

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint by Supra
Telecommunications and
Information Systems, Inc.
against BellSouth
Telecommunications, Inc.
regarding BellSouth's alleged
use of carrier to carrier
information.

DOCKET NO. 030349-TP
ORDER NO. PSC-03-0921-CFO-TP
ISSUED: August 11, 2003

ORDER GRANTING REQUESTS FOR CONFIDENTIAL CLASSIFICATION OF
DOCUMENT NOS. 05813-03, 05872-03, and 06173-03 (X-REF 06516-03)

On April 18, 2003, Supra Telecommunications and Information Systems, Inc. (Supra) filed its Emergency Petition for Expedited Review of BellSouth Telecommunications, Inc.'s (BellSouth) \$75 Cash Back Promotion and Investigation into BellSouth's Pricing and Marketing Practices. On May 5, 2003, BellSouth filed its Answer to Supra's Emergency Petition.

On June 9, 2003, Supra filed for leave to amend its petition, attaching its Amended Emergency Petition alleging BellSouth's violation of 47 U.S.C. Section 222 and Florida Public Service Commission policies regarding the use of wholesale information in retail marketing. On June 17, 2003, by Order No. PSC-03-0721-PCO-TP, Supra was granted leave to amend its petition. On the same date, Order No. PSC-03-0718-PCO-TP, the Order Establishing Procedure, was issued. This matter is set for hearing on August 29, 2003.

On June 30, 2003, Supra filed the direct testimony and Exhibits of David A. Nilson. On the same date, Supra filed a letter claiming confidentiality for portions of the testimony and Exhibits DAN-6, DAN-7, DAN-9, DAN-10, DAN-18, DAN-19, and DAN-20. On July 1, 2003, Supra filed Supplemental Exhibits to Supra Direct Testimony of David A. Nilson. On that same date, Supra filed a letter claiming confidentiality for Exhibits DAN-8, DAN-13, DAN-14, and DAN-17. Supra filed, on July 14, 2003, the same exhibits (DAN-6 through DAN-10, DAN-13, DAN-14, and DAN-17 through DAN-20) Bate-stamped as Replacement Exhibits.

DOCUMENT NUMBER-DATE

07343 AUG 11 8

FPSC-COMMISSION CLERK

On July 21, 2003, BellSouth filed a Request for Specified Confidential Treatment of Supra's Direct Testimony of David A. Nilson and Exhibits DAN-7, DAN-8, DAN-9, DAN-10, DAN-13, DAN-14, DAN-17, DAN-18, DAN-19, and DAN-20 (05813-03, 05872-03, and 06173-03 (X-REF 06516-03) because the information contained in these documents included confidential business practices/procedures utilized by BellSouth to conduct business. In addition, BellSouth states, the subject information is confidential pursuant to the terms of a former interconnection agreement and the rules of a commercial arbitration panel. Public disclosure of this information, BellSouth contends, would cause competitive harm to BellSouth, provide competitors with an unfair advantage in future negotiations, and would impair BellSouth's ability to resolve matters via the Commercial Arbitration process. A detailed description of this information is contained in Attachment A.

BellSouth states that the information discussed in the testimony and listed exhibits is valuable and BellSouth strives to keep it secret. Therefore, BellSouth requests that the information be classified as confidential, proprietary business information pursuant to Section 364.24 and Section 364.183, Florida Statutes, and accordingly, be held exempt from the public disclosure requirements of Section 119.07, Florida Statutes.

On July 31, 2003, Supra filed a Response to BellSouth's Request for Confidential Classification. Supra contends that the only basis for the request to designate certain items as confidential arises from a non-disclosure provision in the parties' prior interconnection agreement. Supra further states that the non-disclosure provision operates to keep confidential substantive matters regarding the merits in a proceeding before arbitrators. Supra contends that the confidentiality stems only from the parties' agreement that the proceedings remain confidential, it does not stem from the fact that something might actually be proprietary.

Supra alleges that BellSouth has made public the term and substance of Operation Sunrise and how the Harmonize feed actually works. Therefore, any documents fully explaining Operation Sunrise and the Harmonize feed are necessary to corroborate, or impeach BellSouth's representations of how these systems and practices work. Hence, Supra states, none of the exhibits BellSouth seeks to make confidential actually contain any proprietary information and,

in addition, it is critical that these documents not be stricken. Therefore, Supra requests that BellSouth's request be denied.

