

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Confidentiality ruling on BellSouth Telecommunications, Inc.'s Maintenance and Repair Report.	DOCKET NO. 040535-TL ORDER NO. PSC-04-1111-CFO-TL ISSUED: November 8, 2004
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ORDER GRANTING IN PART AND DENYING IN PART
BELLSOUTH TELECOMMUNICATIONS, INC.'s
REQUEST FOR CONFIDENTIALITY OF AUDIT INFORMATION
(DOCUMENT NUMBER 05934-04)

I. Procedural Background

On May 24, 2004, BellSouth Telecommunications, Inc. (BellSouth), filed a Request for Specified Confidential Classification for certain information related to our staff's *Review of BellSouth Telecommunications, Inc.'s Maintenance and Repair Practices*. In BellSouth's Request for Confidential Classification, the company states one of the following three reasons in support of each of their claims for confidentiality: (1) Pursuant to Section 364.183, Florida Statutes, BellSouth will suffer a competitive disadvantage if their competitors have free access to BellSouth's intellectual property. Competitors would have an advantage in bidding for such business since they would have few expenses such as market research and market development to recover; and (2) Pursuant to Section 364.183(3)(b), Florida Statutes, BellSouth considers information to be proprietary because it contains internal audit reports or information derived from internal audit reports; and (3) Pursuant to Section 364.183(3)(e), Florida Statutes, this information should be confidential because it relates to auditing strategy, controls, work programs and methodologies used by BellSouth's external auditors.

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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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 14, lines 37-39.** Pursuant to Sections 119.01 and 364.183, Florida Statutes, this request for confidentiality is granted in part and denied in part.

BellSouth relies upon reason number one in Attachment A as its basis for protecting, arguing that if released, competitors would have an advantage in bidding for business since they would have few, if any, market research and development expenses to recover.

Section 364.183(e), Florida Statutes, explicitly addresses information relating to competitive interests. Lines 38 and 39 of page 14 of the Report, contain information regarding competitive interest, which if made public would impair BellSouth's ability to compete. Therefore, pursuant to Section 364.183(e), Florida Statutes, this request for confidentiality is granted. However, line 37 does not contain information relating to BellSouth's competitive interests. The information contained in line 37 is the module name of a Service Technician Training material. This name, without further information does not impair BellSouth's competitive interests and therefore is denied confidential classification.

2. **Page 15, lines 3-10.** Pursuant to Sections 119.01 and 364.183, Florida Statutes, this request for confidentiality is granted.

BellSouth relies upon reason number one in Attachment A stating that the information, if released, would be unfair to BellSouth because it would allow competitors access to BellSouth's intellectual property. The information in these lines are methods and techniques used by BellSouth for training purposes, and are taken directly from BellSouth's training manual. This information, if released, would impair BellSouth's competitive business interest. Therefore, BellSouth's request is granted.

- 3. Page 16, lines 15-17.** Pursuant to Sections 119.01 and 364.183, Florida Statutes, this request for confidentiality is granted.

BellSouth relies upon reason number one in Attachment A. BellSouth seeks confidentiality of performance indicators through quantified measurements. This information meets the standard set forth in Section 364.183(c) and (e), Florida Statutes, because BellSouth developed these measurements at significant expense and if released, would allow competitors to enjoy the fruits of BellSouth's labor without incurring the same costs. Therefore, the request for confidential classification is granted.

- 4. Page 16, 23-38; and Page 17, lines 1-6.** Pursuant to Sections 119.01 and 364.183, Florida Statutes, this request for confidentiality is granted.

BellSouth relies on reason number one in Attachment A for the same reasons stated directly above. The information at issue is a detailed description of the same performance indicators as stated above in number 3. This information is highly confidential because the release of it would reveal BellSouth's competitive business techniques and impair BellSouth's ability to fully compete. Therefore, the request for confidential classification is granted because this information is contemplated by Section 364.183, Florida Statutes.

- 5. Page 17, 9-12.** Pursuant to Sections 119.01 and 364.183, Florida Statutes, this request for confidentiality is granted.

BellSouth relies on reason number one in Attachment A stating that information, if released, would impair BellSouth's business practice. The information at issue is a formula that creates a composite score for service technicians' performance. This metric was created at significant expense and relates to BellSouth's competitive interests. Therefore, this request meets the standard set forth in Section 364.183, Florida Statutes, because the disclosure of which would impair its day-to-day business operations.

