

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for expedited review and cancellation of BellSouth Telecommunications, Inc.'s Key Customer promotional tariffs and for investigation of BellSouth's promotional pricing and marketing practices, by Florida Digital Network, Inc.

DOCKET NO. 020119-TP

In re: Petition for expedited review and cancellation of BellSouth Telecommunications, Inc.'s Key Customer promotional tariffs by Florida Competitive Carriers Association.

DOCKET NO. 020578-TP

In re: Petition for expedited review and cancellation or suspension of BellSouth Telecommunications, Inc.'s Key Customer tariff filed 12/16/02, by Florida Digital Network, Inc.

DOCKET NO. 021252-TP
ORDER NO. PSC-03-0219-CFO-TP
ISSUED: February 13, 2003

ORDER GRANTING BELLSOUTH'S
REQUEST FOR CONFIDENTIAL CLASSIFICATION OF
DOCUMENT NO. 13685-02 (X-REF DOCUMENT NO. 12953-02) AND DOCUMENT
NO. 13992-02 (X-REF DOCUMENT NO. 13259-02)

On February 14, 2002, Florida Digital Network, Inc. (FDN) filed a Petition for Expedited Review and Cancellation of BellSouth Telecommunications, Inc.'s (BellSouth) Key Customer Promotional Tariffs and For An Investigation of BellSouth Telecommunications, Inc.'s Promotional Pricing and Marketing Practices (January tariff filing). On March 5, 2002, BellSouth filed its Response and Answer to FDN's Petition.

On June 25, 2002, the Florida Competitive Carriers Association (FCCA) filed a Petition for Expedited Review and Cancellation Of BellSouth's Key Customer Promotional Tariffs (June tariff filing) in Docket No. 020578-TP.

DOCUMENT NO. 021252-TP

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On July 15, 2002, BellSouth filed a Motion to Dismiss or, in the alternative, Response to the "Petition of the Florida Competitive Carriers Association (FCCA) for Expedited Review and Cancellation Of BellSouth Telecommunications Inc.'s Key Customer Promotional Tariffs."

FDN and the FCCA filed separate protests of Order No. PSC-02-0875-PAA-TP on July 19, 2002, each requesting an administrative hearing be convened in Docket No. 020119-TP. On July 22, 2002, the FCCA filed a Response to BellSouth's Motion to Dismiss. By Order No. PSC-02-1237-FOF-TP, issued September 9, 2002, BellSouth's Motion to Dismiss FCCA's complaint was denied and Docket Nos. 020119-TP and 020578-TP were consolidated for purposes of hearing. By Order No. PSC-02-1295-PCO-TP, issued September 23, 2002, the procedural and hearing dates were set for these dockets.

On December 20, 2002, FDN filed a Petition for Expedited Review and Cancellation or Suspension of BellSouth Telecommunications, Inc.'s Key Customer Tariff Filing of December 16, 2002. Docket No. 021252-TP was opened to address FDN's complaint regarding BellSouth's December 16, 2002 tariff filing. On January 3, 2003, BellSouth filed a Response to FDN's Petition. Order No. PSC-03-0148-PAA-TP was issued on January 28, 2003, consolidating Docket No. 021252-TP with Docket Nos. 020119-TP and 20578-TP, for the purposes of hearing because the matters at issue are substantially similar and consolidation will promote administrative efficiency.

On December 16, 2002, BellSouth filed a Request for Specified Confidential Classification for its Rebuttal Testimony of John Ruscilli, Exhibit JAR-8; the Rebuttal Testimony of W. Bernard Shell and Exhibit WBS-3; and Rebuttal Testimony of Samuel G. Massey and Exhibits SGM-1 and SGM-2. (Document No. 13685-02 and cross-referenced Document No. 12953-02.) BellSouth states that the testimony and exhibits contain confidential and proprietary business information. BellSouth further states that Document No. 13685-02 contains, among other things, cost information, and information regarding the manner in which BellSouth typically configures various business services. BellSouth states it has treated and intends to continue to treat this information as private, and this information has not been generally disclosed. BellSouth's position is further specified in Attachment A, which

contains an explanation of the proprietary information and a list identifying the location of the information designated as confidential and proprietary, and is attached and incorporated in this Order.

