

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition by BellSouth
Telecommunications, Inc. for
arbitration of certain issues in
interconnection agreement with
Supra Telecommunications and
Information Systems, Inc.

DOCKET NO. 001305-TP
ORDER NO. PSC-02-0844-CFO-TP
ISSUED: June 19, 2002

ORDER ON REQUESTS FOR CONFIDENTIAL CLASSIFICATION OF
DOCUMENT NO. 05479-02 AND CROSS-REFERENCED DOCUMENT NO. 04781-
02, DOCUMENT NO. 05536-02 AND CROSS-REFERENCED DOCUMENTS NOS.
04796-02 AND 04770-02, DOCUMENT NO. 05733-02 AND CROSS-
REFERENCED DOCUMENT NO. 05057-02, DOCUMENT NO. 05907-02 AND
CROSS-REFERENCED DOCUMENT NO. 05245-02

On September 1, 2000, BellSouth Telecommunications, Inc. (BellSouth) filed a petition for arbitration of certain issues in an interconnection agreement with Supra Telecommunications and Information Systems, Inc. (Supra). Supra filed its response, and this matter was set for hearing. An administrative hearing was held on September 26-27, 2001.

On May 22, 2002, BellSouth filed a Request for Specified Confidential Classification for portions of BellSouth's Opposition to Supra's Motion for Extension of Time (Document No. 05479-02 and cross-referenced Document No. 04781-02). Therein, BellSouth seeks confidential treatment of certain information identified in its Opposition to Supra's Motion. BellSouth maintains that the information is valuable, that it contains Supra's customer-specific account information, and that it strives to keep it secret.

On May 23, 2002, BellSouth filed a Request for Specified Confidential Classification for portions of Supra's Motion to Strike and Reply to BellSouth's Opposition to Supra's Motion to Disqualify and Recuse (Document No. 05536-02. and cross-referenced Documents Nos. 04796-02 and 04770-02). BellSouth maintains that Supra's Motion released confidential information without prior notification to BellSouth. BellSouth states that upon making the discovery of the release of confidential information, it promptly filed its Notice of Intent to Request Confidential Classification. BellSouth argues that the information released by Supra has already been determined to be confidential by this Commission in Order No.

DOCUMENT NUMBER-DATE

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PSC-02-0293-CFO-TP, and that Supra's action is in violation of that Order.

Thereafter, on May 30, 2002, BellSouth filed a Request for Confidential Classification for its Opposition to Supra's Motion to Strike and Reply to BellSouth's Opposition to Supra's Motion to Disqualify and Recuse (Document No. 05733-02 and cross-referenced Document No. 05057-02). In its request, BellSouth asserts that several portions of its Opposition contain substantive references to the private commercial arbitration proceedings between the parties, including specific references to the findings of the commercial arbitration panel. BellSouth maintains that it has not waived its rights regarding the confidentiality of the commercial arbitration proceedings. It also notes that the subject information contains references to Supra's customer account records, and thus may not be disclosed pursuant to Section 364.24, Florida Statutes.

Finally, on June 5, 2002, BellSouth filed a Request for Confidential Classification for portions of its Motion for Reconsideration of Order No. PSC-02-0637-PCO-TP (Document No. 05907-02 and cross-referenced Document No. 05245-02). Here, BellSouth contends that the subject information references Supra's account records, which may be prohibited from being disclosed under Section 364.24, Florida Statutes. BellSouth maintains that this information may be considered confidential and proprietary to Supra, and that BellSouth has not disclosed it.

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, 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.

Further, Section 364.24(2), Florida Statutes, in pertinent part, provides:

Any officer or person in the employ of any telecommunications company shall not intentionally disclose customer account records except as authorized by the customer or as necessary for billing purposes, or required by subpoena, court order other process of court, or as otherwise allowed by law.

