

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Investigation into
pricing of unbundled network
elements.

DOCKET NO. 990649-TP
ORDER NO. PSC-01-2492-CFO-TP
ISSUED: December 21, 2001

ORDER GRANTING REQUESTS FOR CONFIDENTIAL TREATMENT
OF DOCUMENT NOS. 11631-00 (CROSS-REFERENCE DOCUMENT NO. 11541-
00), 11622-00 (CROSS-REFERENCED DOCUMENT NO. 11436-00), 11619-00,
AND 11628-00 (CROSS-REFERENCED DOCUMENT NO. 11438-00)

On December 10, 1998, in Docket No. 981834-TP, the Florida Competitive Carriers Association (FCCA), the Telecommunications Resellers, Inc. (TRA), AT&T Communications of the Southern States, Inc. (AT&T), MCIMetro Access Transmission Services, LLC (MCIMetro), WorldCom Technologies, Inc. (WorldCom), the Competitive Telecommunications Association (Comptel), MGC Communications, Inc. (MGC), Intermedia Communications Inc. (Intermedia), Supra Telecommunications and Information Systems (Supra), Florida Digital Network, Inc. (Florida Digital Network), and Northpoint Communications, Inc. (Northpoint) (collectively, "Competitive Carriers") filed their Petition of Competitive Carriers for Commission Action to Support Local Competition in BellSouth's Service Territory. Among other matters, the Competitive Carriers' Petition asked that this Commission set deaveraged unbundled network element (UNE) rates.

On May 26, 1999, this Commission issued Order No. PSC-99-1078-PCO-TP, granting in part and denying in part the Competitive Carriers' petition. Specifically, the Commission granted the request to open a generic UNE pricing docket for the three major incumbent local exchange providers, BellSouth Telecommunications, Inc. (BellSouth), Sprint-Florida, Incorporated (Sprint), and GTE Florida Incorporated (GTEFL). Accordingly, this docket was opened to address the deaveraged pricing of UNEs, as well as the pricing of UNE combinations and nonrecurring charges.

By Order No. PSC-99-1397-PCO-TP, issued July 20, 1999, the procedures for this docket were established and the controlling dates set. A Second Revised Order on Procedure, Order No. PSC-00-0540-PCO-TP, was issued on March 16, 2000, which set forth new filing dates and also the newly refined issues to be addressed in this proceeding. By Order No. PSC-00-2015-PCO-TP, issued June 8, 2000, the filing dates were extended and the procedure for this

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case was further modified. Pursuant to these Orders, Phase I was set for hearing July 17-19, 2000, and Phase II was set for hearing September 19-22, 2000.

On September 15, 2000, BellSouth filed a Request for Confidential Classification of its Supplemental Responses to Staff's Eighth Request for Production of Documents, Item No. 55 (Document No. 11631-00 and cross-referenced Document No. 11541-00), which BellSouth contends contains vendor-specific pricing, customer proprietary information, and confidential business information. BellSouth contends that the release of this information would provide its competitors with an unfair advantage in future negotiations, that it has not otherwise been disclosed, and that BellSouth treats this information as confidential.

That same day, BellSouth also filed a Request for Confidential Classification of its Supplemental Responses to Rhythms Links' Request for Production of Documents, No. 3 (Document No. 11622-00 and cross-reference Document No. 11436-00). Similarly, BellSouth argues that this response contains vendor-specific pricing, customer proprietary information, and confidential business information. BellSouth contends that the release of this information would provide its competitors with an unfair advantage in future negotiations, that it has not otherwise been disclosed, and that BellSouth treats this information as confidential.

Also on that day, BellSouth filed a Request for Confidential Classification of its Responses to Staff's Eighth Request for Production of Documents, Items Nos. 41, 42, 44, 47, 48, 52, 58, and 60 (Document No. 11619-00). Again, BellSouth generally contends that these responses contain vendor-specific pricing, customer proprietary information, and confidential business information. BellSouth contends that the release of this information would provide its competitors with an unfair advantage in future negotiations, that it has not otherwise been disclosed, and that BellSouth treats this information as confidential.

Finally, BellSouth also filed a Request for Confidential Classification of its Supplemental Responses to the Coalition's First Set of Interrogatories, No. 2, and First Requests for Production of Documents, Nos. 5 and 7 (Document No. 11628-00 and cross-referenced Document No. 11438-00). With regard to this

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information, BellSouth makes the same general contentions as those identified above.

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 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.

Specifically, with regard to its response to Staff's Request for Production of Documents No. 55, BellSouth seeks confidential treatment of the response in its entirety. BellSouth emphasizes that not only does it believe that release of the information would impair its ability to contract for goods and services on favorable terms, but that it is also contractually bound by an agreement with the vendor to treat the information as confidential.

As for its response to Rhythms Links' Request for Production of Documents No. 3, BellSouth contends that pages identified in Attachment A, which is attached and incorporated herein, should be protected for the reasons also set forth in Attachment A.

