



Public Service Commission

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RECORDS AND REPORTING

DATE: May 11, 1999

TO: Division of Legal Services (Beth Keating)

FROM: Division of Auditing and Financial Analysis (Freeman, Vandiver)

RE: Recommendation concerning confidential status of audit reports prepared during the BellSouth Collocation Cases, Dockets 980946-TL (Port Orange), 980947-TL (Boca Teeca), 980948-TL (Miami Palmetto), 981011-TL (West Palm Beach Gardens), 981012-TL (Golden Glades), and 981250-TL (Lake Mary), Documents 03841-99, 03845-99, 03779-99, 03760-99, 03782-99, and 03775-99

Recommendation concerning confidential status of the exhibits attached to the testimony of staff auditors Welch and Young, Documents 04605-99 and 04607-99.

Summary

On April 15, 1999, the Commission issued Order 99-0717-PCO-TL which protects proprietary information disclosed by BellSouth in these six dockets. This memo discusses and recommends disposition of the confidential status for the staff audit reports and for the exhibits to the staff auditors' testimony prepared during the course of these six cases (Audit Reports - Documents 03841-99, 03845-99, 03779-99, 03760-99, 03782-99, 03775-99 and Auditors' Testimony Exhibits - Documents 04605-99 and 04607-99).

Audit reports, certain audit working papers and exhibits to auditors' testimony prepared during these cases are currently held by the Division of Records and Reporting in a confidential status.

We recommend all staff audits reports prepared during these cases be placed in the public record:

- Documents 03841-99;
- 03845-99;
- 03779-99;
- 03760-99;
- 03782-99; and
- 03775-99.

- AFA _____
- APP _____
- CAF _____
- CMU _____
- CTR _____
- EAG _____
- LEG _____
- MAS _____
- OPC _____
- RRR _____
- SEC
- WAW _____
- OTH *cy to Kay*

We recommend most pages in the exhibits to staff auditors' testimony (Documents 04605-99 and 04607-99) may also be placed in the public record. A summary analysis of the recommended confidential status page-by-page for the exhibits to this testimony is shown on the next page:

DOCUMENT NUMBER - DATE
06097 MAY 13 99
FPSC-RECORDS/REPORTING

Summary - Recommended Confidential Status of Staff Auditor Exhibits:

Document 04605-99, Exhibits of Kathy Welch

Exhibit KW-1	28 pages	Public Record
Exhibit KW-2	31 pages	Public Record
Exhibit KW-3	26 pages	Public Record
Exhibit KW-4	Pages 1-3	Public Record
Exhibit KW-4	Page 4	Public Record, but work paper referenced by this page should be considered confidential: (Document 03843-99, Work Paper 16) (2 pages)
Exhibit KW-4	Page 5	Public Record
Exhibit KW-4	Page 6	Public Record, but work paper referenced by this page should be considered confidential: (Document 03846-99, Work Paper 16) (2 pages)
Exhibit KW-4	Pages 7-11	Public Record

Document 04607-99, Exhibits of Ruth Young

Exhibit RY-1	31 pages	Public Record
Exhibit RY-2	33 pages	Public Record
Exhibit RY-3	30 pages	Public Record
Exhibit RY-4	Pages 1-37	Public Record
Exhibit RY-4	Pages 38-77	Confidential
Exhibit RY-4	Pages 78-81	Public Record

Utility Request for Temporary Confidential Protection

At the audit exit conference, staff provided the utility with copies of staff audit work papers which contained information identified by the utility as confidential.

On March 24, 1999, copies of the staff audit reports in these six dockets were forwarded to the utility. Because the utility requested that information in the audit reports be held as confidential, the audit exit conference was extended, and the utility was advised that to maintain continued confidential protection of these audit reports and working papers, pursuant to the provisions of Rule 22.006, Florida Administrative Code (FAC), a request for confidential protection was due by April 15, 1999.

On April 9, 1999, Commission Auditors Welch and Young provided testimony in this case. Exhibits to the auditors' testimony (Documents 04605-99 and 04607-99) contain the audit reports and copies of selected working papers prepared during the audit which were identified as confidential by the utility.

Staff Analysis of Company Filings

Pursuant to Rule 22.006(3)(a)(2), FAC, information identified as confidential at the staff audit exit conference is provided temporary confidential protection for the next 21 days. If a utility fails to request confidential protection of these materials within the 21 days following the audit exit meeting, confidential protection is considered waived.