In addition, on December 23, 2002, BellSouth filed a Request for Specified Confidential Classification for the attachment to items 49 and 50 of its Response to Staff's 7th Set of Interrogatories (Nos. 47-50). (Document No. 13992-02 and cross-referenced Document No. 13259-02.) BellSouth states that the testimony and exhibits contain confidential and proprietary business information. BellSouth further states that the attachments to Interrogatory Nos. 49 and 50 contain end-user specific account information and cost information and vendor-specific pricing information, which could cause competitive harm to BellSouth and violate Florida law if disclosed. BellSouth states that this information is valuable, BellSouth strives to keep it secret and this information has not been generally disclosed. BellSouth's position is further specified in Attachment B, which contains an explanation of the proprietary information and a list identifying the location of the information designated as confidential and proprietary, and is attached and incorporated in this Order.

Florida law presumes 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." Rule 25-22.006(4)(c), Florida Administrative Code, provides that it is the Company's burden to demonstrate that the documents fall into one of the statutory examples set out in Section 364.183, Florida Statutes, or to demonstrate that the information is proprietary confidential information, the disclosure of which will cause the Company or its ratepayers harm.

Section 364.183(3), Florida Statutes, in pertinent part, provides:

The term "proprietary confidential business information" means information, regardless of form or characteristics,

which is owned or controlled by the person or company, is intended to be and is treated by the person or company as private in that the disclosure of the information would cause harm to the ratepayers or the person's or company's business operations, and has not been disclosed unless disclosed pursuant to a statutory provision, an order of a court or administrative body, or private agreement that provides that the information will not be released to the public.

Further, Section 364.24(2), Florida Statutes, in pertinent part, provides:

Any officer or person in the employ of any telecommunications company shall not intentionally disclose customer account records except as authorized by the customer or as necessary for billing purposes, or required by subpoena, court order other process of court, or as otherwise allowed by law.

Upon review, it appears that the information for which BellSouth seeks confidential classification in Attachments A and B, which are incorporated by reference in this order, is information that if disclosed, would cause harm to BellSouth or its ratepayers by impairing BellSouth's ability to compete. Therefore, I find that BellSouth's requests comply with Rule 25-22.006, Florida Administrative Code, and Section 364.183(3), Florida Statutes, and are hereby granted.

Based on the foregoing, it is therefore

ORDERED by Commissioner Braulio L. Baez, as Prehearing Officer, that BellSouth Telecommunications, Inc.'s Request for Specified Confidential Classification of Document No. 13685-02 and cross-referenced Document No. 12953-02, as set forth in Attachment A, is hereby granted and incorporated by reference in this order. It is further

ORDERED that BellSouth Telecommunications, Inc.'s Request for Specified Confidential Classification of Document No. 13992-02 and cross-referenced Document No. 13259-02, as set forth in Attachment

B is hereby granted and incorporated by reference in this order.
It is further

ORDERED that pursuant to Section 364.183, Florida Statutes, and Rule 25-22.006, Florida Administrative Code, any confidentiality granted to the documents specified herein shall expire eighteen (18) months from the date of issuance of this Order in the absence of a renewed request for confidentiality pursuant to Section 364.183. It is further

ORDERED that this Order will be the only notification by the Commission to the parties concerning the expiration of the confidentiality time period.

By ORDER of Commissioner Braulio L. Baez, as Prehearing Officer, this 13th day of February, 2003.



BRAULIO L. BAEZ
Commissioner and Prehearing Officer

(S E A L)

LHD

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), 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.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

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 25-22.0376, Florida Administrative Code, if issued by a Prehearing Officer; or (2) 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 the Commission Clerk and Administrative Services, 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.

ATTACHMENT A

**BellSouth Telecommunications, Inc.
FPSC Docket No. 020119 & 020578-TP
Request for Confidential Classification
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**REQUEST FOR CONFIDENTIAL CLASSIFICATION OF EXHIBIT
JAR-8 TO THE REBUTTAL TESTIMONY OF JOHN RUSCILLI; THE
REBUTTAL TESTIMONY OF W. BERNARD SHELL AND EXHIBIT
WBS-3; THE REBUTTAL TESTIMONY OF SAMUEL G. MASSEY
AND EXHIBITS SGM-1 AND SGM-2 AS FILED ON NOVEMBER 25, 2002
IN DOCKET 020119 & 020578-TP**

Explanation of Proprietary Information

1. The information is proprietary to BellSouth and includes customer specific information. The Commission has always zealously protected customer specific information in order to protect the customer's privacy and prevent a competitor of the customer from obtaining an unfair advantage. This information is clearly confidential and proprietary under Florida Statutes, Section 364.183 and Rule 25-22.006, Florida Administrative Code. Pursuant to Section 364.183, Florida Statutes, such information is classified as proprietary, confidential business information which is exempt from Section 119.07(1) and Section 24(a), Art. 1 of the State Constitution.