Regarding its Responses to Staff's Eighth Request for Production of Documents, Items Nos. 41, 42, 44, 47, 48, 52, 58, and 60, BellSouth contends that the pages, columns, and lines identified in Attachment B, which is attached and incorporated herein, should be protected for the reasons set forth in Attachment B.

Finally, as it pertains to its Supplemental Responses to the Coalition's First Set of Interrogatories, No. 2, and First Requests for Production of Documents, Nos. 5 and 7, BellSouth argues that the entire document for each response should be treated as confidential because releasing this information would provide a competitor with access to intellectual property developed by

BellSouth at significant expense. If released, BellSouth maintains that competitors would then have great advantage in bidding for business without having to expend money and resources in market research and development. As such, they would likely be able to undercut BellSouth's bids due to their reduced costs.

Section 364.183(3), Florida Statutes, in pertinent part, provides:

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.

Based on the definition of proprietary confidential business information in Section 364.183(3), Florida Statutes, it appears that the material described herein is proprietary business information in accordance with Section 364.183, Florida Statutes, and Rule 25-22.006, Florida Administrative Code. Disclosure of this information could be detrimental to BellSouth's operations, could impair BellSouth's ability to compete, and its ability to contract for goods and services. As such, BellSouth's Requests for Confidential Classification regarding Document Nos. 11631-00 (cross-reference Document No. 11541-00), 11622-00 (cross-referenced Document No. 11436-00), 11619-00, and 11628-00 (cross-referenced Document No. 11438-00) are hereby granted.

Based on the foregoing, it is therefore

ORDERED by Chairman E. Leon Jacobs, Jr., as Prehearing Officer, that BellSouth Telecommunications, Inc.'s Requests for Specified Confidential Classification filed on September 15, 2000, addressing Document Nos. 11631-00 (cross-reference Document No. 11541-00), 11622-00 (cross-referenced Document No. 11436-00),

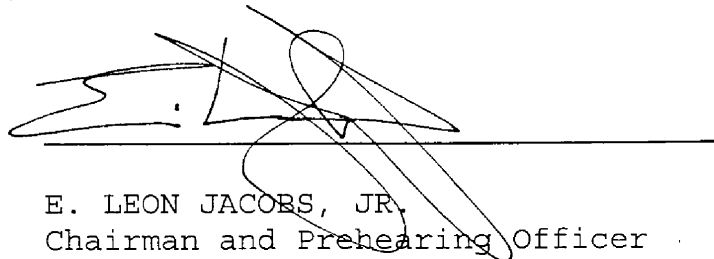
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11619-00, and 11628-00 (cross-referenced Document No. 11438-00) respectively, are hereby granted.

ORDERED that pursuant to Section 364.183, Florida Statutes, and Rule 25-22.006, Florida Administrative Code, the 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 Chairman E. Leon Jacobs, Jr. as Prehearing Officer, this 21st Day of December, 2001.



E. LEON JACOBS, JR.
Chairman and Prehearing Officer

(S E A L)

BK

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.

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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 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

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BellSouth Telecommunications, Inc.
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9/15/00

REQUEST FOR CONFIDENTIAL CLASSIFICATION OF BELL SOUTH'S SUPPLEMENTAL RESPONSE TO RHYTHMS LINKS 1ST REQUEST FOR PRODUCTION OF DOCUMENTS (POD NO 3), FILED SEPTEMBER 13, 2000 IN FLORIDA DOCKET NO. 990649-TP

Explanation of Proprietary Information

1. This information reflects customer vendor specific information, and/or, 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.
2. 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.

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**REQUEST FOR CONFIDENTIAL CLASSIFICATION OF BELLSOUTH'S
SUPPLEMENTAL RESPONSE TO RHYTHMS LINKS 1ST REQUEST FOR
PRODUCTION OF DOCUMENTS (POD NO 3), FILED SEPTEMBER 13, 2000
IN FLORIDA DOCKET NO. 990649-TP**

POD No. 3

<u>Page No.</u>	<u>Line No.</u>	<u>Reason</u>
2-4	Entire Page	2
6	Contractor Hourly Rate	1
30-32	Entire Page	2
34-36	Entire Page	2
38	Contractor Hourly Rate	1
63	Jan Col	1
65-81	Entire Page	2

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**REQUEST FOR CONFIDENTIAL CLASSIFICATION OF BELLSOUTH'S
RESPONSE TO STAFF'S 7TH SET OF INTERROGATORIES (ITEM NO. 124)
AND 8TH REQUEST FOR PRODUCTION OF DOCUMENTS (41, 42, 44, 47, 48,
52, 58 AND 60), FILED AUGUST 24, 2000 IN FLORIDA DOCKET NO. 990649-
TP**

Explanation of Proprietary Information

1. This information reflects customer vendor specific information, and/or, 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.
2. 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.