A telecommunications company may also claim confidential protection of competitively sensitive materials pursuant to the provisions Section 383.184(1), Florida Statutes (F.S.), as further defined in Rule 22.006(5), FAC. A claim of confidentiality by BellSouth would protect identified information until a request was made for access to the information or if the information was to be used in a public hearing.

To date, the utility has not filed a claim of confidentiality for the audit reports or working papers.

On April 9, 1999, as corrected on April 16, 1999, the utility filed a request that certain portions of the working papers be granted confidential protection. The utility request includes redacted copies (Document 04633-99) as well as copies with the confidential information highlighted (Document 04632-99).

Statutory Requirements

Pursuant to Section 119.07, F.S., documents submitted to this Commission are public records. The only exceptions to this law are specific statutory exemptions and exemptions granted by governmental agencies pursuant to the terms of a statutory provision. Subsections 364.183(3)(a)(c)(d) and (e), F.S., provide the following exceptions:

“(3) 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....
- 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 the information....”

Utility Request for Confidential Protection

The following types of information were included in the listing of information identified as confidential within BellSouth's request for confidential protection (filed April 9, 1999 and amended on April 16, 1999) for the material contained in staff's audit reports and audit working papers:

a) Floor Plans

"....These plans are proprietary and confidential business information. These offices have limited access and are the central focal point of telecommunications in their geographic location. Public disclosure of this information would impair BellSouth's ability to keep these office and telecommunications network secure. This information is valuable, it is used by BellSouth in conducting its business and BellSouth strives to keep it secret. Therefore, such information should be classified as proprietary, confidential business information pursuant to Section 363.183 (3)(a) and (c), Florida Statutes."

b) Vendor Information and Prices

"This information contains vendor specific information, and/or, vendor specific prices negotiated by BellSouth....Therefore, such information is a trade secret which should be classified as proprietary, confidential business information pursuant to Section 364.183(d), Florida Statutes."

c) Trade secrets that relate to the competitive business of BellSouth

"....The release of this information would potentially damage BellSouth in that it would allow BellSouth's competitors 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(3)(a), Florida Statutes."

Utility Request for Confidential Protection (Continued)

d) Market Strategies and Information

“....Specifically this information discloses, describes and evaluates BellSouth’s potential strategic responses to various competitive scenarios; sets forth and evaluates underlying components of specific competitive proposals along with supporting rationale such as results of market research and analysis; names of individuals assigned to certain projects; key details relating to the substance of such projects as well as developmental time frame information and implementation information; and discusses/evaluates recommendations on the competitive response. BellSouth’s competitors could use this information to develop their own market strategy with which to thwart BellSouth’s Ability to compete....Therefore, this information is a trade secret which should be classified as proprietary, confidential business information pursuant to Section 364.183(3)(a) and (e), [F.S.]”

BellSouth also asserts that this information is used by BellSouth in conducting its business and BellSouth strives to keep it secret.

Staff Recommendation

BellSouth has not requested confidentiality for the staff audit reports within the 21 days required by Rule 25-22.006(3)(a)(2), FAC. The utility’s request is silent on the confidential status of the staff audit reports and this failure by the utility to request confidential treatment for these documents should be treated as a waiver of confidentiality. Therefore, all six of the audit reports should be considered a public record.

Exhibits attached to the testimony of auditors Welch and Young contain the audit reports referred to above; therefore, portions of the auditor’s exhibits containing the audit reports prepared in this case should also be considered public record.

In addition, the auditors’ exhibits contain copies of 16 other working papers prepared during the audit. Of these, the utility has failed to request protection for 11 of these working papers and therefore pursuant to Rule 25-22.006(3)(a)(2), FAC, these 11 working papers should be considered public record.

BellSouth asked for confidential protection of one working paper contained in an exhibit of auditor Young that is public record. Confidential protection for this document should be denied. This page of the auditor Young’s exhibit should be considered public record.

BellSouth also requested confidential protection for 4 staff working papers within the 21 day time limit which are contained in the staff auditors’ exhibits. Bell’s justification for these documents seems reasonable and therefore a confidential classification is recommended for these documents.

