential subject to a sufficient showing, it is clearly relevant to the docket. Southern Bell's relevancy arguments are again without merit.

Therefore, based on the foregoing, it is

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ORDERED by John T. Herndon, as Prehearing Officer, that the Office of Public Counsel's Motion to Compel Southern Bell Telephone and Telegraph Company to provide interrogatory responses under oath is dismissed as moot. It is further

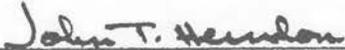
ORDERED that the Office of Public Counsel's Motions to Compel filed January 25, 1989, and April 17, 1989, are granted to the extent discussed in the body of this Order. It is further

ORDERED that Southern Bell Telephone and Telegraph Company's relevancy objections relating to other state information, unregulated operations, and interstate information are hereby denied. It is further

ORDERED that the information listed in Appendix I constitutes proprietary confidential business information pursuant to Section 364.183, Florida Statutes. It is further

ORDERED that Southern Bell Telephone and Telegraph Company supply the materials discussed in the body of this Order within ten (10) days of the date of this Order.

By ORDER of John T. Herndon, Commissioner and Prehearing Officer, this 24th day of JANUARY, 1990.



JOHN T. HERNDON, Commissioner
and Prehearing Officer

(S E A L)

RDV

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

Pursuant to Rule 25-22.006, Florida Administrative Code, parties may protest this ruling to the full Commission within fourteen (14) days of the date of this Order. In the absence of a timely protest, this Order will become final.

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APPENDIX I

INTRODUCTION - The material listed below is proprietary confidential information. The rationale for these decisions appears in the body of the Order. The remaining data in these documents will be public records. All thirty-one (31) documents listed below have been assigned Commission Document Number 3357-89.

1. Title of Document: BSSI Billing Excluding BellCore (1 page) - The numbers in the columns labeled "ASI Overlay" and "1989 CMVW Total" will be accorded confidential treatment. I reject the suggestion that blank spaces in this document constitute confidential materials.
2. Title of Document: Southern Bell Reintegration Impacts (12 pages) - The columns labeled "BAU," "Strategic Plan," "Dereg. CPE," "Total" and the figures appearing below the columns on the first page are confidential information. On the unnumbered second page the figures highlighted under "ASI BAU (10/17)" and "Deregulated CPE" are confidential. On the unnumbered third and fourth page, all dollar amounts appearing on the bottom half of page 3 and the top of page 4 are confidential information. On unnumbered page 9, the columns labeled "BAU," "Strategic Plan," "Dereg. CPE," "Total," and the numbers below the columns constitute confidential information. The same information is confidential on unnumbered pages 10, 11 and 12 as well as the entire hand-written note at the bottom of page 10.
3. Title of Document: Impact of ASI Reintegration on Southern Bell (1 page) - All net income figures except the Part X allocation will be treated as confidential.
4. Title of Document: Southern Bell Florida ASI Recombination/Reintegration Impacts 1989-1993 (15 pages) - All columns labeled "Dereg. CPE," "Total" and "Strategic Plan" are confidential information. On unnumbered page 6,

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the hand-written numbers that appear before "was directly assigned to Nonreg." are also confidential. Finally, on the last page, the only number under 1 of the hand-written material and the first two numbers following 2 shall be confidential material.

5. Title of Document: September 23, 1989 Update of Force (2 pages) - Each of the graph lines containing ASI data shall be treated as confidential information.
6. Title of Document: Southern Bell Status of 1989 Net Income Commitment (2 pages) - The numbers following the terms "Billing & Collection Contract," "Incremental Impact of ASI Reintegration," and "Current projection including ASI Reintegration" are confidential on both pages.
7. Title of Document: ASI/Southern Bell Reintegration (16 pages) - Southern Bell has asked for confidential treatment for every number on each of the pages. We will afford confidential status to all these numbers except that column labeled "PCF DIFF or % DIFF." Disclosure of the numbers in these columns without the other data will not harm the company. Thus the public copies of this material shall include these numbers. Southern Bell's request for confidential status is denied to this extent on Document No. 7.
8. Title of Document: Southern Bell/ASI Expenses (1 $\frac{1}{2}$ page) - All numbers under the columns labeled 1989, 1990, 1991, 1992 and 1993 constitute confidential information with the exception of the "% Increase" line and the "Expenses shifted" line.

