

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In the matter of: Petition by
Metropolitan Fiber Systems of
Florida, Inc. for arbitration
with BellSouth
elecommunications, Inc.
concerning interconnection
rates, terms, and conditions,
pursuant to the Federal
Telecommunications Act of 1996.

DOCKET NO. 960757-TP
ORDER NO. PSC-98-1321-CFO-TP
ISSUED: October 9, 1998

ORDER GRANTING BELLSOUTH TELECOMMUNICATIONS, INC.'S REQUEST FOR
CONFIDENTIAL CLASSIFICATION AND MOTION FOR PROTECTIVE ORDER FOR
DOCUMENT NOS. 09027-96, 09097-96, AND 09099-96 AND ACKNOWLEDGING
BELLSOUTH TELECOMMUNICATIONS, INC.'S WITHDRAWAL OF REQUEST FOR
CONFIDENTIAL CLASSIFICATION AND MOTION FOR PROTECTIVE ORDER FOR
DOCUMENT NOS. 09061-96 AND 09098-96

Pursuant to Rule 25-22.006(4), Florida Administrative Code, BellSouth Telecommunications, Inc., (BellSouth), on September 13, 1996, requested confidential treatment for information contained in Document Nos. 09027-96, 09061-96, 09097-96, 09098-96, and 09099-96, all cross-referenced to Document No. 09760-96. These documents were submitted through discovery in this docket, a 47 U.S.C. §252(b) proceeding involving BellSouth and MFS Communications Company, Inc., (MFS) now WorldCom, Inc., (WorldCom).

Documents submitted to governmental agencies in Florida are public records. The only exceptions 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 is based on the concept that government should operate in the "sunshine." Rule 25-22.006(4), 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, provides the following definition for proprietary confidential business information:

DOCUMENT NUMBER-DATE

11148 OCT-98

FILED RECORDS/REPORTING

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. The term includes, but is not limited to:

- (a) Trade secrets.
- (b) Internal auditing controls and reports of internal auditors.
- (c) Security measures, systems, or procedures.
- (d) Information concerning 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.
- (e) Information relating to competitive interests, the disclosure of which would impair the competitive business of the provider of information.
- (f) Employee personnel information unrelated to compensation, duties, qualifications, or responsibilities.

Rule 25-22.006(4)(c), Florida Administrative Code, requires that the company provide a line-by-line or field-by-field justification how the information asserted to be confidential qualifies as one of the statutory examples listed in Section 364.183(3), Florida Statutes. If no statutory example is applicable, then the company shall include a statement explaining how the ratepayers or the company's operations will be harmed by disclosure.

Specifically, BellSouth seeks confidential treatment for portions of the following documents: Late-filed Deposition Exhibit 1 of D. Caldwell (Document No. 09027-96); Late-filed Deposition Exhibit 1 of R. Scheye (Document No. 09097-96); Late-filed Deposition Exhibit 2 of D. Caldwell (Document No. 09098-96); Late-filed Deposition Exhibit 3 of D. Caldwell (Document No. 09099-96); and Deposition of D. Caldwell (Document No. 09061-96). In its request for classification, BellSouth fails to identify the material in Document Nos. 09098-96 and 09061-96 for which classification is sought. On May 19, 1998, responding to staff's May 8, 1998, deficiency letter, BellSouth withdrew its request for classification of Document Nos. 09098-96 and 09061-96. Attachment A to this Order shows those portions of Document Nos. 09027-96, 09097-96, and 09099-96 for which BellSouth seeks confidential treatment. BellSouth states that these documents contain actual unit costs for discrete cost elements for the items under study (see Reason A) or vendor specific prices negotiated by BellSouth (see Reason B) that are trade secrets. :

Document No. 09027-96, Backup to Cost Support Underlying Unbundled Elements, contains sample loop lengths, the distribution of loops by design type, loop investments, multiplexer system type probabilities, multiplexer investments, Digital Loop Carrier (DLC) deployment probabilities, and DLC investments used in an unbundled loop cost study. The document also includes the development of incremental capital costs, maintenance expense factor, inflation factors, TIRKS expense factor, miscellaneous common equipment and power loadings, pole and conduit loading factors, and switching costs. Document No. 09097-96 contains the number of network access lines by location in service on July 31, 1996. Document No. 09099-96 contains inputs and outputs from Bellcore's Network Cost Analysis Tool - Production Module.