- 6. Page 17, lines 15-21, 23-26, 28, and 30-31** Pursuant to Sections 119.01 and 364.183, Florida Statutes, this request for confidentiality is granted.

BellSouth relies on reason number one in Attachment A. The information at issue herein is proprietary business information in accordance with Section 364.183(3), Florida Statutes. Disclosure of this information would give BellSouth's competitors an unfair competitive advantage by allowing them to successfully compete against BellSouth without the usual market trial and error.

7. **Page 18, lines 2, 10, 13-18, 20-28, and 34-35.** Pursuant to Section 364.183, Florida Statutes, this request for confidentiality is granted in part and denied in part.

BellSouth relies on reason number one in Attachment A. The request is granted in its entirety, except for the name of the auditing group stated in line 10. The name of an auditing group, by itself, does not meet the definition in Section 364.183(3), Florida Statutes, and therefore should be made public. However, the remaining requested redaction includes text the disclosure of which would give BellSouth's competitors an unfair competitive advantage by allowing them to successfully compete against BellSouth without the usual market trial and error.

8. **Page 19, line 3, 7-10.** Pursuant to Section 364.183(3), Florida Statutes, this request for confidentiality is granted in part and denied in part.

BellSouth relies on reason number one in Attachment A to support its request for confidentiality. The information at issue is the name of an incentive program. Section 364.183(3), Florida Statutes, protects information that the disclosure of which would harm the provider. In the case at hand, the disclosure of the name of an incentive program, and the word "incentive" would not harm or impair BellSouth's competitive business practice. Therefore, the request is denied in this respect. However, the remaining information at issue is granted confidential status because it is competitive business information which, if disclosed, would harm BellSouth's competitive interest.

9. **Page 19, lines 12-18, 21, 23, 25-27.** Pursuant to Section 364.183(3), Florida Statutes, this request for confidentiality is granted in part and denied in part.

BellSouth relies upon reason number one of Attachment A in support of its request for confidential classification. As stated directly above, the name of an incentive program contained in these lines fails to meet the standard set forth in Section 364.183(3), Florida Statutes. However, the remaining information at issue is granted confidential status, because it is competitive business information which, if disclosed, would harm BellSouth's competitive interests.

- 10. Page 21, lines 36-38.** Pursuant to Sections 119.01 and 364.183(3)(b), Florida Statutes, this request for confidentiality is granted.

BellSouth relies upon reason number two of Attachment A in support of its request for confidential status of this information. The information at issue, if released, would reveal reports of internal audits which are explicitly contemplated in Section 364.183(3)(b), Florida Statutes. Therefore, the request for confidential classification is granted.

- 11. Page 22, lines 10-12, 14-23, 25-35.** Pursuant to Sections 119.01 and 364.183(3)(b), Florida Statutes, this request for confidentiality is granted.

BellSouth also relies upon reason number two of Attachment A in support of its request for confidential status of this information. The information at issue, if released, would reveal reports of internal audits, which are explicitly addressed in Section 364.183(3)(b), Florida Statutes. Therefore, the request for confidential classification is granted.

- 12. Page 23, lines 1-7.** Pursuant to Sections 119.01 and 364.183(3)(b), Florida Statutes, this request for confidentiality is granted.

BellSouth also relies upon reason number two of Attachment A in support of its request for confidential status of this information. As stated directly above, the information at issue, if released, would reveal reports of internal audits which are explicitly addressed in Section 364.183(3)(b), Florida Statutes. Therefore, the request for confidential classification is granted.

- 13. Page 23, lines 17-33 and Page 24, lines 1-10.** Pursuant to Sections 119.01 and 364.183(3)(e), Florida Statutes, this request for confidentiality is granted in part and denied in part.

