

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Confidentiality ruling on BellSouth
Telecommunications, Inc.'s sales report.

DOCKET NO. 040467-TL
ORDER NO. PSC-04-0971-CFO-TL
ISSUED: October 6, 2004

ORDER GRANTING IN PART AND DENYING IN PART
BELLSOUTH TELECOMMUNICATIONS, INC.'s
REQUEST FOR CONFIDENTIALITY OF AUDIT INFORMATION
(DOCUMENT NUMBER 04326-04)

I. Procedural Background

On March 29, 2004, BellSouth Telecommunications, Inc. (BellSouth), filed a Request for Specified Confidential Classification for certain information related to our staff's *Follow up Review of BellSouth Telecommunications, Inc. Sales Methods and Practices* (Review). On April 6, 2004, BellSouth, filed a Revised Amended Request for Specified Confidential Classification regarding the same material: Document No. 04326-04. In BellSouth's Request for Confidential Classification, the company states one of the following two reasons in support of each of their claims for confidentiality: (1) BellSouth will suffer a competitive disadvantage if information associated with vendor contracts and vendor-specific pricing for services rendered to BellSouth were revealed; and (2) BellSouth considers information to be proprietary when the information is related to "methods, practices, policies and procedures" for sales personnel.

II. Legal Standard

Pursuant to Section 119.01, Florida Statutes, documents submitted to this Commission are public records. This presumption is based on the concept that government should operate in the "sunshine." The right of access to governmental records is an important and longstanding Florida tradition embodied in both Florida Statutes and the Declaration of Rights provision of the state Constitution. The Public Records Law is to be liberally construed in favor of open government, and exemptions from disclosure are to be narrowly construed so they are limited to their stated purpose. Seminole County v. Wood, 512 So. 2d 1000 (Fla 5th DCA 1987), *rev. denied* 520 So. 2d 586 (Fla. 1986). The determination of whether information is proprietary confidential business information is a matter of discretion. Florida Society of Newspaper Editors, Inc. v. Florida Public Service Commission, 543 So. 2d 1262, 1265 (1st DCA 1989) *rehearing den.* June 12, 1989. When determining whether information should be deemed confidential, the Commission should weigh the public interest in disclosing the information with the potential harm to the entity if the information were disclosed.

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FPSC-COMMISSION CLERK

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. 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.

III. Rulings

BellSouth has provided a line-by-line justification for its request as set forth in Attachment A to this Order. Upon consideration of the arguments set forth therein, my rulings regarding specific items in BellSouth's request are as follows:

1. **Page 25, lines 13, 35 and 37.** Pursuant to Sections 119.01 and 364.183(3)(d), Florida Statutes, this request for confidentiality is granted.

BellSouth requests that the dollar amounts of penalties associated with unauthorized sales or slamming by vendors be treated as confidential. BellSouth cites reason number one in Attachment A stating that the information is vendor-related and would impair the company's ability to contract for goods and services. Upon review, it appears that the justification meets the standard found in Section 364.183(3)(d). Therefore, this request for confidentiality is granted.

2. **Page 25, lines 40-42.** Pursuant to Sections 119.01 and 364.183(3)(d), Florida Statutes, this request for confidentiality is denied.

The information in these lines for which BellSouth seeks confidentiality includes the goals to which all vendors are held. BellSouth relies upon reason number one in Attachment A, that the information is vendor-related and would impair the company's ability to contract for goods and services. A statement of the goals to which all vendors are held would in no way impair BellSouth's ability to contract for goods and services at favorable terms. Therefore, pursuant to Section 364.183(3)(d) BellSouth's request as it applies to this information is denied.

3. **Page 27, lines 1-4.** Pursuant to Sections 119.01 and 364.183(3)(e), Florida Statutes, this request for confidentiality is denied.

BellSouth relies upon reason number two in Attachment A as its basis for protecting this information stating that the information includes methods, practices and procedures used in training its sales personnel and is not publicly disclosed. However, the text cited by BellSouth is part of a public document

transmitted to our staff over the unsecured public internet by a third party in e-mail attachments. Florida Public Service Commission (FPSC) e-mails are public record. Moreover, the *Miami Herald* obtained possession of the same document by means of a public records request made to the FPSC. These documents are already in the public domain; and therefore, the request for confidential classification is denied.

4. **Page 28, line 25-43.** Pursuant to Sections 119.01 and 364.183(3)(e), Florida Statutes, this request for confidentiality is denied.

On page 28, BellSouth seeks to redact three sales scripts used by its customer representatives. BellSouth cites reason number two in Attachment A as its basis for protecting this information. Scripts, by their very nature, are public information because they are used when communicating with the public. The scripts are more than likely read every day by a BellSouth employee to any caller who contacts BellSouth sales or service personnel. The scripts are therefore released into the public domain and do not qualify as an exception as stated in 364.183, Florida Statutes.