Confidential Classification Period

The utility's request does not specify the confidential classification period requested. Absent a showing of good cause, Section 364.183 (4) F.S., limits the confidential classification period to 18 months. We, therefore, recommend any confidential classification granted be limited to 18 months.

A detailed recommendation covering the staff audit reports, and the exhibits to staff testimony of auditors Welch and Young follows:

Commission Document Number	Document Description	Page(s)	Recommend	Reason
03760-99	Audit Report regarding: Daytona Beach Port Orange Central Office	30	Declassify	Failed to request confidential protection for this document.
03775-99	Audit Report regarding: West Palm Beach Gardens Central Office	29	Declassify	Failed to request confidential protection for this document.
03779-99	Audit Report regarding: Lake Mary Central Office	26	Declassify	Failed to request confidential protection for this document.
03782-99	Audit Report regarding: Miami Palmetto Central Office	32	Declassify	Failed to request confidential protection for this document.
03841-99	Audit Report regarding: Boca Raton Boca Teeca Central Office	28	Declassify	Failed to request confidential protection for this document.
03845-99	Audit Report regarding: North Dade golden Glades Central Office	30	Declassify	Failed to request confidential protection for this document

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Commission Document Number	Document Description	Page(s)	Recommend	Reason
04605-99	Exhibit KW-1 Audit Report regarding: Boca Raton Boca Teeca Central Office	28	Declassify	This is a copy of document 03841-99 and part of the exhibits to the staff auditor's testimony. Confidential protection was not requested for document 03841-99; therefore, a copy of this audit report prepared during this case is also public record.
04605-99	Exhibit KW-2 Audit Report regarding: North Dade Golden Glades Central Office	31	Declassify	This is a copy of document 03845-99 and part of the exhibits to the staff auditor's testimony. Confidential protection was not requested for document 03845-99; therefore, a copy of this audit report prepared during this case is also public record.
04605-99	Exhibit KW-3 Audit Report regarding: Lake Mary Central Office	26	Declassify	This is a copy of document 03779-99 and part of the exhibits to the staff auditor's testimony. Confidential protection was not requested for document 03779-99; therefore, a copy of this audit report prepared during this case is also public record.
04605-99	Exhibit KW-4 Page 1 Work paper 5-1.3 (1 page) Boca Teeca Audit Binder 6	1	Declassify	The utility failed to request confidential protection of this working paper in its filing; therefore, for this information, the utility has waived its right to confidential protection.

Commission Document Number	Document Description	Page(s)	Recommend	Reason
04605-99	Exhibit KW-4 Page 2 Work paper 5-1.4 (1 page) Boca Teeca Audit Binder 6	1	Declassify	The utility failed to request confidential protection of this working paper in its filing; therefore, for this information, the utility has waived its right to confidential protection.
04605-99	Exhibit KW-4 Page 3 Work paper 5-1.5 (1 page) Boca Teeca Audit Binder 6	1	Declassify	The utility failed to request confidential protection of this working paper in its filing; therefore, for this information, the utility has waived its right to confidential protection.
04605-99	Exhibit KW-4 Page 4	1	Declassify	The auditor's exhibit, page 4, refers to a detailed map of the floor plan for the Boca Teeca office. This reference page does not contain confidential information and should be declassified. The map itself however is recommended to be considered confidential. See the next item.

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Commission Document Number	Document Description	Page(s)	Recommend	Reason
03843-99 Staff Work Papers Boca Teeca Audit WP 16 (2 pages) Binder 6 04632-99 BellSouth filing Boca Teeca WP 16-1 and WP 16-2 Binder 6	Detailed Floor Plan Boca Teeca Central Office	2	Grant	This detailed map of the Boca Teeca Central Office floor plan reports competitive information of BellSouth and vendors supplying BellSouth. Release of this information could harm BellSouth or its vendors.
04605-99	Exhibit KW-4 Page 5 Work paper 30-8 (Page 1 of 2) General Information All Central Offices Binder 4	1	Declassify	The utility failed to request confidential protection of this working paper in its filing; therefore, for this information, the utility has waived its right to confidential protection.
04605-99	Exhibit KW-4 Page 6	1	Declassify	The auditor's exhibit, page 6, refers to a detailed map of the floor plan for the North Dade Golden Glades office. This reference page does not contain confidential information and should be declassified. The map itself however is recommended to be considered confidential. See the next item.