BellSouth cites reason number three in Attachment A in support of its request for confidential status. Section 364.183(3)(e), Florida Statutes, includes information relating to competitive interests, the disclosure of which would impair the competitive business of the provider of the information. The information in the aforementioned lines, if released, would reveal the findings of the external auditor, as well as, methodologies used by the external auditor. Therefore, this portion of the request meets the standard set forth in Section 364.183(3)(e), Florida Statutes. However, BellSouth requests that the name of the external auditor be kept confidential, but the name of an outside auditor is not contemplated by Section 364.183(3)(e), Florida Statutes,¹ and does not otherwise

¹ The name of the external auditor appears in lines 17, 20, and 27.

appear to fall under the statutory definition of “proprietary confidential business information.”

Disclosing the name of the outside auditor does not impair BellSouth’s competitive business interests nor does it reveal any methodologies or tactics used by the outside auditor. Therefore, BellSouth’s request is denied as it applies to the name of BellSouth’s outside auditor.

- 14. Page 46, lines 6-17, and 20.** Pursuant to Sections 119.01 and 364.183(3)(b), Florida Statutes, this request for confidentiality is granted.

BellSouth cites reason number two in Attachment A as justification for its request. The information contained in these lines are internal audit controls and reports. This request meets the standard set forth in Section 364.183(3)(b), Florida Statutes, and therefore, is granted.

- 15. Page 46, lines 27-28 and 31-34.** Pursuant to Sections 119.01 and 364.183(3), Florida Statutes, this request for confidentiality is granted.

BellSouth cites reason number one in Attachment A as justification for its request. The information subject to the request deal with training codes and methods from BellSouth University training material ND300B, Module 10. This information, if disclosed, would allow competitors to have an unfair advantage due to the fact that the competitor would not have incurred any expenses, but would reap the same benefits from BellSouth’s training material. Therefore, the request is granted because it meets the standard set forth in Section 364.183(3), Florida Statutes.

- 16. Page 52, lines 6, 8-11 and 13.** Pursuant to Sections 119.01 and 364.183(3)(b) and (e), Florida Statutes, this request for confidentiality is granted.

BellSouth cites reasons number two and three in support of its request. The information subject to the request includes internal audit controls and data resulting from the audit. This information is at the heart of BellSouth’s competitive interests and if disclosed would impair BellSouth’s competitive business practice. Therefore, the request is granted because it meets the standard set forth in Section 364.183(3)(b), Florida Statutes.

- 17. Page 2, line 31, 36, 38-39 and page 3, lines 1-6 of BellSouth's Final Comments.** Pursuant to Sections 119.01 and 364.183(3)(b), Florida Statutes, this request for confidentiality is granted.

BellSouth cites reason number two in Attachment A to support its request. The information requested contains information from internal audits. As stated above, information stemming from internal audits meets the standard in Section 364.183(3)(b), Florida Statutes. Therefore, the request for confidential classification is granted.

- 18. Page 3, lines 11-15, 18, 22-28 and 30 of BellSouth's Final Comments.** Pursuant to Sections 119.01 and 364.183(3)(e), Florida Statutes, this request for confidentiality is granted in part and denied in part.

BellSouth cites reason number three in Attachment A to support its request. The information requested contains information from external audits. This information, if disclosed to the public, would impair BellSouth's competitive business practice and therefore, meets that standard in Section 364.183(3)(e), Florida Statutes. However, BellSouth requests that the name of the external auditor be kept confidential. Section 364.183(3)(e), Florida Statutes, does not include or contemplate the names of external auditors be confidential, therefore this request is denied.

- 19. Page 9, line 10 of BellSouth's Final Comments.** Pursuant to Sections 119.01 and 364.183(3), Florida Statutes, this request for confidentiality is denied.

BellSouth cites reason number one in Attachment A to support its request. The information requested herein is the name of a database to track training and inform local management of training requirements. Section 364.183(3), Florida Statutes, does not include or contemplate the name of databases used for training. The name of the database is not a trade secret or internal auditing report. In addition, the name, if released, would not impair BellSouth's competitive business practice. Therefore, the request is denied.

- 20. Page 10, lines 23-25 and 28-33 of BellSouth's Final Comments.** Pursuant to Sections 119.01 and Section 364.183(3)(b) and (e), Florida Statutes, this request for confidentiality is granted in part and denied in part.

BellSouth cites reason numbers two and three in Attachment A to support its request. The information that is subject to the request stem from internal and external audits and therefore meet the standard set in Section 364.183(3)(b) and

(e), Florida Statutes. However, BellSouth requests that the name of the external auditor be kept confidential. As discussed earlier, Section 364.183(3)(b) and (e), Florida Statutes, does not include or contemplate the names of external auditors be confidential, therefore this request is denied.