Further, the first two bulleted scripts are already public domain and cannot legally be removed from public view. They were provided to our staff via e-mail by a third party and are also in the possession of the *Miami Herald* by means of a response to a public records request made to the FPSC. As stated above, the information is already in the public domain and therefore cannot receive confidential status.

5. **Page 29, lines 26-30.** Pursuant to Sections 119.01 and 364.183(3)(d), Florida Statutes, this request for confidentiality is denied.

BellSouth seeks confidential status of an entire paragraph that is our staff's description of a five-year-old document. The document instructs BellSouth customer representatives how to overcome a caller's objections to new services and to make a sale. The paragraph does not quote the document except by title and four words that illustrate its tone. Moreover, the document described in the text is a public record provided by a third party to our staff by email. The document itself cannot legally be granted confidential status. The *Miami Herald* is also in possession of the document by means of response to a public records request made to the FPSC; therefore, the information cannot be considered confidential.

6. **Page 29, line 37 - 43.** Pursuant to Sections 119.01 and 364.183(3)(e), Florida Statutes, this request for confidentiality is denied.

BellSouth seeks confidentiality for its sales guides, scripts and coaching materials regarding overcoming customer objections. As stated above, customer service representative scripts by their very nature are public information because they are used when communicating with the public. Furthermore, they were given to staff by a third party via FPSC e-mail and have been provided by our staff to the *Miami Herald* in response to a public documents request.

7. **Page 30, lines 1-30.** Pursuant to Section 364.183(3)(d), Florida Statutes, this request for confidentiality is denied.

Similar to the request in number six above, BellSouth seeks confidential status of its sales guides, scripts and coaching materials regarding overcoming customer objections. The requested redaction includes text that is verbatim language from a public document provided by a third party and already given to the *Miami Herald* through a public records request. The second bulleted paragraph on page 30 is verbatim language from a BellSouth-provided document and comports in tone and substance with the preceding paragraphs. As stated above, by their very nature and purpose, BellSouth's scripts are already in the public domain and therefore cannot be considered confidential.

8. **Page 30, lines 36-42.** Pursuant to Section 364.183(3)(d), Florida Statutes, this request for confidentiality is denied for the reasons set forth above in item 7. The information requested here is a script designed to overcome customer objections. As stated above, customer service representative scripts by their very nature are public information.

9. **Page 31, lines 1-5.** Pursuant to Section 364.183(3)(e), Florida Statutes, this request for confidentiality is denied.

BellSouth relies upon reason number two of Attachment A in support of its request for confidential status of this portion of the *Review*. Reason number two is strictly related to the confidentiality of information used by BellSouth in conducting its business and is not commonly known by or made available to the public. The information cited in this paragraph is part of a script. As stated above, scripts, by their very nature, are public information. The scripts are more than likely read every day by a BellSouth employee to any caller who contacts BellSouth sales or service personnel. The information therein is therefore released

into the public domain and does not qualify as an exception as stated in 364.183, Florida Statutes.

10. **Page 37, lines 40 and 42.** Pursuant to Sections 119.01 and 364.183(3)(d), Florida Statutes, this request for confidentiality is denied.

BellSouth relies upon reason number one of Attachment A in support of its request for confidential status of this information. Reason number one is strictly related to the confidentiality of “information associated with vendor contracts and vendor specific pricing negotiated by BellSouth.” However, the information at issue is the number of referrals of BellSouth employees for sales ethical violation. This information, indeed this entire Section of the *Review*, is in no way related to BellSouth vendors. The numbers are used to illustrate trends in ethics referrals, particularly how many referrals came from one “gate.” A statement of the number of referrals would in no way impair BellSouth’s ability to contract for goods and services at favorable terms. Therefore, pursuant to Section 364.183(3)(d) BellSouth’s request as it applies to this information is denied.

11. **Page 38, lines 8, and 10.** Pursuant to Sections 119.01 and 364.183(3)(d), Florida Statutes, this request for confidentiality is denied.

BellSouth relies upon reason number one of Attachment A in support of its request for confidential status of this information. Reason number one is strictly related to the confidentiality of “information associated with vendor contracts and vendor specific pricing negotiated by BellSouth.” The information cited in this paragraph, indeed this entire Section of the *Review*, is in no way related to BellSouth vendors.

The information at issue is a percentage of CPAT¹ referrals for misconduct by BellSouth. Since this information does not concern bids or other contractual data, the disclosure of which would impair the efforts of the company or its affiliates to contract for goods or services on favorable terms, it does not meet the standard found in Section 364.183(3)(d), Florida Statutes. Therefore, this request is denied.

¹ CPAT observes and evaluates calling center practices throughout BellSouth’s territory for all acquisition and service functions. According to BellSouth, the purpose of CPAT is “. . . primarily to evaluate the effectiveness, impact of practices and procedures, and to identify concerns in providing service.”

12. **Page 38, lines 22, 25-28 and 30.** Pursuant to Sections 119.01 and 364.183(3)(d), Florida Statutes, this request for confidentiality is denied.