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**REQUEST FOR CONFIDENTIAL CLASSIFICATION OF BELLSOUTH'S
RESPONSE TO STAFF'S 7TH SET OF INTERROGATORIES (ITEM NO. 124)
AND 8TH REQUEST FOR PRODUCTION OF DOCUMENTS (41, 42, 44, 47, 48,
52, 58 AND 60), FILED AUGUST 24, 2000 IN FLORIDA DOCKET NO. 990649-
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Staff's 7th Set of Interrogatories, Item No. 124

<u>Location</u>	<u>Line No.</u>	<u>Reason</u>
Response (r) Pg 8 of 8	1 and 2	1

POD No. 41

<u>Page No</u>	<u>Column/Line No.</u>	<u>Reason</u>
1	Material Cost Column	1
2	Lines 4-8, 10-12,14-17,18-20	1
4	All Prices	1
5	All Prices	1
6	Material Cost Column	1
7	2 nd Column	1
9	All Prices	1

POD No. 42 Reason

Entire Document 2

POD No. 44 Reason

Entire Document 2

POD No. 47

<u>Page No.</u>	<u>Location</u>	<u>Reason</u>
1	Lucent Column	1
	Tellabs Column	1
	Alcatel Column	1
	3-1 Column	1
	1-0 Column	1
2	Quantity Column	1
	Unit Cost Column	1
	Totals Column	1
3	Last Column	1
4-31	Unit Price Column	1
	Total Price Column	1
32	Line 8	1
33	Cost Column	1
34	UNTIs Column	1
	Cost/Unit Column	1
	377C Column	1
	560C Column	1
	377M Column	1
	Total Cost Line	1
35	HRDW Column	1
	RTU Column	1
	377C Column	1
	560C Column	1
	Total LMS Costs Line	1
36	Second Column	1
	Note 1, Line 3	1
37-77	Entire Page	1,2
78-87	BST Unit Price Column	1
	Total Line	1
88-89	Material Price Column	1
90-95	Total Price Column	1
96	DS-1 for SF Line	1
	DS-1 for ANSI Line	1
	DS-1 for SLC Line	1
	SLC DS-1 Line	1
	SLC-5 Line	1
	Per Port @ DSO Line	1
	Per Port @ DS1 Line	1

97-106	Lucent Column	1
	Tellabs Column	1
	Alcatel Column	1
	3-1 Column	1
	DSC Column	1
	1-0 Column	1
107	Lucent Column	1
	Tellabs Column	1
	DSC Column	1
108	Lucent Column	1
	Tellabs Column	1
	Alcatel Column	1
109	Lines 9,11-18	1
110-111	Entire Page	1,2
112	Common Costs Column, DS3 Column, DS1 Col	1
113-115	Entire Page	1,2
117	Material Price Col	1
118-123	Entire Page	1,2
128-133	Entire Page	1
134	2W FXS Line	1
	2W FXO Line	1
	4W FFXO Line	1
	4W FXS Line	1
	OCUDP Line	1
135	80 Circuits Line	1
	90 Circuits Line	1
	84 Circuits Line	1
	56 Circuits Line	1
	24 Circuits Line	1
	72 Fibers Line	1
	72 pre-term Line	1
	144 pre-term Line	1
	216 preterm Line	1
	7 Line	1
	9 Line	1
	11 Line	1
	7 Line	1
	Per Bay Column	1
	As Per Mike Hulsey Col	1
136	Primary Price Col	1
	Condar Upplier Col	1
	% Award Col	1
137	Primary Price Col	1
	Condar Upplier Col	1
138	Line 2 of message	1
139	Average Price Line	1
140	Starnd Ft Price Col	1
	Utilized Price Col	1

141	Price Per Fiber Mile Col	1
	80 Circuits Line	1
	90 Circuits Line	1
	84 Circuits Line	1
	56 Circuits Line	1
	24 Circuits Line	1
	72 Fibers Line	1
	72 pre-term Line	1
	144 pre-term Line	1
	216 preterm Line	1
	7 Line	1
	9 Line	1
	11 Line	1
	7 Line	1
	As Per Mike Hulsey Col	1

POD No. 48

<u>Page No.</u>	<u>Location</u>	<u>Reason</u>
Attachment 1		
2-4	Entire Page	1
5	Inv532C Col	1
	Inv630C Col	1
	Inv633C Col	1
	INV Col	1
	EXP Col	1
	RTU Col	1
	EXP + RTU Col	1
7	2000 Line	1
	2001 Line	1
	2002 Line	1
10	Acct 530C, Acct 630C, Expenses, Acct 460C Cols	1

Attachment 2		
5-117	Entire Page	1

POD No. 52

Entire Document		1
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POD No. 58

<u>Location</u>	<u>Reason</u>
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Lines 1994-2007 2

POD NO. 60

AT&T's 9th Set of Interrogatories

Item No. 192	Part A and B of request	1
Attachment	Entire Document	1

AT&T's 5th Request for Production of Documents

POD No. 62	Entire Document	2
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AT&T's 9th Request for Production of Documents

POD No. 69	Material Cost Col, EF&I Col	1
POD No. 71	Material Cost Col, EF&I Col	1

AT&T's 10th Request for Production of Documents

POD No. 73	page 2	Material Only Cost Col	1
		EF&I Col	1
	Page 3	DMS Col, 5ESS Col, Discount Col, Unit Col, Utilized Inv Col	1