21. Page 11, line 32 of BellSouth's Final Comments. Pursuant to Sections 119.01 and 364.183(3), 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. The information requested herein is the identical request in number 19 above. BellSouth requests the name of a database to track training and inform local management of training requirements. Section 364.183(3), Florida Statutes, does not include or contemplate the name of databases used for training. In addition, the name of the database is not a trade secret or internal auditing report and if released, would not impair BellSouth's competitive business practice. Therefore, the request is denied.

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

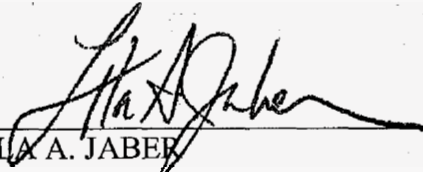
ORDERED that pursuant to Section 364.183, Florida Statutes, and Rule 25-22.006, Florida Administrative Code, the confidentiality granted to the material identified herein shall expire eighteen (18) months from the date of the issuance of this Order, in the absence of a renewed request for confidentiality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

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.

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By ORDER of Commissioner Lila A. Jaber, as Prehearing Officer, this 8th day of November, 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 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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**Review of BellSouth Telecommunications, Inc.'s
Maintenance and Repair Practices**

Explanation of Proprietary Information

1. The information requested concerns competitive business information. This information if released would be unfair to BellSouth for it would allow the competition to have free access to intellectual property which was developed at significant expense to BellSouth. Competitors would then have an advantage in bidding for such business since they would have few, if any, expenses such as market research and market development to recover, and would bid below BellSouth's cost level. Accordingly, this information is entitled to confidential classification pursuant to Florida Statutes Section 364.183.
2. Information Derived from Internal Audits – With respect to the portions of the documents contained in the Staff's audit report and BellSouth's comments for the Maintenance and Repair Practices Audit, containing internal audit report or information derived from internal audit reports, including the specific findings, conclusions, or recommendations contained in such reports, this information is entitled to confidential classification pursuant to Section 364.183(3)(b), Florida Statutes. BellSouth has noted the readily identifiable portions in Staff's Final Report which contain references to internal audit reports, findings, conclusions, recommendations and related information and requests that this information be classified as confidential information, and therefore exempt from the public inspection and examination provisions of Section 119.07(1)(a), Florida Statutes.

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3. Audit Strategy, Controls, Work Programs and Methodologies of External Auditors –
With respect to the portions of Staff's Final Report and BellSouth's Final Comments containing information relating to the auditing strategy, controls, work programs, and methodologies used by BellSouth's external auditors, this information is entitled to confidential classification on the basis that they constitute the proprietary work product of such firm and is considered competitively valuable by these external auditors. Thus, pursuant to Section 364.183(3)(e), Florida Statutes, this information is entitled to confidential classification.

LOCATION

REASON

STAFF'S FINAL REPORT:

Page 14, lines 37-39	1
Page 15, lines 3-10 (the chart)	1
Page 16, lines 15-17	1
Page 16, lines 23-38	1
Page 17, lines 1-6	1
Page 17, lines 9-12	1
Page 17, lines 15-21	1
Page 17, lines 23-26	1
Page 17, lines 28, 30-31	1
Page 18, line 2	1
Page 18, line 10	1
Page 18, lines 13-18	1
Page 18, lines 20-28	1
Page 18, lines 34-35	1
Page 19, line 3	1
Page 19, lines 7-10	1
Page 19, lines 12-18	1
Page 19, line 21	1
Page 19, line 23	1
Page 19, lines 25-27	1
Page 21, lines 36-38	2
Page 22, lines 10-12	2
Page 22, lines 14-23	2
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Page 46, lines 31-34	1
Page 52, lines 6, 8-11, 13	2, 3

BELLSOUTH'S FINAL COMMENTS

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Page 2, lines 36, 38-39	2
Page 3, lines 1-6	2
Page 3, lines 11-15	3
Page 3, line 18	3
Page 3, lines 22-28, 30	3
Page 9, line 10	1
Page 10, lines 23-25	2, 3
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