

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for expedited review and cancellation of BellSouth Telecommunications, Inc.'s Key Customer promotional tariffs and for investigation of BellSouth's promotional pricing and marketing practices, by Florida Digital Network, Inc.

DOCKET NO. 020119-TP

In re: Petition for expedited review and cancellation of BellSouth Telecommunications, Inc.'s Key Customer promotional tariffs by Florida Competitive Carriers Association.

DOCKET NO. 020578-TP
ORDER NO. PSC-02-1759-CFO-TP
ISSUED: December 13, 2002.

ORDER GRANTING BELLSOUTH'S REQUESTS FOR
CONFIDENTIAL CLASSIFICATION OF DOCUMENT NOS. 12446-02
(X-REF DOCUMENT NOS. 11579-02 AND 11580-02), 12683-02
(X-REF DOCUMENT NO. 11870-02), AND DOCUMENT NO. 12766-02
(X-REF DOCUMENT NO. 11908-02)

On February 14, 2002, Florida Digital Network, Inc. (FDN) filed a Petition for Expedited Review and Cancellation of BellSouth Telecommunications, Inc.'s (BellSouth) Key Customer Promotional Tariffs and For An Investigation of BellSouth Telecommunications, Inc.'s Promotional Pricing and Marketing Practices (January tariff filing). On March 5, 2002, BellSouth filed its Response and Answer to FDN's Petition.

On June 25, 2002, the Florida Competitive Carriers Association (FCCA) filed a Petition for Expedited Review and Cancellation Of BellSouth's Key Customer Promotional Tariffs (June tariff filing) in Docket No. 020578-TP.

On July 15, 2002, BellSouth filed a Motion to Dismiss or, in the alternative, Response to the "Petition of the Florida Competitive Carriers Association (FCCA) for Expedited Review and

DOCUMENT NUMBER-DATE

13606 DEC 13 02

FPSC-COMMISSION CLERK

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Cancellation Of BellSouth Telecommunications Inc.'s Key Customer Promotional Tariffs."

FDN and the FCCA filed separate protests of Order No. PSC-02-0875-PAA-TP on July 19, 2002, each requesting an administrative hearing be convened in Docket No. 020119-TP. On July 22, 2002, the FCCA filed a Response to BellSouth's Motion to Dismiss. By Order No. PSC-02-1237-FOF-TP, issued September 9, 2002, BellSouth's Motion to Dismiss FCCA's complaint was denied and Docket Nos. 020119-TP and 020578-TP were consolidated for purposes of hearing. By Order No. PSC-02-1295-PCO-TP, issued September 23, 2002, the procedural and hearing dates were set for these dockets. The administrative hearing set in these dockets is scheduled for January 8-9, 2003.

On November 13, 2002, BellSouth filed a Request for Specified Confidential Classification of Exhibits CG-4 to the Direct Testimony of Carlos Garcia (Document No. 12446-02 and cross-referenced Document No. 11579-02) and Exhibits WS-1 and WS-2 to the Direct Testimony of W. Bernard Shell (cross-referenced Document No. 11580-02). BellSouth maintains that the exhibits contain confidential business information that is proprietary to BellSouth. BellSouth maintains the information valuable, it strives to keep it secret, and the information has not been generally disclosed. BellSouth's position is further specified in Attachment A, which is attached and incorporated in this Order.

On November 19, 2002 BellSouth filed a Request for Specified Confidential Classification of its Supplemental Response to Staff's Third Set of Interrogatories, No. 14 (Document No. 12683-02 and cross-referenced Document No. 11870-02). BellSouth asserts that the response contains confidential business information that is confidential and proprietary to BellSouth. BellSouth states the information is valuable, BellSouth strives to keep it secret, and this information has not been generally disclosed. BellSouth's position is further specified in Attachment B, which is attached and incorporated in this Order.

In addition, BellSouth filed a Request for Specified Confidential Classification for BellSouth's Response to Florida Digital Network, Inc.'s First Set of Interrogatories No. 23, on November 20, 2002 (Document No. 12766-02 and cross-referenced

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Document No. 11908-02). Again, BellSouth states that the response contains confidential business information that is proprietary to BellSouth. BellSouth states the information is valuable, BellSouth strives to keep it secret, and this information has not been generally disclosed. BellSouth's position is further specified in Attachment C, which is attached and incorporated in this Order.

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.

Upon consideration, the responses 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 Braulio L. Baez, as Prehearing Officer, that BellSouth Telecommunications, Inc.'s Request for Specified Confidential Classification of Exhibits CG-4 to the Direct Testimony of Carlos Garcia, Document No. 12446-02 and cross-referenced Document No. 11579-02, and Exhibits WS-1 and WS-2 to the Direct Testimony of W. Bernard Shell, cross-referenced Document No. 11580-02, is granted. It is further

ORDERED that BellSouth Telecommunications, Inc.'s Request for Specified Confidential Classification of its Supplemental Response to Staff's Third Set of Interrogatories, No. 14, Document No. 12683-02 and cross-referenced Document No. 11870-02, is granted. It is further

ORDERED that BellSouth Telecommunications, Inc.'s Request for Specified Confidential Classification of BellSouth's Response to Florida Digital Network, Inc.'s First Set of Interrogatories No. 23, on November 20, 2002, Document No. 12766-02 and cross-referenced Document No. 11908-02, is granted. It is further

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

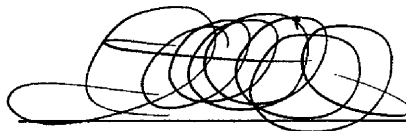
ORDERED that this Order will be the only notification by the Commission to the parties concerning the expiration of the confidentiality time period.

