

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

DOCKET NO. 990649A-TP  
ORDER NO. PSC-02-0096-CFO-TP  
ISSUED: January 16, 2002

ORDER GRANTING REQUEST FOR CONFIDENTIAL TREATMENT  
OF DOCUMENT NO. 00385-02 (CROSS-REFERENCED DOCUMENT NO. 00216-02)

On May 25, 2001, we issued our Final Order on Rates for Unbundled Network Elements Provided by BellSouth, Order No. PSC-01-1181-FOF-TP. Within the Order, we addressed the appropriate methodology, assumptions, and inputs for establishing rates for unbundled network elements for BellSouth Telecommunications. We ordered that the identified elements and subloop elements be unbundled for the purpose of setting prices, and that access to those subloop elements shall be provided. We also determined that the inclusion of non-recurring costs in recurring rates should be considered where the resulting level of non-recurring charges would constitute a barrier to entry. In addition, we defined xDSL-capable loops, and found that a cost study addressing such loops may make distinctions based upon loop length. We then set forth the UNE rates, and held that they shall become effective when existing interconnection agreements are amended to incorporate the approved rates, and those agreements become effective. 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.

On June 11, 2001, BellSouth filed its Motion for Reconsideration, requesting that we reconsider our decision in six respects. Also on June 11, 2001, MCI WorldCom, AT&T, Covad, and Z-Tel (Movants) filed a Motion for Reconsideration and Clarification of certain decisions in the Order. Thereafter, on June 26, 2001, BellSouth filed a Motion to Conform Staff Analysis and Cost Model Run to Order No. PSC-01-1181-FOF-TP. By Order No. PSC-01-2051-FOF-TP, issued October 18, 2001, we granted, in part, and denied, in part, BellSouth's Motion for Reconsideration. We also denied the Motion for Reconsideration and Clarification filed by MCI WorldCom, Inc., AT&T Communications of the Southern States, Inc., DIECA

DOCUMENT NO.

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Communications, Inc. d/b/a Covad Communications Company, and Z-Tel Communications, Inc., as well as BellSouth's Motion to Conform the Staff's Analysis and Cost Model Runs to our decision. On our own motion, we conformed the Commission staff's analysis and cost model runs to our post-hearing decision in this matter.

This proceeding is currently set for hearing on January 30-31, 2002, for us to consider BellSouth's revisions to its cost study submitted as part of its required 120-day filing, and related matters. 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 January 10, 2002, BellSouth filed a Request for Confidential Classification of its Response to Staff's First Request for Production of Documents, Item No. 1, Attachments 1 and 2 (Document No. 00385-02 and cross-referenced Document No. 00216-02), which BellSouth contends contains vendor-specific pricing, customer proprietary information, practices/procedures used by BellSouth conduct its business, 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.

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, BellSouth seeks confidential classification for Attachments 1 and 2, in their entirety, to its response to Staff's First Request for Production, Item 1. BellSouth contends that

Attachment 1 should be granted confidential classification, because it contains the practices and procedures BellSouth uses to conduct its business, which BellSouth contends would provide its competitors with access to BellSouth intellectual property if released. BellSouth contends that the intellectual property was developed at great expense to the company, and that release of it would give competitors the unfair advantage of being able to use the information without the burden and expense of developing the information themselves. Therefore, BellSouth argues that the release of this information would impair BellSouth's ability to compete; thus, the information is entitled to confidential classification pursuant to Section 364.183, Florida Statutes. Furthermore, BellSouth maintains that the information in Attachment 1 includes trade secrets, and as such, should remain protected as proprietary, confidential business information.

As for Attachment 2, BellSouth contends that this should also be given confidential classification, because it contains vendor-specific pricing negotiated by BellSouth. BellSouth argues that if this information is released, it will impair BellSouth's ability to contract for goods and services on favorable terms. As such, BellSouth argues it should be granted confidential status.

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

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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. Furthermore, pursuant to Section 364.24, Florida Statutes, customer proprietary information must be protected. As such, BellSouth's Request for Confidential Classification regarding Document No. 00385-02 (cross-referenced Document No. 00216-02) is 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 Request for Specified Confidential Classification filed on January 10, 2002, addressing Document No. 00385-02 (cross-referenced Document No. 00216-02) is 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

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

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

A handwritten signature in cursive script, appearing to read 'Lila A. Jaber', is written over a horizontal line.

LILA A. JABER  
Chairman 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.

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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.