

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

DOCKET NO. 990649A-TP
ORDER NO. PSC-02-0308-CFO-TP
ISSUED: March 8, 2002

ORDER GRANTING REQUESTS FOR CONFIDENTIAL TREATMENT OF
DOCUMENTS NOS. 01555-02, 01558-02, and 01891-02, 02323-02, and
02500-02

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, Order No. PSC-01-2189-PCO-TP, issued November 8, 2001, Order No. PSC-01-2399-PCO-TP, issued December 11, 2001, and Order No. PSC-02-0117-PHO-TP, issued January 25, 2002, established the procedure for the hearing regarding BellSouth's 120-day filing.

On February 8, 2002, BellSouth filed a Request for Specified Confidential Classification. The request seeks confidential classification for its response to AT&T and MCI's Second Set of Interrogatories Item No. 20, Attachment Nos. 1 and 2 (Document No. 01555-02). BellSouth argues that these responses contain vendor-specific pricing, customer proprietary information, and confidential business information. BellSouth contends that it has treated and intends to continue to treat the information for which confidential classification is sought as private, and that this information has not been generally disclosed.

Also on February 8, 2002, BellSouth filed a Request for Specified Confidential Classification of AT&T and MCI's Third Set of Interrogatories, Item No. 27, Attachment 1, and Item 36, Attachments 1-4 (Document No. 01558-02). BellSouth again indicates that this response contains vendor-specific pricing, customer proprietary information, and confidential business information. BellSouth asserts that the public disclosure of this information would provide competitors with an unfair advantage in future

DOCUMENT NUMBER-DATE

02741 MAR-08

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negotiations, and corresponding information is not available to BellSouth. BellSouth treats the information as private, and it is not generally disclosed.

Thereafter, on February 18, 2002, BellSouth filed a Request for Specified Confidential Classification regarding BellSouth's Response to Staff's Third Request for Production of Documents, Item No. 23, Attachment No. 1, Attachment No. 2, and Attachment No. 3 (Document No. 01891-02). Again, BellSouth alleges that this response contains vendor-specific pricing, customer proprietary information, and confidential business information that would cause competitive harm to BellSouth, and would place it at a disadvantage in future negotiations.

On February 27, 2002, BellSouth filed a Request for Specified Confidential Classification for its Response to Staff's Fifth Set of Interrogatories, Item No. 92, Attachment 1, Item No. 96, Attachments 1, 2 and 3, and Item No. 98, Attachments 1, 2 and 3 (Document No. 02323-02). BellSouth followed on March 4, 2002, with a Request for Specified Confidential Classification for AT&T and MCI's Supplemental Rebuttal Testimony of Brian F. Pitkin and Exhibits BFP-11, BFP-13, BFP-15, and BFP-18 (Document No. 02500-02). BellSouth asserts in both of these requests that the documents therein contain vendor-specific pricing, customer proprietary information, and confidential business information that would cause competitive harm to BellSouth.

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 its responses to AT&T and MCI's Second Set of Interrogatories Item No. 20, Attachment Nos. 1 and 2,

BellSouth contends that the rows identified in Attachment A should be protected for the reasons more fully set forth in Attachment A, which is attached and incorporated herein. With regard to its responses to AT&T and MCI's Third Set of Interrogatories Item No. 27, Attachment 1, and Item 36, and Attachment 1-4, BellSouth maintains that the documents and rows identified in Attachment B, which is attached and incorporated herein, should be protected for the reasons expressed therein. Similarly, as it pertains to BellSouth's Response to staff's Third Request for Production of Documents, Item No. 23, Attachment No. 1, Attachment No. 2, and Attachment No. 3, BellSouth requests the pages, columns and lines identified in Attachment C, which is attached and incorporated herein, be protected for the reasons set forth therein. As for its Response to Staff's Fifth Set of Interrogatories, Item No. 92, Attachment 1, Item No. 96, Attachments 1, 2 and 3, and Item No. 98, Attachments 1, 2 and 3, BellSouth believes that the attachments, columns and rows identified in Attachment D, which is attached and incorporated herein, should be protected for the reasons set forth therein. Finally, with regard to AT&T and MCI's Supplemental Rebuttal Testimony of Brian F. Pitkin and Exhibits BFP-11, BFP-13, BFP-15, and BFP-18, BellSouth contends that the documents, pages, columns and lines identified in attachment E, which is attached and incorporated herein, should be protected for the reasons set forth therein.