May 22, 2002 Request

Specifically, in its May 22, 2002, request, BellSouth seeks confidential treatment for Page 7 of its Opposition, Line 12, and Lines 18-20, because the information contained therein substantively references the parties' commercial arbitration awards. BellSouth contends that the parties are contractually prohibited from disclosing this information, and the Federal District Court for the Southern District of Florida, in Civil Action No. 01-3365, has also required that the parties maintain this information as confidential. BellSouth further contends that certain information identified in these lines is customer-specific account information, which is protected under Section 364.24, Florida Statutes, and thus is entitled to confidential treatment. BellSouth maintains that this information qualifies as proprietary confidential business information under Section 364.183, Florida

Statutes, and that it has not otherwise been disclosed. BellSouth's position is further specified in Attachment A, which is attached and incorporated in this Order.

The lines of information for which BellSouth requests confidentiality appear to meet the definition of proprietary confidential business information in Section 364.183(3), Florida Statutes. Furthermore, certain information contained in these lines appears to be customer-specific account information, which should be protected in accordance with Section 364.24, Florida Statutes. It does not appear that this information has been previously disclosed. This information shall, therefore, be granted confidential classification.

May 23, 2002 Request

In its May 23, 2002, request, BellSouth contends that the information in Supra's Motion to Strike and Reply to BellSouth's Opposition to Supra's Motion to Disqualify and Recuse, also includes substantive references to the private commercial arbitration proceeding between the parties, including specific references to the findings of the commercial arbitration panel. BellSouth seeks confidential classification of Page 2, Lines 14-17 and 20-22, as well as Page 3, Lines 1 and 11-13. BellSouth maintains that in addition to the parties' contractual obligation to keep the proceedings of the private arbitration confidential, the confidential nature of the proceedings has been confirmed by the Federal District Court for the Southern District of Florida, in Civil Action No. 01-3365. BellSouth also asserts that the subject information contains references to information already deemed confidential by the Commission, and that Supra's release of the information constitutes a violation of Order No. PSC-02-0293-CFO-TP. BellSouth's position is further specified in Attachment B, which is attached and incorporated in this Order.

In accord with my determination in Order No. PSC-02-0663-CFO-TP, I find that based on the definition of proprietary confidential business information in Section 364.183(3), Florida Statutes, BellSouth's May 23, 2002, Request for Confidential Classification should be denied. The motion submitted by Supra on May 1, 2002, was submitted as a public document and as such, became a matter of the public record. The information has been disclosed, and such

disclosure was not made pursuant to ". . . a statutory provision, an order of a court or administrative body, or private agreement," as allowed by Section 364.183, Florida Statutes. Therefore, BellSouth's Request for Confidential Classification for portions of Supra's May 1, 2002, Motion to Strike and Reply to BellSouth's Opposition to Supra's Motion to Disqualify and Recuse, (Document No. 05536-02 and cross-referenced Documents Nos. 04796-02 and 04770-02), is hereby denied.

May 30, 2002 Request

Regarding BellSouth's May 30, 2002, request, BellSouth again maintains that portions of its Opposition contain substantive references to the private commercial arbitration proceedings, that a federal court has confirmed the confidential nature of the commercial arbitration proceedings, and that the subject information contains references to Supra's customer account records and thus may be prohibited from being disclosed pursuant to 364.24, Florida Statutes. BellSouth seeks confidential classification of Page 4, Lines 1-3, 5-9, 11-12, 14, 16-18, 20-28, 30-32, 34-36, and 38-45 of its Motion in Opposition. BellSouth's position is further specified in Attachment C, which is attached and incorporated in this Order.

Upon consideration, the lines of information for which BellSouth requests confidentiality appear to meet the definition of proprietary confidential business information in Section 364.183(3), Florida Statutes. This information shall, therefore, be granted confidential classification.

