

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Review of Southern Bell)	DOCKET NO. 890256-TL
Telephone and Telegraph Company's)	ORDER NO. 22766
Capital Recovery Position)	ISSUED: 4-4-90
)	

FOURTH ORDER ON CONFIDENTIALITY

On March 27, 1990, the Florida Cable Television Association (FCTA) requested that Southern Bell Telephone and Telegraph Company (Bell) provide the documents dealing with a fiber-to-the-curb (FTTC) system that is referenced in the Rebuttal Testimony of R. K. Snelling filed by Bell on March 26, 1990.

In response, Bell submitted a letter from N. K. Owen to T. C. Gaddy dated February 2, 1990, and the responding letter dated March 6, 1990, which had two attachments. In submitting these materials, Bell orally requested confidential classification, pursuant to Rule 25-22.006, Florida Administrative Code (the Rule). We assigned Document No. 2807-90 to these documents. Bell also submitted on March 28, 1990, a letter from T. C. Gaddy to N. K. Owen dated October 10, 1989, and Amendments Nos. 1 and 2 to the General Agreement between Bell and AT&T Technologies, Inc. (ATT-T). Bell also requested confidential classification of these documents, and we assigned Document No. 2805-90 to them. Finally, Bell submitted a memorandum, dated January 3, 1990, from S. A. Mulcahy to R. K. Snelling regarding a counterproposal to a FTTC system proposed by ATT-T. Bell also requested confidential classification of these documents, and we assigned Document No. 2806-90 to them.

Bell seeks confidential classification of those portions of the subject documents which have been highlighted in yellow. These portions are the list and discount prices proposed to be charged for a FTTC system. Bell points out that these portions contain the terms of potential and current contracts with outside suppliers and argues that their disclosure would inform competitors of the company's costs of acquiring materials. Bell believes that the contractual data contained in the subject documents should be protected from public disclosure. In the company's view, such disclosure would impair its ability to contract for such goods on favorable terms.

DOCUMENT NUMBER-DATE

02958 APR -4 1990

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The company has the burden of showing that the material for which confidential classification is sought qualifies for such treatment. The Commission is authorized by Section 364.183 to grant confidential treatment to proprietary, business information. One category of information listed in this statute as being confidential, proprietary information is certain "contractual data." In determining whether confidential classification is appropriate, the Commission must balance the conflict between the demands of the Public Records Act and the nature of proprietary, business information.

This conflict stems from the strong policy of this state that documents utilized by the Commission in making its decisions should be public information and the policy that parties have a right to have their proprietary, business information protected. This balancing process requires the Commission to examine carefully the material, to determine whether it is "contractual data" within the terms of this statute and to balance the interests of these competing policies. The basic test is whether the information, if disclosed, would cause harm to the company. Confidential classification of "contractual data" is deemed appropriate only if the company can show that it will be harmed by public disclosure.

After reviewing the subject documents and considering the oral arguments made by the parties at hearings held on March 27-30, 1990, I find that Bell has made a sufficient showing to warrant classifying those portions of the documents which have been identified by the company through yellow highlighting as proprietary, confidential information. Accordingly, only those portions of the subject documents so identified are classified as proprietary, confidential information that is exempt from the requirements of the Public Records Act, Chapter 119, Florida Statutes. Thus, I specifically find that the balance of the documents are not classified as proprietary, confidential information under the Act and the Rule and not exempt from public disclosure.

Now therefore it is

ORDERED by Commissioner John T. Herndon, as Prehearing Officer, following inspection of the documents described in this Order and consideration of the arguments presented by the parties at hearings held on March 27-30, 1990, that only those

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portions of the documents identified in the body of this Order are classified as proprietary, confidential information pursuant to Rule 25-22.006, Florida Administrative Code, in response to Southern Bell Telephone and Telegraph Company's requests for confidential classification. It is further

ORDERED that the requests for confidential classification presented orally by Southern Bell Telephone and Telegraph Company at hearings held on March 27-30, 1990, are hereby granted to the extent identified in this Order and denied in all other respects. It is further

ORDERED that if a protest is filed within 14 days of the date of this Order, it will be resolved by the appropriate Commission panel pursuant to Rule 25-22.006(3)(d), Florida Administrative Code. It is further

ORDERED that if no timely protest is filed, this ruling shall become final pursuant to Rule 25-22.006(2)(f) & (3)(d), Florida Administrative Code.

By ORDER of Commissioner John T. Herndon, as Prehearing Officer, this 4th day of APRIL, 1990.



JOHN T. HERNDON, Commissioner
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 within 10 days pursuant to Rule 25-22.038(2), Florida Administrative Code, if issued by a Prehearing Officer; 2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or 3) 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.