

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

DOCKET NO. 990649A-TP  
ORDER NO. PSC-02-0295-CFO-TP  
ISSUED: March 8, 2002

ORDER GRANTING BELLSOUTH'S REQUESTS FOR CONFIDENTIAL TREATMENT OF  
DOCUMENTS NOS. 00698-02 (CROSS-REFERENCED DOCUMENT NO. 00545-02);  
00701-02 (CROSS-REFERENCED DOCUMENT NO. 15408-01); 00849-02;  
00852-02; 00905-02; AND 00978-02

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 January 18, 2002, BellSouth filed a Request for Specified Confidential Classification for its responses to AT&T's and MCIWorldCom's First Set of Interrogatories and Requests for Production of Documents to BellSouth (Document No. 00698-02 and cross-referenced Document No. 00545-02). 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 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.

That same day, BellSouth filed a Request seeking confidential treatment of Exhibits JCD-2, JCD-4, and JCD-5 to John C. Donovan's testimony (Document No. 00701-02 and cross-referenced Document No. 15408-01). BellSouth also contends that these exhibits contain vendor-specific pricing information and confidential business information. BellSouth contends that disclosure of this

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information would give its competitors and unfair advantage in future negotiations. It also maintains that this information has not otherwise been disclosed and that it treats the information as confidential.

On January 23, 2002, BellSouth filed a Request for Specified Confidential Classification for its response to Florida Digital Network's Request for Production of Documents, No. 1 (Document No. 00849-02). BellSouth contends that this response contains information pertaining to BellSouth's practices and procedures used to conduct business. If released, BellSouth maintains that competitors would have free access to intellectual property developed at great expense to BellSouth, which would enable the competitors to compete without incurring the expense of developing the research. BellSouth contends that it maintains this information as confidential and that it has not otherwise been disclosed.

Also on January 23, 2002, BellSouth filed a Request for Confidential Classification of its response to Staff's Second Request for Production of Documents, Item No. 21, Attachment 1 (Document No. 00852-02). BellSouth contends that this contains vendor-specific pricing information, customer proprietary information, and confidential business information. BellSouth argues that disclosure of this information would give its competitors an unfair advantage in future negotiations. BellSouth maintains this information as confidential and contends that it has not otherwise been disclosed.

The following day, BellSouth filed a Request for Specified Confidential Treatment of Daonne Caldwell's Late-Filed Deposition Exhibits, Nos. 6 and 11 (Document No. 00905-02). With regard to these items, BellSouth similarly contends that this contains vendor-specific pricing information, customer proprietary information, and confidential business information. BellSouth argues that disclosure of this information would give its competitors an unfair advantage in future negotiations. BellSouth maintains this information as confidential and contends that it has not otherwise been disclosed.

Finally, on January 25, 2002, BellSouth filed a Request for Specified Confidential Classification of its revised response to

Staff's First Set of Interrogatories, Item No. 62, and revised responses to Staff's First Request for Production of Documents, Items Nos. 13, 14, and 16 (Document No. 00978-02). Similar to previous requests, BellSouth contends that these responses contain vendor-specific pricing information, customer proprietary information, and confidential business information. BellSouth argues that disclosure of this information would give its competitors an unfair advantage in future negotiations. BellSouth maintains this information as confidential and contends that it 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.

Specifically regarding BellSouth's responses to AT&T's and MCIWorldCom's First Set of Interrogatories and Requests for Production of Documents (PODs) to BellSouth, BellSouth specifically seeks confidential treatment of Interrogatory No. 9, Attachment 1; POD No. 1, Attachments 1, 2, and 4; POD No. 2, Attachment 1; POD No. 3 (a-f), Attachment 1 for each subpart; and the text of AT&T/MCI's Interrogatory No. 18. BellSouth contends that some of this information includes BellSouth's Regional Telephone Plant Index, which if disclosed, would impair BellSouth's ability to contract for goods and services on reasonable terms. Other information includes is BellSouth's Loop Technology Deployment Directives, BellSouth's Central Office Detail, and a Requirements Document. BellSouth maintains that disclosure of this information, which it contends constitute trade secrets, would impair BellSouth's ability to contract for goods and services at reasonable terms and would also allow competitors to unfairly take advantage of BellSouth's investment in design and system development.

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As for BellSouth's request regarding Exhibits JCD-2, JCD-4, and JCD-5, BellSouth contends that the pages and lines identified in Attachment B, which is attached and incorporated herein, should be protected for the reasons also set forth in Attachment A.

Regarding BellSouth's request for confidential treatment of Attachment 1 to its response to POD No. 1 from Florida Digital Network, BellSouth contends that this Attachment contains practices and procedures used by BellSouth to conduct business. Disclosure of this information would give BellSouth's competitors access to intellectual property that was developed at great expense to the company, contends BellSouth. Thus, if disclosed, competitors would be able to use this information without having incur the costs that BellSouth did in developing it.

As for BellSouth's request regarding Attachment 1 to its response to Staff's POD No. 21, BellSouth maintains that the Attachment is a CD that contains a file titled INVESTLOGIC.xls. This file, according to BellSouth, contains BellSouth's cost to provide certain services. This information, if disclosed, would unfairly provide competitors with information sufficient to undercut BellSouth's prices, thus impairing BellSouth's ability to compete, argues BellSouth. Thus, BellSouth believes the information should be afforded confidential treatment.