Again, BellSouth relies upon reason number one of Attachment A in support of its request for confidential status of this information. Reason number one is strictly related to the confidentiality of “information associated with vendor contracts and vendor specific pricing negotiated by BellSouth.” The information contained in these lines include the number of callers affected by fraud and customer abuse by BellSouth employees. Since this information does not concern bids or other contractual data, the disclosure of which would impair the efforts of the company or its affiliates to contract for goods or services on favorable terms, it does not meet the standard found in Section 364.183(3)(d), Florida Statutes. Therefore, this request is denied.

13. **Page 38, lines 4-5, 8 and 11-15.** Pursuant to Sections 119.01 and 364.183(3)(d), Florida Statutes, this request for confidentiality is denied.

Again, BellSouth relies upon reason number one of Attachment A in support of its request for confidential status of this information. Reason number one is strictly related to the confidentiality of “information associated with vendor contracts and vendor specific pricing negotiated by BellSouth.” The information cited in this paragraph is in no way related to BellSouth vendors. BellSouth is proposing to redact numbers indicating our staff’s conclusions regarding alleged fraud that results from slamming, unwanted sales, and products added to bills against customer wishes. For the reasons set forth directly above, this request is denied. The information does not concern bids or other contractual data and therefore is in no way related to “information associated with vendor contracts and vendor specific pricing negotiated by BellSouth.”

Based on the foregoing, it is

ORDERED by Commissioner Lila A. Jaber, as Prehearing Officer, that the claim by BellSouth Telecommunications, Inc., for confidential classification is hereby granted in part and denied in part as stated in the body of this Order. It is further

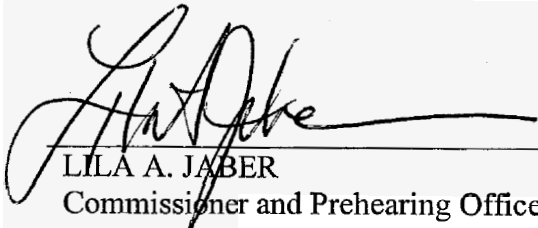
ORDERED that pursuant to Section 364.183, Florida Statutes, and Rule 25-22.006, Florida Administrative Code, the confidentiality granted to the material identified herein shall expire eighteen (18) months from the date of the issuance of this Order, in the absence of a renewed request for confidentiality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

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ORDERED that the material addressed herein for which confidential classification has been denied shall be maintained as confidential until the time for filing an appeal has expired, in accordance with Rule 25-22.006(10), Florida Administrative Code. It is further

ORDERED that this Docket shall be closed upon expiration of the time for filing an appeal.

By ORDER of Commissioner Lila A. Jaber, as Prehearing Officer, this 6th day of October, 2004.



LILA A. JABER
Commissioner and Prehearing Officer

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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

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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

**BellSouth Telecommunications, Inc.
Florida Public Service Commission/
Audit Document/Record Request
Florida Sales Review
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**REQUEST FOR CONFIDENTIAL CLASSIFICATION OF BELLSOUTH'S
RESPONSE TO FLORIDA PUBLIC SERVICE COMMISSIONS
AUDIT DOCUMENT/RECORD REQUEST FLORIDA
SALES REVIEW**

Explanation of Proprietary Information

1. This information contains business information related to competitive interests of BellSouth that is proprietary to BellSouth. Specifically this information reflects information associated with vendor contracts and vendor specific pricing negotiated by BellSouth. Disclosure of this data would impair the competitive business interests of BellSouth and would impair BellSouth's ability to contract for goods and/or services on favorable terms. Consequently, this information should be classified as proprietary, confidential business information pursuant to Section 364.183(3)(d), Florida Statutes and is exempt from the Open Records Act.
2. The subject information includes methods, practices and procedures developed and used by BellSouth in training its sales personnel. This material is proprietary and confidential business information used by BellSouth in conducting its business and not commonly known by or available to the public. Furthermore, this information has been prepared at great cost to BellSouth, and therefore, others should not be permitted to gain the benefit from not having to develop these instructions and materials themselves. Those practices and procedures are not publicly disclosed, and were developed by BellSouth only bc expending a great deal of time and money. Accordingly, this information constitutes confidential business information pursuant to Section 364.183(3)(e), and is exempt from the Open Records Act.

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AUDIT DOCUMENT/RECORD REQUEST FLORIDA
SALES REVIEW**

Explanation of Proprietary Information

AUDIT REPORT

| | | |
|---------|----------------------------|---|
| Page 25 | Lines 13, 35, 37, 40-42 | 1 |
| Page 27 | Lines 1-4 | 2 |
| Page 28 | Lines 25-43 | 2 |
| Page 29 | Lines 26-30, 37-43 | 2 |
| Page 30 | Lines 1-30, 36-42 | 2 |
| Page 31 | Lines 1-5 | 2 |
| Page 37 | Lines 40, 42 | 1 |
| Page 38 | Lines 8, 10, 22, 25-28, 30 | 1 |
| Page 44 | Lines 4-5, 8, 11-15 | 1 |