

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition by BellSouth Telecommunications, Inc. for waiver of Rules 25-4.107, 25-4.108, and 25-4.113, F.A.C., which require provision of basic telecommunications service to certain locations and persons.

DOCKET NO. 000028-TL
ORDER NO. PSC-01-0723-CFO-TL
ISSUED: March 23, 2001

ORDER GRANTING REQUEST FOR
SPECIFIED CONFIDENTIAL CLASSIFICATION OF DOCUMENT NO. 01474-01
(CROSS-REFERENCE DOCUMENTS NOS. 00354-00 AND 00427-01)
AND SETTING FORTH CONDITIONS FOR INSPECTION OF DOCUMENT

I. Background

On January 10, 2000, the Commission received a petition from BellSouth Telecommunications, Inc. (BellSouth) seeking a waiver of Rules 25-4.107, 25-4.108 and 25-4.113, Florida Administrative Code, pursuant to Section 120.542, Florida Statutes. The rules require a local exchange company (LEC) to assist any customer or applicant in obtaining telephone service adequate to his communication needs, to provide service, and limit circumstances under which a LEC may refuse telephone service. BellSouth indicates in its petition that it is seeking a permanent waiver of these rules for one particular customer. BellSouth seeks a waiver to forego service to this person and service to the locations that he owns, leases, or with which he is, in any way, associated.

By Order No. PSC-00-0902-PAA-TL, issued May 5, 2000, BellSouth's petition was granted. On May 30, 2000, Mr. Anthony Parks filed a protest of Order No. PSC-00-0902-PAA-TL and requested a formal hearing pursuant to Rule 25-22.029, Florida Administrative Code. Accordingly, this matter has been scheduled for an administrative hearing.

II. Confidential Request

On February 24, 2000, BellSouth filed a Claim of Confidential Treatment regarding certain customer documents pursuant to Section 364.183, Florida Statutes, Document No. 00354-00. On January 10,

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2001, BellSouth prefiled the direct panel testimony of Nancy H. Sims and Patricia K. Shields, along with Exhibit NHS/PKS-1. BellSouth also filed a Notice of Intent to Request Confidential Classification pursuant to Rule 25-22.006, Florida Administrative Code, for Exhibit No. NHS/PKS-1, Document No. 00427-01 (cross-reference Document No. 00354-00). On January 31, 2001, BellSouth filed a Request for Specified Confidential Classification pursuant to Rule 25-22.006, Florida Administrative Code, for Exhibit No. NHS/PKS-1, Document No. 01474-01 (cross-reference Documents Nos. 00354-00 and 00427-01). Specifically, BellSouth requests confidential treatment of the pages and lines as identified in Attachment A, which is attached to and incorporated in this Order. BellSouth asserts that the document contains customer-specific and competitive business information. BellSouth states that the information is valuable to BellSouth and it strives to keep it secret. BellSouth also states that it is prohibited by Section 364.24(2), Florida Statutes, from public disclosure of customer account information. Therefore, BellSouth asserts that the information contained in its response is proprietary and confidential pursuant to Sections 364.183 and 364.24, Florida Statutes, and Rule 25-22.006, Florida Administrative Code. BellSouth states that it has treated and intends to continue to treat the information as private. BellSouth further asserts that the information has not otherwise been disclosed.

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, states that "proprietary confidential business information" is

[o]wned 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.

Based on the definition of proprietary confidential business information in Section 364.183(3), Florida Statutes, it appears that the information for which BellSouth seeks confidential classification is information that, if disclosed, would cause harm to BellSouth's ratepayers. Thus, this information qualifies as proprietary confidential business information under Section 364.183, Florida Statutes, and Rule 25-22.006, Florida Administrative Code. Also, any customer-specific information should be protected in accordance with Section 364.24, Florida Statutes. As such, BellSouth's request for confidential classification is hereby granted.

III. Motion to Compel

A prehearing conference was held on March 12, 2001. Prior to the commencement of the prehearing conference, Mr. Parks sent by facsimile a Motion to Change Date of Hearing and Motion to Compel BellSouth to provide Mr. Parks with all documents it intends to use at hearing within 10 days from the date of Mr. Parks' motion. Parties addressed Mr. Parks' motions during the prehearing conference. The Motion to Change Date of Hearing was granted, and the Motion to Compel was taken under advisement.

Mr. Parks stated in his Motion to Compel and at the prehearing conference that he seeks documents BellSouth plans to use at hearing so that he can defend his position and avoid "trial by ambush." BellSouth responded that it provided Mr. Parks with the redacted version of Exhibit No. NHS/PKS-1, the document it intends to use at hearing. BellSouth indicated that it was prohibited from disclosing certain portions of the exhibit that contain customer names, phone numbers and addresses, which BellSouth asserts are related to its allegations regarding Mr. Parks. As discussed earlier, that information is the subject of Section II of this Order.

