

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Request for arbitration
concerning complaint of IDS
Telcom LLC against BellSouth
Telecommunications, Inc.
regarding breach of
interconnection agreement.

DOCKET NO. 010740-TP
ORDER NO. PSC-01-1884-PCO-TP
ISSUED: September 21, 2001

ORDER GRANTING, IN PART, AND DENYING, IN PART,
REQUESTS FOR CONFIDENTIAL TREATMENT

On May 11, 2001, IDS Long Distance, Inc. n/k/a IDS Telecom, L.L.C. (IDS) filed a Complaint and Request for Emergency Relief against BellSouth Telecommunications, Inc. (BellSouth). IDS raises four counts against BellSouth: (1) BellSouth has breached the interconnection agreement by failing to provide IDS OSS and UNEs at parity; (2) BellSouth has perpetrated an anticompetitive campaign of "win back" tactics against IDS, including the Full Circle Program and fraudulent telemarketing schemes; (3) BellSouth has permitted the sharing of IDS's customer proprietary network information between its retail and wholesale divisions in violation of the Telecommunications Act of 1996; and (4) the Commission should immediately initiate a show cause proceeding to investigate and sanction BellSouth for its anticompetitive activities that have harmed citizens of the State of Florida. BellSouth filed a response and the matter is set for hearing on September 21 and October 1, 2001.

During the months leading up to this date, a large number of requests for confidential treatment of various documents have been filed by both parties. In order to facilitate a more orderly process during the hearing, a prior determination of the documents which do not meet the criteria for confidential treatment is appropriate. After thorough evaluation, this Order addresses the filed confidentiality requests. I note that for each of the requests identified below, the requesting party has indicated that the information has not previously been released as a public document and that the requesting party treats the information as proprietary, confidential information.

Specifically, on September 10, 2001, BellSouth filed a Request for Specified Confidential Classification (hereafter "Request") of Document No. 11300-01 (cross-referenced Document No. 10286-01), which is page 6, lines 4,5 of witness Ainsworth's direct testimony

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and Exhibit KLA-1 in its entirety. This information pertains to disconnect orders.

On September 13, 2001, BellSouth filed a Request for Document No. 11395-01, which contains pages 1 and 2 of its response to our staff's Interrogatory 42. This information pertains to trouble counts.

On September 14, 2001, BellSouth filed a Request for Document No. 11478-01, which contains its response to IDS's Second Request for Production of Documents Nos. 32, 33, 39 (PODs), and its response to IDS's Interrogatory 33. The PODs contain information regarding BellSouth's DOE and SONGS training packages, its User Requirements for LENS, user manuals, and similar material that provide access instructions, feature, function, and system capability descriptions and instructions. The Interrogatory response contains information that is customer specific to IDS that BellSouth and IDS treat as confidential.

On September 17, 2001, BellSouth filed a Request for Document No. 11551-01, which contains its responses to IDS's First Request for Production of Documents 4, 11, 16, 17, 18, 19, and 22, as well as its responses to Interrogatories 2, 9, and 10 from IDS. For Interrogatory 2 and 9 Attachments and Interrogatory 10, BellSouth seeks confidentiality of the entire document, as well as for PODs 16, 17, 18, 19, and 22. It seeks classification of page 1, line 1; page 2, lines 1-9; page 5, line 1; page 6, lines 1-2; page 7, line 1; page 8, line 1; and page 9, line 1 of POD 4, and pages 1-9, columns B-G (all lines); page 10, columns B-C (all lines); page 11, columns B-D (all lines); pages 12-13, entire pages; and page 14, columns B-G (all lines) of POD 11. BellSouth contends that this information is either intellectual property of BellSouth, customer specific information, or business information regarding marketing compensation and incentive payments.

On that same day, BellSouth also filed a Request for Document No. 11554-01 (cross-referenced Document No. 10688-01), which is page 7, line 11 of the panel testimony of witnesses Pryor and Lepkowski. This reflects the number of orders submitted from IDS to BellSouth.

In addition, BellSouth also filed on that day, a Request for Document No. 11557-01, which addresses late-filed deposition

exhibits 2, 3, 4, and 6 to Gloria Burr's deposition; late-filed deposition exhibits 1 to Ken Ainsworth's deposition; and late-filed deposition exhibit 1 to Berlene Means's deposition. BellSouth contends this information addresses either BellSouth's internal procedures for LENS Retail/Resale to UNE Conversion, Encore User Requirements, information regarding the scope, final report and findings from BellSouth's Port Loop Combo testing of systems for IDS, BellSouth's internal procedures in OSS development and in LCSC operations, and/or information regarding its employees of a personal nature.

BellSouth also filed on that day a Request for Document No. 11560-01, which addresses Item 102 of IDS's 2nd Supplemental Answers to BellSouth's Interrogatories. BellSouth states that it contains customer proprietary information belonging to IDS.

On September 18, 2001, BellSouth filed a Request for Document No. 11564-01, addressing late-filed deposition exhibits 1, 2, and 3 to Bill Thrasher's deposition, and late-filed deposition exhibit 1 to Pattie Knight's deposition. BellSouth contends this information is either internal procedures for UNE Rebundled Switched Residence and Business 2-wire Combinations, Rebundled UNE Switched Combos-Coin-2-wire, How to Clear a 403 SOER Format Error, customer-specific information, or customer-specific information regarding flow-through volume for IDS.