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.

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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. As such, BellSouth's Requests for Confidential Classification addressing Documents Nos. 01555-02, 01558-02, 01891-02, 02323-02, and 02500-02, 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 Documents Nos. 01555-02, 01558-02, 01891-02, 02323-02, and 02500-02, 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.

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By ORDER of Chairman Lila A. Jaber, as Prehearing Officer,
this 8th Day of March, 2002.

A handwritten signature in black ink, appearing to read 'Lila A. Jaber', is written over a horizontal line. The signature is fluid and cursive.

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 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.

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**REQUEST FOR CONFIDENTIAL CLASSIFICATION OF BELLSOUTH'S RESPONSE
TO AT&T AND MCI'S SECOND SET OF INTERROGATORIES, ITEM NO. 20, FILED
FEBRUARY 8, 2002, IN FLORIDA DOCKET NO. 990649A-TP**

Explanation of Proprietary Information

1. 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.

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ATTACHMENT A

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**REQUEST FOR CONFIDENTIAL CLASSIFICATION OF BELLSOUTH'S RESPONSE
TO AT&T AND MCI'S SECOND SET OF INTERROGATORIES, ITEM NO. 20, FILED
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Interrogatory No. 20

<u>Location</u>	<u>Reason</u>
Attachment 1, Row 6 through and including 16	1
Attachment 2, Row 6 through and including 16	1

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**REQUEST FOR CONFIDENTIAL CLASSIFICATION OF BELLSOUTH'S RESPONSE
TO AT&T AND MCI'S THIRD SET OF INTERROGATORIES, ITEM NO. 27,
ATTACHMENT 1, ITEM 36, ATTACHMENT 1-4, FILED FEBRUARY 8, 2002, IN
FLORIDA DOCKET NO. 990649A-TP**

Explanation of Proprietary Information

1. 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.
2. The information requested contains practices/procedures utilized by BellSouth to conduct business. This information, if released, would allow BellSouth's competitors to have free access to certain intellectual property that was developed at significant expense to BellSouth. BellSouth's competitors can use this information to develop their own strategies without the burden and expense of developing this property for themselves. Thus the disclosure of this information to BellSouth's competitors would impair BellSouth's ability to compete and the information is entitled to confidential classification pursuant to Section 364.183, Florida Statutes. In addition, this information, which BellSouth keeps as trade secrets, is valuable because BellSouth uses it in conducting its business. Therefore, this information should be classified as proprietary, confidential business information exempt from the Open Records Act.

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**REQUEST FOR CONFIDENTIAL CLASSIFICATION OF BELL SOUTH'S RESPONSE
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ATTACHMENT 1, ITEM 36, ATTACHMENT 1-4, FILED FEBRUARY 8, 2002, IN
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Interrogatory No. 27

<u>Location</u>	<u>Reason</u>
Attachment 1, Row 6 through and including 16	1

Interrogatory No. 36

<u>Location</u>	<u>Reason</u>
Attachment 1, Entire Document	2
Attachment 2, Entire Document	2
Attachment 3, Entire Document	2
Attachment 4, Entire Document	2

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**REQUEST FOR CONFIDENTIAL CLASSIFICATION OF BELLSOUTH'S
RESPONSE TO STAFF'S THIRD REQUEST FOR PRODUCTION OF
DOCUMENTS, ITEM NO. 23, ATTACHMENT ONE, TWO AND THREE, FILED
FEBRUARY 18, 2002, IN FLORIDA DOCKET NO. 990649A-TP**

Explanation of Proprietary Information

1. 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.

