

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Investigation into the establishment of operations support systems permanent performance measures for incumbent local exchange telecommunications companies.

DOCKET NO. 000121-TP
ORDER NO. PSC-01-1163-CFO-TP
ISSUED: May 22, 2001

ORDER GRANTING CONFIDENTIAL CLASSIFICATION
OF DOCUMENT NO. 05574-01
(CROSS-REFERENCE DOCUMENT NO. 04434-01)

On May 2, 2001 BellSouth Telecommunications, Inc. (BellSouth) filed its Motion for Leave to File Request for Confidential Classification One Day Out of Time. No responses to the Motion have been received and the time for filing such responses has expired. Consequently, because no one has alleged any injury or prejudice by allowing BellSouth to file its request one day late, the Motion is hereby granted.

Also on May 2, 2001, BellSouth filed its Request for Confidential Classification of its response to Staff's First Request for Production of Documents Item No. 1, which has been identified as Document No. 05574-01 (cross-reference Document No. 04434-01), and as Exhibit 4 at the hearing in this docket.

BellSouth claims that the document contains the Performance Measurements Quality Assurance Plan (PMQAP), which documents and maintains the systematic procedures used to ensure that BellSouth produces accurate and reliable service quality measurement reports. Other entities have inquired as to whether BellSouth's programs would be commercially available, thus demonstrating that the information is commercially valuable and constitutes proprietary business information. Consequently, BellSouth asserts that the information contained in its response is proprietary and confidential pursuant to Sections 364.183 and 364.24, Florida Statutes, and Rule 25-22.006, Florida Administrative Code. BellSouth states that it has treated and continues to treat the information as private.

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, states that "proprietary confidential business information" is

[o]wned 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 information for which BellSouth seeks confidential classification is information that, if disclosed, would cause harm to BellSouth's business operations. Thus, this information qualifies as proprietary confidential business information under Section 364.183, Florida Statutes, and Rule 25-22.006, Florida Administrative Code. Also, any customer-specific information should be protected in accordance with Section 364.24, Florida Statutes. As such, BellSouth's request for confidential classification is hereby granted.

Based on the foregoing, it is

ORDERED by Commissioner Michael A. Palecki, as Prehearing Officer, that BellSouth Telecommunications, Inc.'s Motion for Leave to File Request for Confidential Classification One Day Out of Time is hereby granted. It is further

ORDERED that BellSouth Telecommunications, Inc.'s Request for Confidential Classification of response to Staff's First Request

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for Production of Documents Item No. 1 which has been identified as Document No. 05574-01 (cross-reference Document No. 04434-01), is hereby granted. It is further

ORDERED that pursuant to Section 364.183, Florida Statutes, and Rule 25-22.006, Florida Administrative Code, any 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 Michael A. Palecki, as Prehearing Officer, this 22nd day of May, 2001.



MICHAEL A. PALECKI
Commissioner and Prehearing Officer

(S E A L)

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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.