

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint of Florida  
Competitive Carriers Association  
against BellSouth  
Telecommunications, Inc.  
regarding BellSouth's practice  
of refusing to provide  
FastAccess Internet Service to  
customers who receive voice  
service from a competitive voice  
provider, and request for  
expedited relief.

DOCKET NO. 020507-TL  
ORDER NO. PSC-03-0443-CFO-TL  
ISSUED: April 1, 2003

ORDER GRANTING BELLSOUTH'S REQUEST FOR SPECIFIED CONFIDENTIAL  
CLASSIFICATION FOR DOCUMENT NO. 00736-03  
(X-REF. 00046-03 AND 00435 [FOR INTERROGATORY NO. 5  
ONLY]) (DOCUMENTS NOS. 13990-02, 00405-03, 00046-03)

On June 12, 2002, the Florida Competitive Carriers Association (FCCA) filed a Complaint against BellSouth Telecommunications, Inc. (BellSouth) and a Request for Expedited Relief seeking relief from BellSouth's practice of refusing to provide its FastAccess service to customers who receive voice service from an Alternative Local Exchange Carrier (ALEC). By Order No. PSC-02-0935-PCO-TL, issued July 12, 2002, the request for expedited relief was denied.

On January 13, 2003, BellSouth filed its Request for Specified Confidential Classification for the Rebuttal Testimony of Eric Fogle's Exhibit EF-2, Document No. 00405-03 (x-ref. 13990-02), which was subsequently amended by the following pleadings. On January 23, 2003, BellSouth filed its Request for Specified Confidential Classification for its Responses to Staff's First Set of Interrogatories Nos. 5 and 11. BellSouth noted in its attached letter that its Response to Interrogatory No. 11 was also filed as Eric Fogle's Exhibit EF-2. BellSouth indicated that by filing this Request it was revising its previous request for confidential treatment of EF-2 because some but not all of the exhibit is confidential. Thereafter, on January 30, 2003, BellSouth filed an Amended Request for Specified Confidential Classification for the Rebuttal Testimony of Eric Fogle's Exhibit EF-2, Document No.

DOCUMENT NUMBER-DATE

12983 APR-18

PSC-03-0443-CFO-TL CLERK

ORDER NO. PSC-03-0443-CFO-TL  
DOCKET NO. 020507-TL  
PAGE 2

00986-03 (x-ref. 13990) (Documents Nos. 00405-03, 00046-03, 00736-03). This Order address BellSouth's January 23, 2003 and January 30, 2003, Requests.

Attachment A, attached hereto and incorporated herein, contains a detailed justification of the confidentiality of some of the information regarding Exhibit EF-2. BellSouth contends that it filed its request because some of the information in Fogle's testimony contains cost information and vendor-specific pricing information that could cause competitive harm to BellSouth. BellSouth states in its request that this information is valuable and it strives to keep the information secret. Further, BellSouth asserts that this information has not been generally disclosed.

Attachment B, attached hereto and incorporated herein, contains a detailed justification of the confidentiality of the information regarding BellSouth's Response to Interrogatory No. 5. BellSouth states that the document(s) contain competitive business information that is considered confidential and proprietary. BellSouth contends that it has treated and intends to continue to treat the information as private and the information has not been generally 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.

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

ORDER NO. PSC-03-0443-CFO-TL  
DOCKET NO. 020507-TL  
PAGE 3

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 would give its competitors an artificial competitive advantage, allowing them to successfully compete against BellSouth without the usual market trial and error. As such, BellSouth's Request for Specified Confidential Classification of Document No. 00736-03 (x-ref. 00046-03 and 00435 [for Interrogatory No. 5 only]) (Documents Nos. 13990-02, 00405-03, 00046-03) is hereby granted.

ORDER NO. PSC-03-0443-CFO-TL  
DOCKET NO. 020507-TL  
PAGE 4


Based on the foregoing, it is

ORDERED by Commissioner Braulio L. Baez, as Prehearing Officer, that BellSouth Telecommunications, Inc.'s Request for Specified Confidential Classification of Document No. 00736-03 (x-ref. 00046-03 and 00435 [for Interrogatory No. 5 only]) (Documents Nos. 13990-02, 00405-03, 00046-03), as set forth in Attachments A and B, is hereby granted and incorporated by reference into this Order. 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 Commissioner Braulio L. Baez, as Prehearing Officer, this 1st Day of April, 2003.

 for Commissioner Braulio L. Baez

---

BRULIO L. BAEZ  
Commissioner and Prehearing Officer

( S E A L )

PAC

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.

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.

**BellSouth Telecommunications, Inc.  
FPSC Docket No. 020507-TL  
Amended Request for Confidential  
Classification  
Page 1 of 1  
1/30/03**

**AMENDED REQUEST FOR CONFIDENTIAL CLASSIFICATION OF EXHIBIT  
EF-2 TO THE REBUTTAL TESTIMONY OF ERIC FOGLE FILED ON  
DECEMBER 23, 2002 IN FLORIDA PUBLIC SERVICE  
COMMISSION DOCKET 020507-TL**

**Explanation of Proprietary Information**

1. The information contained includes cost information, vendor-specific pricing information and confidential business information that is considered proprietary to BellSouth. Disclosure of this information would cause competitive harm to BellSouth. Therefore, this information should be classified as proprietary, confidential business information pursuant to Section 364.183, Florida Statutes and is exempt from the Open Records Act.

**PAGE NO.**

**BASIS FOR REQUEST**

**Exhibit EF-2**

Columns A, B, C, D

1

ORDER NO. PSC-03-0443-CFO-TL  
DOCKET NO. 020507-TL  
PAGE 7

ATTACHMENT B

**BellSouth Telecommunications, Inc.**  
**FPSC Docket No. 020507-TL**  
**Request for Confidential Classification**  
**Page 1 of 2**  
**01/23/03**

**REQUEST FOR CONFIDENTIAL CLASSIFICATION OF BELL SOUTH'S RESPONSE  
TO STAFF'S 1<sup>ST</sup> SET OF INTERROGATORIES (ITEM NOS. 5 AND 11) FILED  
JANUARY 2, 2003, IN FLORIDA DOCKET NO. 020507-TL**

**Explanation of Proprietary Information**

1. This information contains competitive business information. 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.

ORDER NO. PSC-03-0443-CFO-TL  
DOCKET NO. 020507-TL  
PAGE 8

ATTACHMENT B

**BellSouth Telecommunications, Inc.**  
**FPSC Docket No. 020507-TL**  
**Request for Confidential Classification**  
**Page 2 of 2**  
**01/23/03**

**REQUEST FOR CONFIDENTIAL CLASSIFICATION OF BELLSOUTH'S RESPONSE  
TO STAFF'S 1ST SET OF INTERROGATORIES (ITEM NOS. 5 AND 11) FILED  
JANUARY 2, 2003, IN FLORIDA DOCKET NO. 020507-TL**

**Interrogatory No. 5**

<u>Location</u>	<u>Reason</u>
Items A-G	1

**Interrogatory No. 11**

<u>Location</u>	<u>Reason</u>
Columns A-B, C-D	1