

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Comprehensive review of revenue requirements nad rate stabilization plan of SOUTHERN BELL.) DOCKET NO. 920260-TL
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In Re: Investigation into the integrity of SOUTHERN BELL'S repair service activities and reports.) DOCKET NO. 910163-TL
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In Re: Investigation into SOUTHERN BELL'S compliance with Rule 25-4.110(2), F.A.C., Rebates.) DOCKET NO. 910727-TL
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In Re: Show cause proceeding against SOUTHERN BELL for misbilling customers.) DOCKET NO. 900960-TL
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In Re: Request by Broward Board of County Commissioners for extended area service between Ft. Lauderdale, Hollywood, North Dade and Miami.) DOCKET NO. 911034-TL
) ORDER NO. PSC-93-1606-FOF-TL
) ISSUED: November 2, 1993
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The following Commissioners participated in the disposition of this matter:

J. TERRY DEASON, Chairman
SUSAN F. CLARK
JULIA L. JOHNSON
LUIS J. LAUREDO

ORDER ON RECONSIDERATION

BY THE COMMISSION:

I. ORDER NO. PSC-93-0965-CFO-TL

On May 1, 1992, BellSouth Telecommunications, Inc. d/b/a Southern Bell Telephone and Telegraph Company (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

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was subsequently returned to Bell, obviating the need for any ruling thereon.

As for the switched access data, Bell's sole justification for holding that information confidential was 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." After reviewing the relevant information and arguments, the Prehearing Officer found that, since switched access is presently a monopoly service in Florida, Bell has no competitors for such services. Accordingly, by Order No. PSC-93-0965-CFO-TL, issued June 28, 1993, the Prehearing Officer denied Bell's request.

On July 8, 1993, Bell filed a motion for reconsideration of Order No. PSC-93-0965-CFO-TL. Bell argued that the prehearing Officer failed to consider certain arguments made with regard Document No. 4326-92, 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 Minimum Filing Requirements (MFR) Schedule E-1A, filed July 2, 1993. According to Bell, these "collective arguments", viewed in their "totality" satisfy Bell's burden of proof. We do not agree. Bell filed its motion for reconsideration of Order No. PSC-93-0876-CFO-TL on June 21, 1993, over thirteen months subsequent to Document No. 4326-92. Its current MFR Schedule E-1A was filed fully fourteen months after Document No. 4326-92. Obviously, arguments contained in these filings could not have been incorporated, even by reference, in Bell's request for confidential classification of Document No. 4326-92. Such arguments are, therefore, inappropriate as a basis for reconsideration.

Bell also argues that, even though switched access is currently a monopoly service, there is potential competition 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. This argument might have been persuasive, at least with regard to some of the information at issue, had it not been made for the first time in Bell's motion for reconsideration.

This Commission has no duty to look outside the four corners of a request for confidential classification when ruling upon the

request. Under Section 364.183, Florida Statutes, and Rule 25-22.006, Florida Administrative Code, it is Bell's burden to demonstrate, in its initial pleading, that materials qualify for confidential classification. Since Bell failed to carry its burden in its initial request, its motion for reconsideration of Order No. PSC-93-0965-CFO-TL is denied.

II. ORDER NO. PSC-93-0876-CFO-TL

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 at issue 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 inter-connection, 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. We do not believe that the disclosure of this average unit cost data would provide any benefit, even to potential competitors. Accordingly, Bell's motion for reconsideration of Order No. PSC-93-0876-CFO-TL is hereby denied.

III. ORDER NO. PSC-93-1062-CFO-TL

During 1992, the Staff of this Commission (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 that Bell has requested this Commission to reconsider involves private line and toll settlement data. In its original request for confidential classification, as well as in its motion for reconsideration, 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.

This Commission has already rejected Bell's argument that the information is confidential based solely upon the nondisclosure agreements. By Order No. PSC-93-1311-FOF-TL, issued September 9, 1993, we determined that such agreements are not self-actuating, that they only operate to provide a safe harbor for disclosure on a limited basis, and that Bell was still required to articulate the harm that would result from disclosure. In that regard, Bell contends that, if the information is disclosed, interexchange telecommunications providers (IXCs) may be reluctant to provide such information to Bell in the future. By Order No. PSC-93-1311-FOF-TL, we also rejected this argument because the IXCs are required to supply this information.

In its motion for reconsideration, Bell also argued that the data should be held confidential because it is customer-specific. In support of this argument, Bell cited Order No. 24531, issued May 14, 1991, by which information regarding the percentages of Bell pay telephones presubscribed to various IXCs was held to be customer specific information, and thus, confidential. However, Bell failed to 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.

Accordingly, for the reasons set forth above, Bell's motion for reconsideration of Order No. PSC-93-1311-FOF-TL is denied, insofar as it relates to the toll settlement data.

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. Further review of the information at issue indicates that it was, indeed, derived from internal auditing reports. Accordingly, we hereby grant Bell's motion for reconsideration of this portion of Order No. PSC-93-1062-CFO-TL, and grant Bell's request for confidential classification of page 61, lines 12 through 21 of the CAMS audit workpapers (Documents Nos. 14888-92 and 692-93).

IV. ORDER NO. PSC-93-0964-CFO-TL

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 MFR Schedule E-1A. Bell's motion for reconsideration of these pages is, therefore, denied.

Bell also requested that we 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. Accordingly, we hereby grant Bell's motion for reconsideration of Order No. PSC-93-0964-CFO-TL, insofar as it relates to page F01B14Y 000019, but only for column 1, which lists the customer names.

It is, therefore,

ORDERED by the Florida Public Service Commission that Southern Bell Telephone and Telegraph Company's motion for reconsideration of Order No. PSC-93-0965-CFO-TL is denied. It is further

ORDERED that Southern Bell Telephone and Telegraph Company's motion for reconsideration of Order No. PSC-93-0876-CFO-TL is denied. It is further

ORDERED that Southern Bell Telephone and Telegraph Company's motion for reconsideration of Order No. PSC-93-1062-CFO-TL is granted, in part, and denied, in part, as set forth in the body of this Order. It is further

ORDERED that Southern Bell Telephone and Telegraph Company's motion for reconsideration of Order No. PSC-93-0964-CFO-TL is granted, in part, and denied, in part, as set forth in the body of this Order.

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By ORDER of the Florida Public Service Commission, this 2nd
day of November, 1993.



STEVE TRIBBLE, Director
Division of Records and Reporting

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NOTICE OF 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 the Commission's final action in this matter may request 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 wastewater utility by filing a notice of appeal with the Director, Division of Records and Reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.