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.

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. While the information may be the subject of a non-disclosure agreement between the parties as alleged by Supra, BellSouth has sufficiently alleged that the information fits the definition of proprietary confidential business information. Furthermore, it does not appear that the specific information at issue here has been previously

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disclosed. Disclosure of this information would give BellSouth's competitors an unfair advantage in future negotiations. As such, BellSouth's Requests for Confidential Classification of Document Nos. 05813-03, 05872-03, and 06173-03 (x-ref 06516-03) are hereby granted.

Based on the foregoing, it is

ORDERED by J. Terry Deason, as Prehearing Officer, that BellSouth Telecommunications, Inc.'s Requests for Confidential Classification of Document Nos. 05813-03, 05872-03, and 06173-03 (x-ref 06516-03) as set forth in Attachment A, which is attached and incorporated herein, 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 Commissioner J. Terry Deason as Prehearing Officer, this 11th day of August; 2003.



J. TERRY DEASON
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.

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; or (2) 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,

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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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ATTACHMENT A

**BellSouth Telecommunications, Inc.
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**REQUEST FOR CONFIDENTIAL CLASSIFICATION OF PORTIONS OF SUPRA'S
DIRECT TESTIMONY AND EXHIBITS OF DAVID A. NILSON FILED IN FPSC
DOCKET 030349-TP ON JUNE 30th, JULY 1st, AND JULY 14, 2003.**

Explanation of Proprietary Information

1. This information reflects BellSouth's business strategy relating to its competitive marketing position. Specifically, this information discusses, describes and evaluates BellSouth's internal systems used in potential strategic responses to various competitive scenarios; key details relating to the substance of such systems as well as developmental time frame information and implementation information; and discusses/evaluates recommendations on these potential competitive response. 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.
2. The subject information contains substantive reference to, or are documents from the BellSouth/Supra Commercial Arbitrations. Both BellSouth and Supra agreed to keep the information of the Commercial Arbitrations confidential. This information is proprietary to BellSouth and includes information containing customer proprietary and business proprietary information. The Commission has always zealously protected customer proprietary and business proprietary information in order to protect the customer's privacy and prevent a competitor of the customer from obtaining an unfair advantage. This information is clearly confidential and proprietary under Florida Statutes, Section 364.24, Section 364.183 and Rule 25-22.006, Florida Administrative Code.

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TESTIMONY

<u>Location</u>	<u>Reason</u>
Page 12, Lines 1-24, Footnote -7	2
Page 13, Lines 1-12, 22-32	2
Page 14, Lines 11-22	2
Page 15, Lines 9-11	1
Page 16, Lines 1-7 & 9-27	2
Page 17, Lines 16-25	2
Page 18, Lines 4-19 & 24-26	2
Page 20, Lines 4-21 & 25-34	2
Page 21, Lines 2-10 & 13-25	2
Page 26, Lines 4, 5 & 19	1
Page 27, Lines 5-13 & 20-29	2
Page 28, Lines 4-15, 19-23, 28-32, & 37	2
Page 28, Lines 17, 18, 26, & 35	1
Page 29, Lines 1-5, 9-14, 22-37	2
Page 29, Lines 8 & 17	1
Page 30, Lines 1-5, 13-25, & 28-39	2
Page 30, Line 11	1
Page 31, Lines 1, 2, 10-12	2
Page 31, Lines 7 & 16	1
Page 32, Lines 10, 11, 17 & 20	1
Page 33, Line 2	1
Page 34, Lines 3, 16-23	1 & 2
Page 34, Line 15	1
Page 35, Lines 1-5, 8, 12, -14,19-22	2
Page 35, Line 11	1

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**REQUEST FOR CONFIDENTIAL CLASSIFICATION OF PORTIONS OF SUPRA'S
DIRECT TESTIMONY AND EXHIBITS OF DAVID A. NILSON FILED IN FPSC
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EXHIBITS

Location	Reason
DAN6	2
DAN7	2
DAN8	1 & 2
DAN9	1 & 2
DAN10	1 & 2
DAN13	1
DAN14	1 & 2
DAN 17	2
DAN18	2
DAN19	2
DAN20	