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ORDERED that pursuant to Section 364.183, Florida Statutes, and Rule 25-22.006, Florida Administrative Code, any confidentiality granted to the documents specified herein shall expire eighteen (18) months from the date of issuance of this Order in the absence of a renewed request for confidentiality pursuant to Section 364.183. 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 Commissioner Braulio L. Baez, as Prehearing Officer, this 13th day of December, 2002.



BRAULIO L. BAEZ
Commissioner and Prehearing Officer

(S E A L)

LHD

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.

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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.

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.

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REQUEST FOR CONFIDENTIAL CLASSIFICATION OF BELL SOUTH'S EXHIBIT CG-4 TO THE DIRECT TESTIMONY OF CARLOS GARCIA AND EXHIBITS WS-1 AND WS-2 TO THE DIRECT TESTIMONY OF W. BERNARD SHELL FILED OCTOBER 23, 2002, IN FLORIDA DOCKET NOS. 020119-TP AND 020578-TP

Explanation of Proprietary Information

1. This information reflects end-user specific account information. BellSouth is prohibited from disclosing these records pursuant to 364.24, Florida Statutes. Therefore, the subject information should be classified as proprietary, confidential business information pursuant to Section 364.183, Florida Statutes and is exempt from the Open Records Act.
2. This information reflects BellSouth's cost to provide certain services. It would be inequitable and unfair for BellSouth's competitors to have access to BellSouth's cost information. Further, public disclosure of this information would impair BellSouth's ability to contract for goods and services on favorable terms. Accordingly, the subject information should be classified as proprietary, confidential business information pursuant to 364.183, Florida Statutes.

ATTACHMENT A

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CG-4

<u>Location</u>	<u>Reason</u>
Pg 1, Column A, Lines 1,2,4	1
Pg 1, Column B, Lines 5,6,7	1
Pg 2, Column A, Lines 1,2,4,12,13,25	1
Pg 2, Column E, Lines 33,35,45	1
Pg 3, Column A, Lines 1,2,5,6,27,29	1
Pg 3, Column E, Lines 37,45,46,54,56	1
Pg 4, Column A, Lines 1,2,5,6,21,23	1
Pg 5, Column A and B, Line 2	1
Pg 6, Column A, Lines 3-10	1
Pg 6, Column B and C, Line 2	1
Pg 7, Column A, Line 2	1
Pg 7, Column B, Lines 2,6	1
Pg 8, Column A and B, Line 2	1
Pg 8, Lines 10-13	1
Pg 9, Columns A and B, Line 2	1
Pg 10, Lines 1 and 2	1
Pg 10, Column C, Lines 3-6	1
Pg 11, Lines 1,2,3	1
Pg 12, Lines 1,2,3,4	1
Pg 13, Lines 1,2,3,4	1
Pg 14, Lines 1-8	1
Pg 15, Line 1 Client	1
Pg 16, Line 1	1
Pg 17, Lines 1,1,6,11	1
Pg 19, Lines 1,2,9,14	1
Pg 21, Lines 1,2,8,13	1

ATTACHMENT A

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WS-1

<u>Location</u>	<u>Reason</u>
Column A	2

WS-2

<u>Location</u>	<u>Reason</u>
Pg 1-7, Columns A, B, C, D	2
Pg 8-9, Columns A,B,C,D,E,F	2
Pg 10, Columns A,B,C,D,E,F,G	2
Pg 11-14, Columns A,B,C,D,E,F	2
Pg 15, Columns A,B,C,D	2
Pg 16-17, Entire Page	2

ATTACHMENT B

**BellSouth Telecommunications, Inc.
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**REQUEST FOR CONFIDENTIAL CLASSIFICATION OF BELLSOUTH'S REVISED
RESPONSE TO STAFF'S 3RD SET OF INTERROGATORIES, ITEM NO. 14 FILED
OCTOBER 29, 2002, IN FLORIDA DOCKET NOS. 020119-TP AND 020578-TP**

Explanation of Proprietary Information

1. This information contains confidential customer information and competitive business information, including customer location. 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.



ATTACHMENT B

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**REQUEST FOR CONFIDENTIAL CLASSIFICATION OF BELLSOUTH'S REVISED
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Interrogatory No. 14

<u>Location</u>	<u>Reason</u>
CLAC Column	1
Qty Column	1

ATTACHMENT C

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**REQUEST FOR CONFIDENTIAL CLASSIFICATION OF BELLSOUTH'S
SUPPLEMENTAL RESPONSE TO FLORIDA DIGITAL NETWORK, INC.'S FIRST
SET OF INTERROGATORIES, ITEM NO. 23 FILED OCTOBER 30, 2002, IN FLORIDA
DOCKET NOS. 020119-TP AND 020578-TP**

Explanation of Proprietary Information

1. This information reflects BellSouth's market strategy relating to its competitive marketing position. Specifically, this information describes and evaluates BellSouth's potential strategic responses to various competitive scenarios. BellSouth's competitors can use this information to develop their own market strategy with which to thwart BellSouth's effort in this market. Thus, the disclosure of this information to BellSouth's competitors would impair BellSouth's ability to compete and is entitled to confidential classification pursuant to Section 364.183(3)(a) and (3)(e), Florida Statutes. In addition, this information is valuable as it is used by BellSouth in conducting its business and BellSouth strives to keep it secret. Therefore, this 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 BELLSOUTH'S
SUPPLEMENTAL RESPONSE TO FLORIDA DIGITAL NETWORK, INC.'S FIRST
SET OF INTERROGATORIES, ITEM NO. 23 FILED OCTOBER 30, 2002, IN FLORIDA
DOCKET NOS. 020119-TP AND 020578-TP**

Interrogatory No. 23

<u>Location</u>	<u>Reason</u>
Line 3	1
Line 6	1

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