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9. Title of Document: BSASI Recombination BOC Revenue Impact (16 pages) - All numbers in the body of the charts are confidential, including the hand-written number on unnumbered page 4.
10. Title of Document: Southern Bell Analysis of ASI Part X Effects (1 page) - All numbers above the "% direct" column are confidential. The other states' data must also be supplied for this document. See the discussion in the body of this Order.
11. Title of Document: 12/5/88 memo from W. H. Groce, Jr. to R. K. Snelling, D. B. Davis, M. Harrel - All dollar amounts and the four words following the words "Net Income" in the second sentence of the second paragraph shall be treated as confidential information.
12. Title of Document: Structural Integration Impact Analysis Total Combined Expenses (4 pages) - With the exception of the dates, all numbers including hand-written notations are confidential.
13. Title of Document: ASI Reconciliation to Strategic Plan 1989 (2 pages) - All numbers, with the exception of the Part X Allocation line will be considered confidential information.
14. Title of Document: Commitment View of 1989-1993 BellSouth Headquarters General Service Fees (4 pages) - The following lines on Page 1 will be treated as confidential: PRE CMVM 89-93 ASI (1); PRE CMVM TOTAL (1); CMVW-BAU (2); CMVN 89-93-AJI (2); and ASI Change from PRE CMVW. The ASI and total figures from unnumbered pages 2-4 are also confidential.

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15. Title of Document: Data Center Chargeback Associated with ASI Reintegration (3 pages) - All numbers on the second page with the exception of the "CPI" line are hereby declared confidential information.
16. Title of Document: Status of 1989 Net Income Commitment (1 page) - The numbers associated with the extension of the Billing and Collection contract and Revised BAU will be treated as confidential information.
17. Southern Bell Commitment View of 1989-1993 Proposed Expense Adjustments (15 pages) - The lines "Strategic Integration Adjustment" and "Commitment View" will be treated as confidential on the following unnumbered pages: 2, 3, 4, 7, 8, 10, 11, 12, 13, and 15. On page 8 the lines "ASI Takeback Adjustment" and "Commitment View" will be confidential. On page 14, the "Commitment View" line will be confidential. The Strategic Adjustment line is not confidential for obvious reasons.
18. Title of Document: Commitment View of 1989-1993 As Reintegration Impact (2 pages) - The substantive numbers here constitute confidential information except the numbers relating to cash balances on a certain date. This figure changes daily and I fail to see how disclosure of this information would hurt the company.
19. Title of Document: ASI Best View (1 page) - The numbers under the columns labeled "DEREG & ASI" are confidential information.
20. Title of Document: Incremental Expense for 1989 (1 page) - The dollar figures following "SB:Direct =", "Total incr. exp.," and "Total Direct" are confidential information.

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21. Title of Document: Incremental Expenses (1 page) - The numbers in columns labeled "% SB," "Fl.," "SB," "SB," "ASI," "Part X," "Net," "Total," and "Co." are declared to be confidential information. The other states' data must also be supplied for this document. See the discussion in the body of this Order.
22. Title of Document: 8701 Distribution for ASI (2 pages) - All substantive numbers from the 1989 column to the right of the page are confidential information.
23. Title of Document: Memo from Tom Ruck: BSSI Impact Due to ASI Integration (2 pages) - All substantive numbers, including the hand-written portion, constitute confidential information.
24. Title of Document: Budget View - Items for Reconciliation (1 page) - The figures following "Reintegration," "Stock" and "Inv. in Affil." are confidential information.
25. Title of Document: Southern Bell Company View Overview Comparison (1 page) - I reject the claim that 1988 data is confidential. Apart from 1988 data, the "Current View" and "Difference" lines under "Total Booked Miscellaneous Revenues" and "Total Booked Revenue" are confidential information.
26. Title of Document: Preliminary Draft of Proposed ASI Reintegration Balance Sheet and Corporate Expense Commitment View Procedures (41 pages) - The dollar figures on page 3 relative to BSASI other current assets, furniture and motor vehicles; dollar figure on page 4 on promissory notes balance; the dollar figures on page 5 concerning noncurrent assets and current maturity on long-term debt; the dollar figure on page 11 concerning contingent liabilities; on page A-3 in the column labeled "SB" with dollar amounts; are all confidential information. An earlier draft of the same information appears later on identical page references. This data also constitutes confidential information.

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27. Title of Document: ASI Forecast (3 pages) - The substantive numbers, readable and otherwise, are confidential information.
28. Title of Document: Memo from T. Ruck, dated 11/8/88 (5 pages) - All substantive numbers here are confidential except for the "CPI" line on page 2.
29. Title of Document: BCI Budget Activity and BCI Charges to Southern Bell and South Central Bell in 1988 (9 pages) - The percentage figure in numbered paragraph 2 on the unnumbered first page; the percentage figure on unnumbered page 2; the entire "Billed Expense" column on page 3 together with Rev. Stimulation for nonregulated CPE; the customer name on page 5; and the numbers listed under Southern Bell on the last 4 pages are all confidential information.
30. Title of Document: Memo to T. Ruck from J. Benton, dated 10/4/88 (2 pages) - The column headings are almost illegible. The four columns with substantive numbers constitute confidential information.
31. Title of Document: Southern Bell Advanced Systems Income Statement for 1988 (3 pages) - Every substantive number on the 3 pages constitutes confidential information.