BellSouth argues that the unit cost information reflects its long run incremental cost of providing network elements on a going-forward basis. It argues that public disclosure of this information would provide its competitors with the advantage of knowing the price or rate below which BellSouth could not provide the service. According to BellSouth, the data is valuable to competitors in formulating strategies for entry, pricing, and marketing, and overall business plans for obtaining access. BellSouth notes that it has no access to this same information on its competitors. It asserts that this is information of value to it in conducting its business, information that it has not publicly disclosed (except in accordance with a protective agreement

executed with WorldCom) and information that it strives to keep secret.

BellSouth argues that public disclosure of vendor specific prices, which reflect terms and conditions favorable to BellSouth, would impair its ability to effectively contract for goods and services and cause its cost of doing business to increase. It asserts that this also is information of value to it in conducting its business, information that it has not publicly disclosed (except in accordance with the protective agreement executed with WorldCom), and information that it strives to keep secret.

BellSouth concludes that this information is trade secrets that should be classified as proprietary confidential business information pursuant to Section 364.183, Florida Statutes, and exempted from public disclosure pursuant to Section 119.07(1), Florida Statutes.

BellSouth's arguments are persuasive. The information for which BellSouth seeks confidential classification meets the requirements of Section 364.183(3), Florida Statutes. While "trade secret" is not a defined term in Chapter 364, Florida Statutes, the definition provided in Chapter 688, Florida Statutes, The Uniform Trade Secrets Act, is informative. Section 688.002, Florida Statutes, provides that "trade secret":

means information ... that:

- (a) Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and
- (b) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

Thus, the portions of the cost study documentation exhibits specified in Attachment A can be reasonably classified as trade secrets. They are information the public disclosure of which pursuant to Chapter 119, Florida Statutes, would be harmful to BellSouth's competitive interests as set out in 47 U.S.C. §§ 251 and 252. This information furthermore is the subject of a

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protective agreement executed by WorldCom, MFS and BellSouth on October 22, 1997. Accordingly, BellSouth's request for confidential classification of Document Nos. 09027-96, 09097-96, and 09099-96 to the extent described above is hereby granted. BellSouth's motion for protective order is also hereby granted for as long as this proceeding remains open.

Based upon the foregoing, it is

ORDERED by Commissioner Susan F. Clark, as Prehearing Officer, that BellSouth Telecommunication Inc.'s Request for Confidential Classification of Document Nos. 09027-96, 09097-96, and 09099-96 is hereby granted as described in the body of this Order and in Attachment A, which is incorporated hereto by reference. It is further

ORDERED that BellSouth Telecommunication Inc.'s withdrawal of its Request for Confidential Classification of Document Nos. 09061-96 and 09098-96 is hereby acknowledged. It is further

ORDERED that BellSouth Telecommunication Inc.'s Motion for Permanent Protective Order for Document Nos. 09027-96, 09097-96, and 09099-96 is granted to the extent described in the body of this Order. It is further

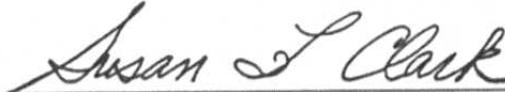
ORDERED that BellSouth Telecommunication Inc.'s withdrawal of its Motion for Permanent Protective Order for Document Nos. 09061-96 and 09098-96 is hereby acknowledged. It is further

ORDERED that pursuant to Section 364.183, Florida Statutes, and Rule 25-22.006, Florida Administrative Code, the confidentiality granted to the documents specified herein shall expire eighteen (18) months from the date of issuance of this Order in the absence of a renewed request for confidentiality pursuant to Section 364.183. 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 Susan F. Clark, as Prehearing Officer, this 9th day of October, 1998.



