

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-03-0982-CFO-TP
ISSUED: August 29, 2003

ORDER GRANTING REQUEST FOR CONFIDENTIAL CLASSIFICATION OF
DOCUMENT NOS. 07572-03 AND 07857-03

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 July 25, 2003 Supra filed the Rebuttal Testimony and Exhibits of David A. Nilson. On the same date, Supra filed a letter claiming confidentiality for Exhibit DAN-RT-2. On August 15, 2003, BellSouth filed its Request for Specified Confidential Classification of Supra's Exhibit DAN-RT-2.

BellSouth claims the information contained in this exhibit is confidential pursuant to the terms of a former interconnection agreement and the rules of a commercial arbitration panel. A specific description of this information is contained in Attachment A. Public disclosure of this information would cause competitive

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harm to BellSouth and provide competitors with an unfair advantage in future negotiations and would impair BellSouth's ability to resolve matters via the Commercial Arbitration process. BellSouth states that the information discussed in its Request is valuable and BellSouth strives to keep it secret. Therefore, BellSouth request that the information should be classified as confidential, proprietary business information pursuant to Sections 364.24 and 364.183, Florida Statutes, and accordingly, should be held exempt from the public disclosure requirements of Section 119.07, Florida Statutes.

On August 1, 2003, BellSouth filed a Supplemental Motion to Strike certain exhibits attached to the Direct Testimony of David A. Nilson which was filed by Supra on June 30, 2003. On August 1, 2003 BellSouth filed a Notice of Intent to Request Specified Confidential Classification for certain portions of the Supplemental Motion to Strike. On August 22, 2003, BellSouth filed a Request for Specified Confidential Treatment for those portions of the Supplemental Motion to Strike.

BellSouth states that the Supplemental Motion contains confidential, proprietary information pursuant to Rule 25-222.006(3)(a), Florida Administrative Code, and pursuant to the terms of a former interconnection agreement and the rules of a commercial arbitration panel. A line-by-line description of this information is contained in Attachment B. BellSouth contends that public disclosure of this information would cause competitive harm to BellSouth, provide competitors with an unfair advantage in future negotiations, and impair BellSouth's ability to resolve matters via the Commercial Arbitration process. BellSouth states that the information discussed in Supplemental Motion to Strike is valuable and BellSouth strives to keep it secret. Therefore, BellSouth requests that the information be classified as confidential, proprietary business information pursuant to Sections 364.24 and 364.183, Florida Statutes, and, therefore, should be held exempt from the public disclosure requirements of Section 119.07, Florida Statutes.

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

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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. 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. 07572-03 and 07857-03 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. 07572-03 and 07857-03 as set forth

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in Attachments A and B, which are 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.

By ORDER of Commissioner J. Terry Deason as Prehearing Officer, this 29th 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, 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 SUPRA'S EXHIBIT DAN-
RT-2 OF THE REBUTTAL TESTIMONY OF DAVID A. NILSON FILED IN FPSC
DOCKET 030349-TP ON JULY 25, 2003.**

Explanation of Proprietary Information

1. 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.

LOCATION

REASON

Entire Document

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**REQUEST FOR CONFIDENTIAL CLASSIFICATION OF BELLSOUTH 's
 SUPPLEMENTAL MOTION TO STRIKE SUPRA'S DIRECT TESTIMONY EXHIBITS
 AS FILED IN FPSC DOCKET 030349-TP ON AUGUST 1, 2003.**

Explanation of Proprietary Information

1. 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.

| <u>LOCATION</u> | <u>REASON</u> |
|---|---------------|
| Page 2, Lines 6-22 | 1 |
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