June 5, 2002 Request

BellSouth's June 5, 2002, request noted that portions of its Motion for Reconsideration, submitted on May 15, 2002, contained information that Supra may consider confidential and proprietary, as it references Supra's account records. The request seeks confidential classification of Page 2, Lines 21-22, and Page 11, Line 1. BellSouth states that this information should not be disclosed under Section 364.24, Florida Statutes, and it is entitled to confidential classification pursuant to Section 364.183(3). BellSouth's position is further specified in Attachment D, which is attached and incorporated in this Order.

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Upon consideration, the lines of information for which BellSouth requests confidentiality appear to meet the definition of proprietary confidential business information in Section 364.183(3), Florida Statutes. This information shall, therefore, be granted confidential classification.

Based on the foregoing, it is therefore

ORDERED by Commissioner Michael A. Palecki, as Prehearing Officer, that BellSouth Telecommunications, Inc.'s Request for Specified Confidential Classification for portions of BellSouth's Opposition to Supra's Motion for Extension of Time, Document No. 05479-02 and cross-referenced Document No. 04781-02, is granted. It is further

ORDERED that BellSouth Telecommunications, Inc.'s Request for Specified Confidential Classification for portions of Supra's Motion to Strike and Reply to BellSouth's Opposition to Supra's Motion to Disqualify and Recuse, Document No. 05536-02 and cross-referenced Documents Nos. 04796-02 and 04770-02, is denied. It is further

ORDERED that BellSouth Telecommunications, Inc.'s Request for Confidential Classification for its Opposition to Supra's Motion to Strike and Reply to BellSouth's Opposition to Supra's Motion to Disqualify and Recuse, Document No. 05733-02 and cross-referenced Document No. 05057-02, is granted. It is further

ORDERED that BellSouth Telecommunications, Inc.'s Request for Confidential Classification for portions of its Motion for Reconsideration of Order No. PSC-02-0637-PCO-TP, Document No. 05907-02 and cross-referenced Document No. 05245-02, is granted. It is further

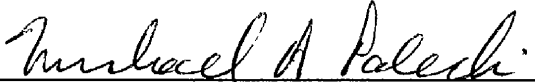
ORDERED that pursuant to Section 364.183, Florida Statutes, and Rule 25-22.006, Florida Administrative Code, the confidentiality granted to the material specified herein shall expire eighteen (18) months from the date of the issuance of this Order, in the absence of a renewed request for confidentiality pursuant to Section 364.183, Florida Statutes. It is further

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

ORDERED that in accordance with Rule 25-22.006(10), Florida Administrative Code, any material denied confidential classification by this Order shall be kept confidential until the time for filing an appeal has expired.

By ORDER of Commissioner Michael A. Palecki, as Prehearing Officer, this 19th Day of June, 2002.



MICHAEL A. PALECKI
Commissioner 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.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

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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 25-22.0376, 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.

ATTACHMENT A

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REQUEST FOR CONFIDENTIAL CLASSIFICATION OF BELLSOUTH'S OPPOSITION TO SUPRA'S MOTION FOR EXTENSION OF TIME FILED ON MAY 1, 2002 IN FLORIDA DOCKET NO. 001305-TP

Explanation of Proprietary Information

1. This information contains substantive references to commercial arbitration awards between BellSouth and Supra. Both BellSouth and Supra are bound by a previous and now-expired Interconnection Agreement to keep the results of the arbitration confidential. Since the public release of this information is contractually prohibited, it is entitled to confidential classification pursuant to Section 364.183, Florida Statutes. The Parties are also bound by a ruling from the United States District Court for the Southern District of Florida to keep the information confidential.
2. This information contains Supra's customer account records, which is protected under Section 364.24, Florida Statutes, and thus is entitled to confidential treatment.