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ATTACHMENT C

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**REQUEST FOR CONFIDENTIAL CLASSIFICATION OF BELL SOUTH'S
RESPONSE TO STAFF'S THIRD REQUEST FOR PRODUCTION OF
DOCUMENTS, ITEM NO. 23, ATTACHMENT ONE, TWO AND THREE, FILED
FEBRUARY 18, 2002, IN FLORIDA DOCKET NO. 990649A-TP**

Production of Documents, Item 23

<u>Location</u>	<u>Reason</u>
Attachment 1, Row 6 through and including 16	1
Attachment 2, Row 6 through and including 16	1
Attachment 3, Row 6 through and including 16	1

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ATTACHMENT D

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**REQUEST FOR CONFIDENTIAL CLASSIFICATION OF BELLSOUTH'S RESPONSE
TO STAFF'S FIFTH SET OF INTERROGATORIES, ITEM NO. 92, ATTACHMENT
ONE, ITEM NO. 96, ATTACHMENT ONE, TWO AND THREE, AND ITEM NO. 98,
ATTACHMENT ONE, TWO, AND THREE, FILED FEBRUARY 27, 2002, IN FLORIDA
DOCKET NO. 990649A-TP**

Explanation of Proprietary Information

1. 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.

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**REQUEST FOR CONFIDENTIAL CLASSIFICATION OF BELLSOUTH'S RESPONSE
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ONE, ITEM NO. 96, ATTACHMENT ONE, TWO AND THREE, AND ITEM NO. 98,
ATTACHMENT ONE, TWO, AND THREE, FILED FEBRUARY 27, 2002, IN FLORIDA
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Interrogatory Item No. 92

<u>Location</u>	<u>Reason</u>
Attachment 1, Column E, F and G	1

Interrogatory Item No. 96

<u>Location</u>	<u>Reason</u>
Attachment 1, Rows 6 through 16	1
Attachment 2, Rows 6 through 16	1
Attachment 3, Column E, F and G	1

Interrogatory Item No. 98

<u>Location</u>	<u>Reason</u>
Attachment 1, Rows 6 through 16	1
Attachment 2, Rows 6 through 16	1
Attachment 3, Column E, F and G	1

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**REQUEST FOR CONFIDENTIAL CLASSIFICATION OF THE SUPPLEMENTAL
REBUTTAL TESTIMONY OF BRIAN F. PITKIN AND EXHIBIT NOS. BFP-11,
BFP-13, BFP-15 AND BFP-18 AS FILED ON FEBRUARY 11, 2002 IN
FLORIDA PUBLIC SERVICE COMMISSION DOCKET 990649A-TP**

Explanation of Proprietary Information

1. 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, BellSouth uses it in conducting its business and BellSouth strives to keep it secret. Therefore, such information is a trade secret that should be classified as proprietary, confidential business information pursuant to 364.183, Florida Statutes and is exempt from the Open Records Act.
2. This information contains competitive business information, BellSouth's Regional Telephone Plant Index. 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, such information is a trade secret which should be classified as proprietary, confidential business information, exempt from the Open Records Act.
3. This information contains competitive business information. 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, such information is a trade secret which should be classified as proprietary, confidential business information, exempt from the Open Records Act.

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**REQUEST FOR CONFIDENTIAL CLASSIFICATION OF THE SUPPLEMENTAL
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BFP-13, BFP-15 AND BFP-18 AS FILED ON FEBRUARY 11, 2002 IN
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<u>Supplemental Rebuttal</u>	
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<u>BFP-13</u>	
Page 1 of 4, lines 1-31, Columns D and E	3
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<u>BFP-15</u>	
Entire Document	2
<u>BFP-18</u>	
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