Upon consideration of the foregoing, I am concerned that Mr. Parks have the necessary information to prepare for hearing. Nevertheless, BellSouth's Request for Specified Confidential Classification has been granted to protect those customers who are not parties to this docket. Rule 25-22.006(7)(b), Florida Administrative Code, provides that a finding of confidentiality notwithstanding, a source may consent to inspection or examination by any person. The rule also provides that such consent shall not constitute a waiver of confidentiality, and limits inspection of the materials to the person specified in the consent.

Counsel for BellSouth has indicated that the company will consent to Mr. Parks' inspection of the confidential information contained in Exhibit No. NHS/PKS-1 subject to a protective agreement. Therefore, Mr. Parks' Motion to Compel is rendered moot. The protective agreement shall not preclude Mr. Parks from communicating on a one-to-one basis with any customer listed in Exhibit No. NHS/PKS-1; however, Mr. Parks shall not disclose information regarding any one account to any other customer listed in that exhibit, nor shall the information be disclosed to any other person who is not a signatory to the protective agreement. Unauthorized disclosure of this information shall constitute a violation of this Order, which may result in the Commission seeking appropriate remedies in circuit court.

Finally, Mr. Parks requested in his Motion to Compel that the documents be provided by BellSouth within 10 days. Therefore, the due date pursuant to Mr. Parks' motion would have been March 22, 2000. Rule 28-106.206, Florida Administrative Code, provides for discovery requests pursuant to Rules 1.280 through 1.400, Florida Rules of Civil Procedure. Pursuant to Rule 1.350, Florida Rules of Civil Procedure, any party may request documents which contain matters within the scope of Rule 1.280(b), Florida Rules of Civil Procedure, from any other party. Pursuant to Rule 1.350, Florida Rules of Civil Procedure, the party to whom a request for production of documents is made shall have 30 days to respond. Further, Order No. PSC-00-2406-PCO-TP (Order Establishing Procedure), issued December 14, 2000, provides that parties shall have 10 days to object to any discovery requests. Mr. Parks never served BellSouth with a request for production of documents. Therefore, absent BellSouth's consent to inspection, Mr. Parks' Motion to Compel would have been premature. The hearing in this docket has been rescheduled for May 21, 2000. This should provide

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Mr. Parks ample time to inspect Exhibit No. NHS/PKS-1 and prepare for hearing.

Based on the foregoing, it is

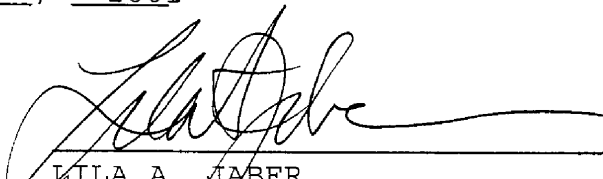
ORDERED by Commissioner Lila A. Jaber, as Prehearing Officer, that BellSouth Telecommunications, Inc.'s Request for Specified Confidential Classification of Document No. 01474-01 (cross-reference Documents Nos. 00354-00 and 00427-01) is hereby granted. It is further

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

ORDERED that the protective agreement entered into between BellSouth Telecommunications, Inc. and Mr. Anthony Parks, discussed herein, shall not preclude Mr. Parks from communicating on a one-to-one basis with any customer listed in Exhibit No. NHS/PKS-1; however, Mr. Parks shall not disclose information regarding any one account to any other customer listed in that exhibit, nor shall the information be disclosed to any other person who is not a signatory to the protective agreement.

By ORDER of Commissioner Lila A. Jaber, as Prehearing Officer, this 23rd day of March, 2001



LILA A. JABER
Commissioner 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 120.569(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; (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.

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**REQUEST FOR CONFIDENTIAL CLASSIFICATION OF BELL SOUTH'S DIRECT
PANEL TESTIMONY OF NANCY H. SIMS AND PATRICIA K. SHIELDS EXHIBIT
NHS/PKS-1 FILED JANUARY 10, 2001 IN FLORIDA DOCKET NO. 000028-TL**

EXHIBIT NHS/PKS-1

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2	Lines 1, 2, 4, 7, 10, 13, 16, 19, 22, 25, 28, 31, 32	1
3	Lines 1, 2, 3, 4, 5, 7, 10	1
5	Lines 1, 10, 15, 23, 28	1
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7	Lines 1, 12, 16, 27	1
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