Specifically regarding witness Caldwell's Late-Filed Deposition Exhibits 6 and 11, BellSouth believes that files FL-USL.xls and DSLAM.xls contained in Exhibit 6, and the entire CD-ROM comprising Exhibit 11, should be given confidential status, because they contain BellSouth's cost to provide certain services. This information, if disclosed, would unfairly provide competitors with information sufficient to undercut BellSouth's prices, thus impairing BellSouth's ability to compete, argues BellSouth. Thus, BellSouth believes the information should be afforded confidential treatment.

As for BellSouth's request pertaining to its responses to Staff's Interrogatory No. 62, and PODs Nos. 13, 14, and 16, BellSouth contends that the pages and lines identified in Attachment C, which is attached and incorporated herein, should be protected for the reasons also set forth in Attachment B.

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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. 00698-02 and cross-referenced Document No. 00545-02; Document No. 00701-02 and cross-referenced Document No. 15408-01; Document No. 00849-02; Document No. 00852-02; Document No. 00905-02; and Document No. 00978-02 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. 00698-02 and

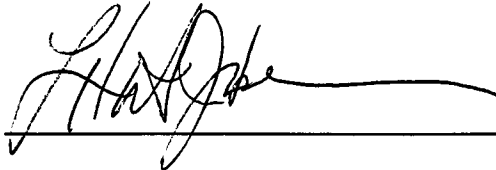
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cross-referenced Document No. 00545-02; Document No. 00701-02 and cross-referenced Document No. 15408-01; Document No. 00849-02; Document No. 00852-02; Document No. 00905-02; and Document No. 00978-02 are hereby granted. It is further

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

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 8th Day of March, 2002.



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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. 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 REBUTTAL  
TESTIMONY OF JOHN C. DONOVAN EXHIBITS JCD-2, JCD-4 AND JCD-5  
AS FILED ON DECEMBER 10, 2001 IN FLORIDA PUBLIC SERVICE  
COMMISSION DOCKET 990649A-TP**

**Explanation of Proprietary Information**

- A. 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.

<u>PAGE NO.</u>	<u>BASIS FOR REQUEST</u>
<u>JCD-2</u>	
Page 1 of 2, lines 4-50, Columns H, I, J	1
Page 2 of 2, lines 4-21, Columns H, I, J	1
<u>JCD-4</u>	
Page 1 of 1, lines 3-10, Columns C-F	1
<u>JCD-5</u>	
Page 1 of 1	
Line 8, Columns B-D, G-I	1
Line 12, Columns B-D, G-I	1
Line 22, Columns, B-D, G-I	1
Line 26, Columns B-D, G-I	1
Line 36, Columns B-D, G-I	1
Line 40, Columns B-D, G-I	1



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**REQUEST FOR CONFIDENTIAL CLASSIFICATION OF BELLSOUTH'S REVISED  
RESPONSE TO STAFF'S FIRST SET OF INTERROGATORIES, ITEM NO. 62 AND  
FIRST REQUEST FOR PRODUCTION OF DOCUMENTS (ITEM NOS. 13, 14 AND  
16), FILED JANUARY 25, 2002, IN FLORIDA DOCKET NO. 990649A-TP**

**Explanation of Proprietary Information**

1. This information reflects vendor specific pricing negotiated by BellSouth. Public disclosure of this information would impair BellSouth's ability to contract for goods and/or services on favorable terms. Pursuant to Section 364.183, Florida Statutes such information is classified as proprietary, confidential business information which is exempt from the Open Records Act.
2. This information reflects BellSouth's cost to provide certain services. The public disclosure of this information would provide BellSouth's competitors with an advantage in that they would know the price or rate below which BellSouth could not provide the service, therefore, it would be inequitable and unfair for BellSouth's competitors to have access to BellSouth's cost information. In addition, this information is valuable, it is used by BellSouth in conducting its business and BellSouth strives to keep it secret. Therefore, such information is a trade secret which should be classified as proprietary, confidential business information pursuant to 364.183, Florida Statutes and is exempt from the Open Records Act.

Florida Statutes. Accordingly, it should be held exempt from the public disclosure requirements of Section 119.07, Florida Statutes.

7. BellSouth has treated and intends to continue to treat the information for which confidential classification is sought as private, and this information has not been generally disclosed.

8. The original of this Request was filed today with the Division of the Commission Clerk and Administrative Services and a copy was served on the Parties.

WHEREFORE, based on the foregoing, BellSouth respectfully requests that the Commission enter an order declaring the information described above to be confidential, proprietary business information that is not subject to public disclosure.

Respectfully submitted this 25<sup>th</sup> day of January, 2002.

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**REQUEST FOR CONFIDENTIAL CLASSIFICATION OF BELLSOUTH'S REVISED  
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**Interrogatory No. 62**

<u>Location</u>	<u>Reason</u>
The Response	1 and 2

**POD NO. 13**

<u>Location</u>	<u>Reason</u>
Lines 1-25	1 and 2

**POD NO. 14**

<u>Location</u>	<u>Reason</u>
Brackets A, B	1 and 2
Lines 1-4	1 and 2

**POD NO. 16**

<u>Location</u>	<u>Reason</u>
Lines 1,2	1 and 2
POD 16 Column	1 and 2