SUSAN F. CLARK
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.

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 25-22.038(2), 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 Records and Reporting, 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

FPSC DOCKET 960757

**LATE FILED DEPOSITION EXHIBITS OF D. CALDWELL
AND R. SCHEYE**

Explantaion of Proprietary Information

A. This information contains actual unit cost information for discrete cost elements for the item under study. These costs reflect BellSouth's long run incremental cost of providing these elements on a going forward basis. Public Disclosure of this information would provide BellSouth's competitors with an advantage in that they would know the price or rate below which BellSouth could not provide the service. The data is valuable to competitors and potential competitors in formulating strategic plans for entry, pricing, marketing, and overall business strategies concerning access services. This same information on competitors is not available to BellSouth. 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 pursuant to Section 364.183, Florida Statutes and is exempt from the Open Records Act.

B. This information reflects vendor specific prices negotiated by BellSouth. Public disclosure of this information would impair BellSouth's ability to contract for goods and services on favorable terms. 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 pursuant to Section 364.183, Florida Statutes and is exempt from the Open Records Act.

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LOCATION OF THE PROPRIETARY INFORMATION

<u>PAGE NO.</u>	<u>LINE/COL. NO.</u>	<u>REASON</u>
Exhibit 1 of R. Scheye		
Page 1-11	Col. NAL	A
Exhibit #1 of D. Caldwell		
Page 4-11	Cols. A,D	A
12	Cols. A,B	A
13	Cols. D,E	A
15,17	Cols. C,E	A
16	Cols. C-E	A
28,30-33,35-38,40-43, 45-48, 34	Col. D	A
39,44,49	Cols. A-K,M	A,B
50	Cols. A-J,L	A,B
54,59,65	Cols. B,D,F	A
55	Col. C	A
	Cols. A-E, Lines 1-7; Cols. A-E, Lines 11-17; Cols. A-E, Lines 23-31	B
56,57	Cols. B,D-F	A,B
58	Cols. B,D-F, Marginalia	A,B
60	Col. B	A
61,66	Cols. B-F, Lines 1-7; Cols. B-F, Lines 11-19; Cols. C-F, Lines 23-31	A,B
62-64,67-69	Cols. B,D-F	A,B

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<u>PAGE NO.</u>	<u>LINE/COL. NO.</u>	<u>REASON</u>
Exhibit #1 of D. Caldwell		
Page 73	Lines 8-28	B
74-85	Entire Page	B
91	Col. B, Lines 1,2,4,5,7,8	A
92	Cols. B-F	A
93,94,96,97,101,103,	Cols. A-D	A
98	Cols. A-D, Marginalia	A
95	Cols. A-C	A
99,100	Cols. A-E	A
102	Cols. B-E	A
105	Cols. A-D, Lines 4,6,9,10-14, 17-22,25,26	A
113	Col. B, Lines 9-14; Cols. C&D, Lines 9-12	A
115	Col. C, Lines 1-9	A
118	Cols. A-D	A
121	Cols. B-I	A

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<u>PAGE NO.</u>	<u>LINE/COL. NO.</u>	<u>REASON</u>
Exhibit #3 of D. Caldwell		
Page 943	Col. A, Lines 7,8; Col. B, Lines 11-15	A,B
944	Col. A, Lines 7,8; Col. B, Lines 11-13	A,B
946	Lines 10-17,19, 21-26,29-31(nos.)	B
947	Lines 10-16,18,20-24,27-30(nos.)	B
950	Col. A, Lines 8,9,11; Col. B; Col. C, Line 21	A,B
951	Col. A, Lines 8,10,12,14,16; Col. B; Col. C, Line 27	A,B
952,953	Cols. A-G.	B
983	Cols. C-I	A
984,986	Cols. C-H	A
985	Cols. C-J	A
987	Cols. C-G	A