

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Investigation into
pricing of unbundled network
elements (BellSouth track).

DOCKET NO. 990649A-TP
ORDER NO. PSC-02-0092-CFO-TP
ISSUED: January 16, 2002

ORDER GRANTING REQUESTS FOR CONFIDENTIAL TREATMENT OF
DOCUMENT NO. 15976-01 (CROSS-REFERENCED DOCUMENT NO. 15408-01)-
AND DOCUMENT NO. 15979-01 (CROSS-REFERENCED DOCUMENT NO. 15409-
01)

On May 25, 2001, this Commission issued its Final Order on Rates for Unbundled Network Elements Provided by BellSouth (Phases I and II), Order No. PSC-01-1181-FOF-TP. Furthermore, we ordered BellSouth to refile, within 120 days of the issuance of the Order, revisions to its cost study addressing xDSL-capable loops, network interface devices, and cable engineering and installation. The parties to the proceeding were also ordered to refile within 120 days of the issuance of the Order, proposals addressing network reliability and security concerns as they pertain to access to subloop elements. Order No. PSC-01-1904-PCO-TP, issued September 24, 2001, and Order No. PSC-01-2189-PCO-TP, issued November 8, 2001, and Order No. PSC-01-2399-PCO-TP, issued December 11, 2001, established the procedure for the hearing regarding BellSouth's 120-day filing.

On December 21, 2001, BellSouth filed three Requests for Confidential Classification. This Order addresses two of those requests. Within the first, regarding the Rebuttal Testimony of John C. Donovan (Document No. 15976-01 and cross-referenced Document No. 15408-01), BellSouth argues that this response contains vendor-specific pricing, customer proprietary information, and confidential business information. BellSouth contends that the release of this information would provide its competitors with an unfair advantage in future negotiations, that it has not otherwise been disclosed, and that BellSouth treats this information as confidential.

In BellSouth's second request of December 21, 2001, regarding Brian F. Pitkin's exhibits BFP-2 through BFP-9 (Document No. 15979-01 and cross-referenced Document No. 15409-01), BellSouth again generally contends that these responses contain vendor-specific pricing, customer proprietary information, and confidential business information. BellSouth claims that the release of this

DOCUMENT NUMBER-DATE

00586 JAN 16 2002

FPSC-COMMISSION CLERK

information would provide its competitors with an unfair advantage in future negotiations, that it has not otherwise been disclosed, and that BellSouth treats this information as confidential.

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.

Specifically, with regard to the Rebuttal Testimony of John C. Donovan, BellSouth contends that the pages and lines identified in Attachment A, which is attached and incorporated herein, should be protected for the reasons also set forth in Attachment A.

Regarding Brian F. Pitkin's exhibits BFP-2 through BFP-9, BellSouth again seeks confidential treatment of the files identified in Attachment B, which is attached and incorporated herein, for the reasons also set forth in Attachment B.

In each attachment, BellSouth argues that the public disclosure of this information would impair BellSouth's ability to contract for goods and services on favorable terms. BellSouth states that the information is valuable, it is used by BellSouth in conducting its business and BellSouth strives to keep it secret.

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.

Based on the definition of proprietary confidential business information in Section 364.183(3), Florida Statutes, it appears that the material described herein is proprietary business information in accordance with Section 364.183, Florida Statutes, and Rule 25-22.006, Florida Administrative Code. Disclosure of this information could be detrimental to BellSouth's operations, could impair BellSouth's ability to compete, and its ability to contract for goods and services. Additionally, any customer specific information should be protected pursuant to Section 364.24(2), Florida Statutes. As such, BellSouth's Requests for Confidential Classification addressing Document No. 15976-01 and Document No. 15979-01, respectively, are hereby granted. Pursuant to Section 364.183, Florida Statutes, and Rule 25-22.006, Florida Administrative Code, the 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.

Based on the foregoing, it is therefore

ORDERED by Chairman Lila A. Jaber, as Prehearing Officer, that BellSouth Telecommunications, Inc.'s Requests for Specified Confidential Classification addressing Document No. 15976-01 (cross-referenced Document No. 15408-01) and Document No. 15979-01 (cross-referenced Document No. 15409-01, respectively, are hereby granted. It is further

ORDERED that pursuant to Section 364.183, Florida Statutes, and Rule 25-22.006, Florida Administrative Code, the 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

ORDER NO. PSC-02-0092-CFO-TP
DOCKET NO. 990649A-TP
PAGE 4

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 Chairman Lila A. Jaber, as Prehearing Officer, this 16th Day of January, 2002.



