

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Investigation into ) DOCKET NO. 930330-TP  
IntraLATA Presubscription ) ORDER NO. PSC-93-1688-CFO-TP  
\_\_\_\_\_ ) ISSUED: November 22, 1993

ORDER DENYING REQUEST FOR CONFIDENTIAL  
CLASSIFICATION OF DOCUMENT NO. 8007-93

On June 21, 1993, the Staff of this Commission (Staff) propounded its second set of interrogatories in this matter upon BellSouth Telecommunications, Inc. d/b/a Southern Bell Telephone and Telegraph Company (Bell). On July 26, 1993, Bell filed its responses to Staff's second set of interrogatories, along with a request for confidential classification for portions of its responses to Interrogatories Nos. 26 and 28. Its responses to these items have been designated as Document No. 8007-93.

Bell has requested confidential classification for the projected revenue impact of continued 10XXX competition for 1994 through 1996 (response to Interrogatory No. 26), and its MTS traffic volumes and revenues for 1991 through May, 1993, (response to Interrogatory No. 28). The latter data is broken down by minutes of use (initial and additional) and mileage bands.

Under Section 119.01, Florida Statutes, all documents submitted to this Commission are public records. The only exceptions to this law are documents which are exempt pursuant to specific statutory terms or provisions. Moreover, under Section 364.183, Florida Statutes, and Rule 25-22.006, Florida Administrative Code, the burden of demonstrating that materials qualify for confidential classification falls upon the person requesting such treatment.

With regard to its response to Interrogatory No. 26, Bell argues that the intraLATA toll market is a highly competitive arena. According to Bell, if the information was disclosed, its competitors would gain free access to the market assumptions and analyses underlying its projections. Bell argues that its competitors could use this information to develop their own competitive scenarios and strategies. Bell also argues that potential competitors might use this information to decide not to enter the intraLATA toll market at all. Bell contends that the information is a trade secret and that it is, therefore, protected from disclosure under Section 364.183(3)(a), Florida Statutes.

Upon review, I do not agree. The information provided by Bell in response to Interrogatory No. 26 is not route-specific. It is

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highly aggregated. It is difficult to see, therefore, how Bell's competitors could use this information to target any particular market niche. Bell's request for confidential classification for the information contained in its response to Interrogatory No. 26 is, therefore, denied.

As for its response to Interrogatory No. 28, Bell contends that intraLATA toll competitors could use this mileage-band specific toll volume and revenue information to target the most lucrative mileage-bands and siphon off customers. According to Bell, intraLATA toll revenues help "decrease the upward pressure otherwise exerted on basic local exchange rates" and that any loss in such revenues "could accelerate the need for increases in such basic rates."

As with the information provided in response to Interrogatory No. 26, the information provided in response to Interrogatory No. 28 is not route-specific. It is highly aggregated. Accordingly, I fail to see how Bell's competitors could use this information to target any particular market niche.

Nevertheless, Bell also argues that the information provided in response to Interrogatory No. 28 is the same type of information afforded confidential classification in Order No. 19775, issued August 9, 1988. According to Bell, under Peoples Gas System, Inc. v. Mason, 187 So.2d 335 (Fla. 1966) and Reedy Creek Utilities Co. v. Florida Public Service Commission, 418 So.2d 249 (Fla. 1982), this Commission may only modify preexisting orders when new evidence is presented which warrants such a change. Along the same lines, Bell also cites Florida Motor Lines Corp. v. Douglas, 4 So.2d 856 (Fla. 1941), for the proposition that "[c]hanged conditions and circumstances arising out of the rapid development of the state may justify or require changes or modifications of orders made by the Commission."

Bell's arguments in this regard are not persuasive. For one thing, the information at issue here is not exactly the same type of information discussed in Order No. 19775. More importantly, however, is that Bell's reading of the above-noted cases is overbroad. Both Peoples Gas and Reedy Creek involved attempts to modify specific decisions in specific cases. No attempt has been made to modify Order No. 19775. Accordingly, Peoples Gas and Reedy Creek are not applicable to the matter at hand.

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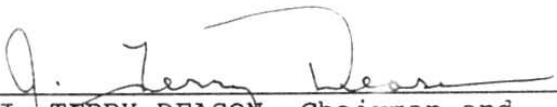
As for Florida Motor Lines, that case involved a petition for judicial review of several Railroad Commission orders granting one bus company's application for extension of operating rights and denying another's. Although it denied the petition, the court nevertheless stated that changed circumstances might justify or even require modification of the Commission's rulings. Again, since no attempt has been made to change or modify Order No. 19775, Florida Motor Lines is not applicable to the in this case.

For the reasons stated above, Bell's request for confidential classification of the information contained in its response to Interrogatory No. 28 is also denied.

It is, therefore,

ORDERED by Chairman J. Terry Deason, as Prehearing Officer, that Bell's request for confidential classification of Document No. 8007-93 is hereby denied.

By ORDER of Chairman J. Terry Deason, as Prehearing Officer, this 22nd day of November, 1993.

  
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J. TERRY DEASON, Chairman and  
Prehearing Officer

( S E A L )

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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 wastewater 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.