

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Investigation to determine whether BellSouth Telecommunications, Inc.'s tariff filing to restructure its late payment charge is in violation of Section 364.051, F.S.

DOCKET NO. 000733-TL  
ORDER NO. PSC-01-1731-CFO-TL  
ISSUED: August 24, 2001

ORDER GRANTING REQUESTS FOR CONFIDENTIAL TREATMENT  
OF DOCUMENTS NOS. 06367-00, 07636-01, AND CROSS-REFERENCED  
DOCUMENTS NOS. 06766-01 AND 07497-01

On June 19, 2000, this docket was established to investigate whether BellSouth Telecommunications, Inc.'s (BellSouth) tariff filing to restructure its late payment charge is in violation of Section 364.051, Florida Statutes. By proposed agency action Order No. PSC-00-1357-PAA-TL, issued July 27, 2000, the Commission found BellSouth's July 9, 1999, tariff filings revising its Late Payment Charge in Section A2 of its General Subscriber Service Tariff and Section B2 of its Private Line Services Tariff in violation of Section 364.051(6)(a), Florida Statutes. The Commission also ordered that the tariffs remain in effect for 30 days from the issuance of the Order. If a timely protest of this Order was filed, then the tariffs were to remain in effect pending the outcome of a hearing with any revenues resulting from the tariff held subject to refund.

On August 17, 2000, BellSouth timely petitioned for a formal hearing. By Order No. PSC-00-2458-PSC-TL, issued December 20, 2000, the Office of Public Counsel's (OPC or Citizens) Notice of Intervention was acknowledged. By Order No. PSC-00-2279-PCO-TL, a hearing was set for April 18, 2001. On December 11, 2000, BellSouth and the OPC filed a Joint Motion to Amend Procedural Schedule, wherein the parties asked that the procedural order be amended to reflect that the case would proceed pursuant to Section 120.57(2), Florida Statutes, and that a briefing schedule was appropriate. By Order No. PSC-01-0228-PCO-TL, issued January 23, 2001, the Joint Motion was granted, and the procedure and schedule for filing briefs on the issues were established.

DOCUMENT NUMBER-DATE

10558 AUG 24 01

FPSC-COMMISSION CLERK

Prior to this Docket being established, BellSouth responded on May 23, 2000, to our staff's request for information regarding this matter. Along with its response, which was information regarding the "price out" for its tariff, BellSouth filed a letter requesting confidential treatment of its response, Document No. 06367-00. Therein, BellSouth argues that its entire response should be given confidential treatment, because it includes competitively sensitive pricing information that meets the definition of confidential, proprietary information set forth in Section 364.183, Florida Statutes. BellSouth notes that it treats this information as confidential and that it has not otherwise been disclosed. No responses to BellSouth's request were filed.

On June 19, 2001, BellSouth filed a Request for Confidential Classification of Document No. 07636-01, including cross-referenced Documents Nos. 06766-01 and 07497-01, which is Item 22 of the parties' Joint Stipulation of the Record in this proceeding. Specifically, Item 22 is information regarding the restructuring of the company's late payment tariff addressed at the company's internal Florida Regulatory Meeting. BellSouth contends that this entire document should also be granted confidential classification, because the information is confidential, proprietary information as defined in Section 364.183, Florida Statutes, and public disclosure of the information could cause competitive harm to BellSouth. BellSouth notes that it treats this information as confidential and that it has not otherwise been disclosed. No responses to BellSouth's request were filed.

Specifically, BellSouth emphasizes that

The subject information includes BellSouth's business plans, forecasts and other confidential business information of BellSouth. Public disclosure of this information would harm BellSouth's business operations because it would damage the competitive interests of BellSouth.

. . . .

In addition, this information is valuable as it is used by BellSouth in conducting its business and BellSouth strives to keep it secret. Therefore, this information is

a trade secret which should be classified as proprietary, confidential business information exempt from the Open Records Act.

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 business operations. Documents Nos. 06367-00 and 06766-01, as well as the cross-referenced documents, contain company-specific operational data, such as information regarding operational units, the disclosure of which could negatively impact the company. Thus, this information qualifies as proprietary confidential business information under Section 364.183, Florida Statutes, and Rule 25-22.006, Florida Administrative Code. As

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such, BellSouth's requests for confidential classification are hereby granted.

Based upon the foregoing, it is therefore,

ORDERED by Commissioner Lila A. Jaber, as Prehearing Officer, that BellSouth Telecommunications, Inc.'s May 23, 2000, request for confidential treatment of Document No. 06367-00, and its June 19, 2001, request for confidential treatment of Document No. 07636-01, as well as cross-referenced Documents Nos. 06766-01 and 07497-01, are 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.

By ORDER of Commissioner Lila A. Jaber, as Prehearing Officer, this 24th Day of August, 2001.

A handwritten signature in black ink, appearing to read "L.A. Jaber", is written over a horizontal line.

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.

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 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.