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**REQUEST FOR CONFIDENTIAL CLASSIFICATION OF BELLSOUTH'S
OPPOSITION TO SUPRA'S MOTION FOR EXTENSION OF TIME FILED ON
MAY 1, 2002 IN FLORIDA DOCKET NO. 001305-TP**

Location

Reason

Page 7, line 12

2

Page 7, lines 18 thru 20

1 and 2

ATTACHMENT B

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REQUEST FOR CONFIDENTIAL CLASSIFICATION FOR PORTIONS OF SUPRA'S MOTION TO STRIKE AND REPLY TO BELL SOUTH'S OPPOSITION TO SUPRA'S MOTION TO DISQUALIFY AND RECUSE FILED ON MAY 1, 2002 IN FLORIDA DOCKET NO. 001305-TP

Explanation of Proprietary Information

1. This information contains substantive references to commercial arbitration awards between BellSouth and Supra. Both BellSouth and Supra are bound by a previous and now-expired Interconnection Agreement to keep the results of the arbitration confidential. Since the public release of this information is contractually prohibited, it is entitled to confidential classification pursuant to Section 364.183, Florida Statutes. The Parties are also bound by a ruling from the United States District Court for the Southern District of Florida to keep the information confidential. Finally, the Commission has already determined that portions of the identified information is confidential and subject to protection under Section 364.183. See Order No. PSC-02-0293-CFO-TP.

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**REQUEST FOR CONFIDENTIAL CLASSIFICATION FOR PORTIONS OF SUPRA'S
MOTION TO STRIKE AND REPLY TO BELL SOUTH'S OPPOSITION TO SUPRA'S
MOTION TO DISQUALIFY AND RECUSE FILED ON MAY 1, 2002 IN FLORIDA
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Page 2, lines 14-17	1	
Page 2, lines 20-22	1	1
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ATTACHMENT C

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REQUEST FOR CONFIDENTIAL CLASSIFICATION FOR PORTIONS OF BELLSOUTH'S OPPOSITION TO SUPRA'S MOTION TO STRIKE AND REPLY TO BELLSOUTH'S OPPOSITION TO SUPRA'S MOTION TO DISQUALIFY AND RECUSE FILED ON MAY 1, 2002 IN FLORIDA DOCKET NO. 001305-TP

Explanation of Proprietary Information

1. This information contains substantive references to commercial arbitration awards between BellSouth and Supra. Both BellSouth and Supra are bound by a previous and now-expired Interconnection Agreement to keep the results of the arbitration confidential. Since the public release of this information is contractually prohibited, it is entitled to confidential classification pursuant to Section 364.183, Florida Statutes. The Parties are also bound by a ruling from the United States District Court for the Southern District of Florida to keep the information confidential. In addition, the subject information contains references to Supra's customer account information, which may be prohibited from being disclosed pursuant to Section 364.24 and thus should be entitled to confidential classification.

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BELLSOUTH'S OPPOSITION TO SUPRA'S MOTION TO STRIKE AND REPLY TO
BELLSOUTH'S OPPOSITION TO SUPRA'S MOTION TO DISQUALIFY AND
RECUSE FILED ON MAY 1, 2002 IN FLORIDA DOCKET NO. 001305-TP**

<u>Location</u>	<u>Reason</u>
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Page 4, Lines 5 thru 9	1
Page 4, Lines 11 thru 12	1
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Page 4, Lines 16 thru 18	1
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ATTACHMENT D

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**REQUEST FOR CONFIDENTIAL CLASSIFICATION FOR PORTIONS OF
BELLSOUTH'S MOTION FOR RECONSIDERATION OF ORDER NO. PSC-02-0637-
PCO-TP FILED ON MAY 15, 2002 IN FLORIDA DOCKET NO. 001305-TP**

Explanation of Proprietary Information

1. The subject information contains references to Supra's account records with BellSouth. This information may be prohibited from being disclosed pursuant to Section 364.24, Florida Statutes and thus should be entitled to confidential classification.

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PCO-TP FILED ON MAY 15, 2002 IN FLORIDA DOCKET NO. 001305-TP**

<u>Location</u>	<u>Reason</u>
Page 2, Lines 21-22	1
Page 11, Line 1	1