LILA A. JABER
Chairman and Prehearing Officer

(S E A L)

WDK

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

ORDER NO. PSC-02-0092-CFO-TP
DOCKET NO. 990649A-TP
PAGE 5

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

ORDER NO. PSC-02-0092-CFO-TP
DOCKET NO. 990649A-TP
PAGE 6

BellSouth Telecommunications, Inc.
FPSC Docket No. 990649A-TP
Request for Confidential Classification
Page 1 of 1
12/21/01

**REQUEST FOR CONFIDENTIAL CLASSIFICATION OF REBUTTAL
TESTIMONY OF JOHN C. DONOVAN AS FILED ON DECEMBER 10, 2001 IN
FLORIDA PUBLIC SERVICE
COMMISSION DOCKET 990649A-TP**

Explanation of Proprietary Information

- 1 This information reflects vendor specific prices negotiated by BellSouth. Public disclosure of this information would impair BellSouth's ability to contract for goods and services on favorable terms. This information is valuable, it is used by BellSouth in conducting its business and BellSouth strives to keep it secret. Therefore, this information should be classified as proprietary, confidential business information pursuant to Section 364.183(3)(d) Florida Statutes and is exempt from the Open Records Act.

PAGE NO.

BASIS FOR REQUEST

Rebuttal Testimony

Page 22, Line 17	1
Page 28, Lines 22-23	1
Page 30, Lines 10-12	1
Page 42, Lines 10-12	1
Page 43, Lines 5, 8-10	1
Page 44, Line 20	1
Page 53, Lines 15-17	1

ATTACHMENT B

ORDER NO. PSC-02-0092-CFO-TP
DOCKET NO. 990649A-TP
PAGE 7

BellSouth Telecommunications, Inc.
FPSC Docket No. 990649A-TP
Request for Confidential Classification
Page 1 of 2
12/21/01

REQUEST FOR CONFIDENTIAL CLASSIFICATION OF EXHIBITS BFP-2 THROUGH BFP-9 TO THE REBUTTAL TESTIMONY OF BRIAN F. PITKIN AS FILED ON DECEMBER 10, 2001 IN FLORIDA PUBLIC SERVICE COMMISSION DOCKET 990649A-TP

Explanation of Proprietary Information

1. This information reflects vendor specific prices negotiated by BellSouth. Public disclosure of this information would impair BellSouth's ability to contract for goods and services on favorable terms. This information is valuable, it is used by BellSouth in conducting its business and BellSouth strives to keep it secret. Therefore, this information should be classified as proprietary, confidential business information pursuant to Section 364.183(3)(d) Florida Statutes and is exempt from the Open Records Act.

PAGE NO.

BASIS FOR REQUEST

BFP-2

Lines 1-10, Column E

1

BFP-3

Lines 1-8, Column E

1

BFP-4

Lines 1-30, Column F

1

BFP-5

Lines 1-8, Column D

1

BFP-6

Lines 1-18, Columns B, E, H, J

1

BellSouth Telecommunications, Inc.
FPSC Docket No. 990649A-TP
Request for Confidential Classification
Page 2 of 2
12/21/01

BFP-7

Page 1 of 6, lines 1-73, Column D	1
Page 2 of 6, lines 1-73, Column D	1
Page 3 of 6, lines 1-73, Column D	1
Page 4 of 6, lines 1-73, Column D	1
Page 5 of 6, lines 1-73, Column D	1
Page 6 of 6, lines 1-35, Column D	1

BFP-8A

Lines 1-24, Columns D, E	1
--------------------------	---

BFP-8B

Lines 1-23, Columns D, E	1
--------------------------	---

BFP-8C

Lines 1-17, Column D	1
----------------------	---

BFP-8D

Lines 1-3, Column B	1
---------------------	---

BFP-8E

Lines 1-3, Column B	1
Lines 4-6, Column F	1

BFP-8F

Lines 1-5, Column D	1
---------------------	---

BFP-9

Lines 1-9, Column E	1
---------------------	---