On that same day, IDS filed a Request for Document No. 11649-01 (cross-referenced Document Nos. 10515-01, 10650-01, 11138-01, and 11195-01), which address its Supplemental Responses to BellSouth's PODs Nos. 4, 5, and 11; its Supplemental Response to BellSouth's Interrogatories 4, 8, 18, 25, 35, 49, 50, and 59; and its Second Supplemental Responses to BellSouth's Interrogatories 5, 8, 35, 49, 59, 50, 83, 92, 101, and 103. IDS contends this information is customer proprietary information.

On that same day, the parties also filed a Joint Request for Document No. 11653-01, which addresses Exhibit JAR-1 to John Ruscilli's Surrebuttal Testimony. Specifically, the request addresses page 2, lines 20, 21, 22, 24, 25, 27, 28, 30, 34, and 35; page 3, lines 1, 2, 5, 6, 7, 10, 11, 12, 14-16, 19, 21, 22, 24-27, 29, 31, and 35-36; page 4, lines 2, 5, 7, 9-10, 13, 15-16, 18, 21-22, 24-25, 28, 30-32, and 35-36; and page 5, lines 4-7, 13-14, 17,

19, 21, 23, 26, 28, 30, and 33. The parties contend that this contains customer-specific information regarding IDS's customers.

For each of these requests, the parties have contended that the information is either proprietary confidential business information as defined in Section 364.183(3), Florida Statutes, the release of which would cause competitive harm to either BellSouth or IDS, or that the information is customer-specific information, the release of which is prohibited by Section 364.24, Florida Statutes.

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 information that

...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.

Based on the criteria set forth above, it appears that the respective parties have not demonstrated that disclosure of the following information for which they seek confidential classification, would cause harm to either the respective company or its ratepayers because disclosure would impair either companies' ability to compete. Furthermore, the information does not appear

to be customer-specific information of a nature designed to be protected by Section 364.24, Florida Statutes. Thus, the following items do not qualify as proprietary business information under Section 364.183, Florida Statutes, and Rule 25-22.006, Florida Administrative Code. The following items, therefore, shall not be granted confidential treatment in these proceedings:

Document No.	Filing Party	Description
11300-01 (10286-01)	BellSouth	Disconnect Orders
11395-01	BellSouth	Response to Staff Interrogatory No. 42. Lists the trouble Counts and percent of total by Type of trouble.
11478-01	BellSouth	POD 39 only
11551-01 (11003-01)	BellSouth	<p>Response to IDS' POD Request 16, with the exception of spreadsheet column "AN" which contains Tns.</p> <p>Response to IDS' POD Request 17, with the exception of Spreadsheet column "AA" which contains Tns.</p> <p>Response to IDS' POD request 18, with the exception of spreadsheet column "BA" which contains Tns.</p> <p>Response to IDS' POD request No. 22.</p> <p>Response to 1st set of interrogatory 4, except for column 4.</p> <p>Response to interrogatory 10.</p>

Document No.	Filing Party	Description
11554-01 (10688-01)	BellSouth	Two numbers contained in the Panel rebuttal testimony of Pryor and Lepkowski. These numbers reflect the number of orders submitted to BellSouth from IDS.
11557-01 (10893-01)	BellSouth	Late-filed deposition exhibit of Ken Ainsworth, with the exception of the telephone numbers contained in column 1.
11564-01 (10685-01, 10724-01)	BellSouth	Late-filed deposition No. 2 for Bill Thrasher, except for the first column containing the OCN number. Late-filed deposition exhibit No. 1 for Pattie Knight.

It should be noted that the portions identified in bold type in the list above are portions of the item that shall retain confidential classification.

Based on the definition of proprietary confidential business information in Section 364.183(3), Florida Statutes, it appears that all the remaining information for which confidential classification was sought in the requests addressed in this Order is information that, if disclosed, would cause harm to BellSouth's or IDS's business operations. 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 of a nature designed to be protected by Section 364.24, Florida Statutes, shall be protected in accordance that provision. As such, to the extent not addressed in the list above, BellSouth's and IDS's requests for confidential classification are hereby granted.

Based on the foregoing, it is

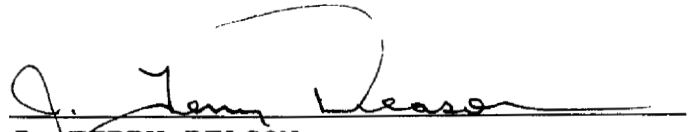
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ORDERED by Commissioner J. Terry Deason, as Prehearing Officer, that the Requests for Confidential Classification filed by BellSouth Telecommunications, Inc. and IDS Long Distance, Inc. n/k/a IDS Telcom, LLC shall be granted, in part, and denied, in part, as set forth in the body of this Order.

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 J. Terry Deason as Prehearing Officer, this 21st Day of September, 2001.



J. TERRY DEASON
Commissioner and Prehearing Officer

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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

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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.