2. This information reflects BellSouth's cost to provide certain services. It would be inequitable and unfair for BellSouth's competitors to have access to BellSouth's cost information. Further, public disclosure of this information would impair BellSouth's ability to contract for goods and services on favorable terms. Accordingly, the subject information should be classified as proprietary, confidential business information pursuant to 364.183, Florida Statutes.

3. This information is proprietary to BellSouth and includes information containing customer proprietary and business proprietary information. The Commission has always zealously protected customer proprietary and business proprietary information in order to protect the customer's privacy and prevent a competitor of the customer from obtaining an unfair advantage. This information is clearly confidential and proprietary under Florida Statutes, Section 364.24, Section 364.183 and Rule 25-22.006, Florida Administrative Code.

ATTACHMENT A (CONT.)

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AND EXHIBITS SGM-1 AND SGM-2 AS FILED ON NOVEMBER 25, 2002
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| <u>LOCATION</u> | <u>REASON</u> |
|---|---------------|
| <u>W. BERNARD SHELL TESTIMONY</u> | |
| Page 2, line 24 | 2 |
| Page 3, lines 7, 12, and 17 | 2 |
| Exhibits WBS-3-Page 1-7, Columns A, B, C, D | 2 |
| -Page 8-9, Columns A, B, C, D, E, F | 2 |
| -Page 10, Columns A, B, C, D, E, F, G | 2 |
| -Page 11-14, Columns A, B, C, D, E, F | 2 |
| -Page 15, Columns A, B, C, D | 2 |
| -Page 16-17, Entire Page | 2 |
| <u>Ruscilli's Exhibit</u> | |
| JAR-8 Pages 4-14 | 3 |
| <u>Samuel G. Massey Testimony</u> | |
| Page 5, Line 25 | 1 |
| Page 6, Lines 1 and 2 | 1 |
| Exhibit SMG-1, Pages 1 & 2, Column A | 3 |
| Exhibit SGM-2, Pages 1 & 2, Column A | 3 |

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ATTACHMENT B

BellSouth Telecommunications, Inc.
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**REQUEST FOR CONFIDENTIAL CLASSIFICATION OF BELLSOUTH'S RESPONSE
TO STAFF'S 7TH SET OF INTERROGATORIES, ITEM NOS. 49 AND 50 FILED
DECEMBER 4, 2002, IN FLORIDA DOCKET NOS. 020119-TP AND 020578-TP**

Explanation of Proprietary Information

1. This information reflects end-user specific account information. BellSouth is prohibited from disclosing these records pursuant to 364.24, Florida Statutes. Therefore, the subject information should be classified as proprietary, confidential business information pursuant to Section 364.183, Florida Statutes and is exempt from the Open Records Act.

2. This information reflects BellSouth's cost to provide certain services. It would be inequitable and unfair for BellSouth's competitors to have access to BellSouth's cost information. Further, public disclosure of this information would impair BellSouth's ability to contract for goods and services on favorable terms. Accordingly, the subject information should be classified as proprietary, confidential business information pursuant to 364.183, Florida Statutes.

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ATTACHMENT B (CONT.)

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REQUEST FOR CONFIDENTIAL CLASSIFICATION OF BELLSOUTH'S RESPONSE
TO STAFF'S 7TH SET OF INTERROGATORIES, ITEM NOS. 49 AND 50 FILED
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INTERROGATORY NO. 49

| <u>LOCATION</u> | <u>REASON</u> |
|-----------------|---------------|
| Entire Page | 1 |

INTERROGATORY NO. 50

| <u>LOCATION</u> | <u>REASON</u> |
|-----------------|---------------|
| Columns A-G | 2 |