Commission Document Number	Document Description	Page(s)	Recommend	Reason
03846-99 Staff Work Papers North Dade Golden Glades WP 16 (2 pages) Binder 6 04632-99 BellSouth filing North Dade Golden Glades WP 16 (2 pages) Binder 6	Detailed Floor Plan North Dade Golden Glades Central Office	2	Grant	The detail floor plan reports competitive information of BellSouth and vendors supplying BellSouth. Release of this information could harm BellSouth or its vendors.
04605-99	Exhibit KW-4 Pages 7-11 Work paper 16-2 (5 pages) North Dade Golden Glades Audit Binder 6	5	Declassify	The utility failed to request confidential protection of this working paper in its filing; therefore, for this information, the utility has waived its right to confidential protection.
04607-99	Exhibit RY-1 Audit Report regarding: Daytona Beach Port Orange Central Office	31	Declassify	This is a copy of document 03760-99 and part of the exhibits to the staff auditor's testimony. Confidential protection was not requested for document 03760-99; therefore, a copy of this audit report prepared during this case is also public record.

Commission Document Number	Document Description	Page(s)	Recommend	Reason
04607-99	Exhibit RY-2 Audit Report regarding: Miami Palmetto Central Office	33	Declassify	This is a copy of document 03782-99 and part of the exhibits to the staff auditor's testimony. Confidential protection was not requested for document 03782-99; therefore, a copy of this audit report prepared during this case is also public record.
04607-99	Exhibit RY-3 Audit Report regarding: West Palm Beach Gardens Central Office	30	Declassify	This is a copy of document 03775-99 and part of the exhibits to the staff auditor's testimony. Confidential protection was not requested for document 03775-99; therefore, a copy of this audit report prepared during this case is also public record.
04607-99	Exhibit RY-4 Pages 1-4 Work paper 30-7/4-1 (4 pages) General Information All Central Offices Binder 4	4	Declassify	The utility failed to request confidential protection of this working paper in its filing; therefore, for this information, the utility has waived its right to confidential protection.
04607-99	Exhibit RY-4 Pages 5-6 Work paper 30-8 (2 pages) General Information All Central Offices Binder 4	2	Declassify	The utility failed to request confidential protection of this working paper in its filing; therefore, for this information, the utility has waived its right to confidential protection.

Commission Document Number	Document Description	Page(s)	Recommend	Reason
04607-99	Exhibit RY-4 Pages 7-37 Work paper 30-17 (31 pages) General Information All Central Offices Binder 5	31	Declassify	The utility failed to request confidential protection of this working paper in its filing; therefore, for this information, the utility has waived its right to confidential protection.
04607-99 04632-99 WP 30-19 General Information All Central Offices Binder 5	Exhibit RY-4 Pages 38-72 Work paper 30-19 entitled "Capacity Management Collocation Guidelines" (35 pages)	35	Grant	The utility reports this information presents trade secrets and market strategy of BellSouth. This type of information qualifies for confidential protection as competitive information the release of which will cause the utility harm.
04607-99 04632-99 WP 30-24 General Information All Central Offices Binder 5	Exhibit RY-4 Pages 73-77 WP 30-24/1 entitled "Excerpts from Engineering & Installation Collocation Equipment (TR 73503)" (5 pages)	5	Grant	The utility reports this information presents trade secrets of BellSouth. This type of information qualifies for confidential protection as competitive information the release of which will cause the utility harm.
04607-99 04632-99 BellSouth filing Miami Palmetto Audit WP 16-2 Binder 6 Central Office Floor Plan	Exhibit RY-4 Page 79 Work paper 16-2 (page 1 of 4) Miami Palmetto Audit Binder 6	1	Deny	This document is already in the public record; therefore a confidential status cannot be granted to this document.

Commission Document Number	Document Description	Page(s)	Recommend	Reason
04607-99	Exhibit RY-4 Pages 80-82 Work paper 16-2 (pages 2,3,4 of 4) Miami Palmetto Audit Binder 6	3	Declassify	The utility failed to request confidential protection of this working paper in its filing; therefore, for this information, the utility has waived its right to confidential protection.

For a limited time, a copy of this recommendation will be retained at I:04632-99.RAF.

CC: Division of Financial Analysis (Wright, Welch, Wilson, Pelt)
 Division of Records and Reporting (M. Sanders)