

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Proposed tariff by SOUTHERN BELL) DOCKET NO. 881257-TL
TELEPHONE AND TELEGRAPH COMPANY to intro-)
duce new features for Digital ESSX Service) ORDER NO. 23723
and to provide structural changes for both)
ESSX Service and Digital ESSX Service) ISSUED: 11-5-90
)

ORDER DENYING REQUEST FOR SPECIFIED
CONFIDENTIAL CLASSIFICATION

On April 3, 1989, the Commission staff requested Southern Bell Telephone and Telegraph Company (Southern Bell or the Company) to supply cost information regarding the provision of ESSX service, private branch exchange PBX trunks, and other PBX-related services. ESSX is Southern Bell's trademark name for a local exchange company (LEC) offering generically known as Centrex. Southern Bell provided the data and on July 18, 1989, pursuant to Rule 25-22.006, Florida Administrative Code, requested specified confidential classification for its costs to provide ESSX service and certain PBX-related services such as Touchtone and Direct Inward Dialing (DID). On August 14, 1989, AT&T Information Systems, Inc. (ATT-IS) filed its Request for Determination of Non-Confidentiality (Request) pursuant to Rule 25-22.006(6).

There is a presumption in the law of the State of Florida that documents submitted to governmental agencies shall be public records. The only exceptions to this presumption are the specific statutory exemptions provided in the law and exemptions granted by governmental agencies pursuant to the specific terms of a statutory provision. This presumption is based on the concept that government should operate in the "sunshine." In the instant matter, the value of the examination and utilization by all parties of the information contained in these documents must be weighed against the legitimate concerns of the Company regarding the disclosure of business information that it considers proprietary. It is this Commission's view that the burden to be met by one requesting specified confidential classification of documents submitted during a proceeding before us is very high.

Pursuant to Section 364.183, Florida Statutes, and Rule 25-22.006, it is the Company's burden to show that any material submitted to this Commission is qualified for specified confidential classification. Rule 25-22.006 provides that the Company may fulfill its burden by demonstrating that the documents fall into one of the statutory examples set out in Section 364.183,

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Florida Statutes, or by demonstrating that the information is proprietary confidential information, the disclosure of which will cause the Company or its ratepayers harm. Southern Bell has requested that specified confidential treatment be accorded to several different categories of documents.

Southern Bell argues that its costs to provide ESSX service and certain PBX-related services such as Touchtone and DID are proprietary confidential business information which should not be publicly disclosed. Southern Bell considers these services to be competitive and argues that disclosure of the information would harm the Company's ability to compete in the PBX/ESSX market. The Company's argument continues: "if this information was made available to Southern Bell's customers they would then be able to determine Southern Bell's costs and this would detrimentally affect Southern Bell's ability to negotiate contract service arrangements on favorable terms."

Southern Bell asserts that Touchtone competes with rotary dial service and pulse signaling. Additionally, the Company argues that DID, which is provided to PBX subscribers, competes with equipment utilizing live operators and automated voice response systems. In the case of both DID and Touchtone, the Company asserts that disclosure of these costs would also harm its ability to compete.

In its Request, ATT-IS points out that this docket concerns revisions to Southern Bell's General Subscriber Services Tariff relative to ESSX and Digital ESSX service. ATT-IS notes that in Order No. 21163, the Commission expressed a concern that Southern Bell may have anticompetitively priced its monopoly-bundled services in the ESSX and Digital ESSX offerings. It is in response to this concern that Commission staff sought the data which is at issue in this confidentiality request. ATT-IS submits that Southern Bell's characterization of its monopoly services as proprietary is ill-founded and that the costs of these monopoly services should be open to public inspection. ATT-IS notes that the Commission found that ESSX loop cost information was not entitled to specified confidential classification in Order No. 21519, which is currently the subject of a Southern Bell Motion for Reconsideration. ATT-IS argues that Order No. 21519 was properly decided and that the ESSX loop is a monopoly facility, the cost of which must be available for public inspection.

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As to Touchtone and DID services, ATT-IS argues that "it is difficult to determine what 'competition' exists in these 'markets,' or how disclosure of Southern Bell's cost of providing these services would affect its ability to sell its services. The fact is that Touchtone and DID are monopoly services obtainable only from Southern Bell." ATT-IS further asserts that even if the Commission accepts Southern Bell's characterization that Touchtone and DID exist in a competitive market, Southern Bell has failed to demonstrate any competitive harm that could arise from disclosure of the costs of such service, since the rates for these services are set by tariff. ATT-IS concludes that "Southern Bell's attempts to exempt the costs of such services from public disclosure are simply an effort to prevent users of these monopoly services from knowing the true mark-up which they are required to pay." While ATT-IS acknowledges that certain aspects of ESSX/Digital ESSX service are competitive; however, it concludes that ESSX/Digital ESSX station loops, as well as Touchtone and DID services, are monopoly service elements, the cost of which must be available for public inspection.

Upon consideration, we find the arguments made by ATT-IS to be highly persuasive. Accordingly, for the reasons discussed above, we find it appropriate to deny Southern Bell's request for specified confidential classification in its entirety.

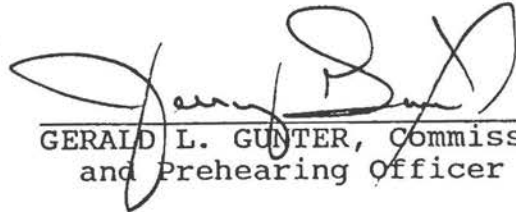
Based on the foregoing, it is

ORDERED by Commissioner Gerald L. Gunter, as Prehearing Officer, that Southern Bell Telephone and Telegraph Company's July 18, 1989, Request for Specified Confidential Classification is hereby denied for the reasons set forth herein. It is further

ORDERED that this docket shall remain open.

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By ORDER of Commissioner Gerald L. Gunter, as Prehearing Officer, this 5th day of NOVEMBER, 1990.


GERALD L. GUNTER, Commissioner
and Prehearing Officer

(S E A L)

CWM/ABG

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 from the full Commission within 14 days pursuant to Rule 25-22.006(3), Florida Administrative Code, for rulings on confidentiality issued by a Prehearing Officer; 2) reconsideration within 10 days pursuant to Rule 25-22.038(2), Florida Administrative Code, for any rulings on issues other than confidentiality if issued by a Prehearing Officer; 3) reconsideration within 15 days pursuant to Rule 25-22.060, Florida

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Administrative Code, if issued by the Commission; or 4) 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.