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May 24, 2002

Mrs. Blanca S. Bayo
Director, Division of the Commission Clerk
and Administrative Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399

RE: Docket No. 001305-TP (Supra)

Dear Ms. Bayo:

Enclosed is an original and fifteen copies of BellSouth Telecommunications, Inc.'s Motion for Reconsideration of Order No. PSC-02-0663-PCO-TP, which we ask that you file in the captioned docket.

A copy of this letter is enclosed. Please mark it to indicate that the original was filed and return a copy to me. Copies have been served to the parties shown on the attached certificate of service.

Sincerely,

James Meza III (KA)

Enclosures

cc: All Parties of Record
Marshall M. Criser III
R. Douglas Lackey
Nancy B. White

CERTIFICATE OF SERVICE
Docket No. 001305-TP

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via Electronic Mail and U.S. Mail this 24th day of May, 2002 to the following:

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James Meza III

(+) Signed Protective Agreement

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for Arbitration of the Interconnection Agreement Between BellSouth Telecommunications, Inc. and Supra Telecommunications & Information System, Inc., Pursuant to Section 252(b) of the Telecommunications Act of 1996.	)	Docket No. 001305-TP
	)	Filed: May 24, 2002

BELLSOUTH TELECOMMUNICATIONS, INC.'S MOTION FOR RECONSIDERATION OF ORDER NO. PSC-02-0663-PCO-TP

BellSouth Telecommunications, Inc. ("BellSouth"), pursuant to Rules 25-22.036 and 25-22.006(3)(c), Florida Administrative Code, respectfully requests that the Florida Public Service Commission ("Commission") Panel assigned to this docket reconsider Order No. PSC-02-0663-PCO-TP ("Order") and grant BellSouth's Request for Confidential Classification. For the reasons set forth in detail below, the Commission Panel should reconsider and reverse the Prehearing Officer's Order because it (1) overlooks and fails to consider several points of fact and law; (2) potentially violates an order from a Federal Court; (3) rewards Supra for violating the terms of its previous Interconnection Agreement, Commission Order, and a Federal Court Order; (4) misinterprets Section 364.183, Florida Statutes; (5) eviscerates a party's rights to protect certain information under Commission rules and Chapter 364; and (6) would have a chilling effect on the disclosure of information between parties and the Commission.

INTRODUCTION

Recognizing the sensitivity of certain information and the need for full disclosure, this Commission has historically preserved parties' rights to protect their confidential business information. As a result, parties appearing before the Commission routinely submit their highly sensitive, confidential business information to the Commission for review by invoking the appropriate protective measures under Chapter 364 and the Commission rules. Additionally, the parties themselves almost always enter into protective agreements in order to facilitate and ease the exchange of information in contested proceedings. Parties willingly enter into protective agreements, and thus, entrust their opponents with their confidential information, for the most part, because of the Commission's willingness to recognize a party's right to protect its confidential information. Without these protective agreements, the Commission would be inundated with frivolous and time-consuming discovery motions, seeking to protect or prevent another party from obtaining confidential information.

The effect of the Order is profound as it guts this Commission's well-established treatment of confidential information. If the Order is not reversed, the Commission will send a message to the companies it regulates that the concept of "confidential information" is nothing but a fiction, as it would allow a party's opponent to strip the confidential status of information, thereby rendering it public, by simply unilaterally submitting the information it in a public filing. Further troublesome is the apparent unwillingness of the Order to recognize the fact that, by intentionally submitting the information in a public filing, the opponent

breaches its contractual obligations to keep the information confidential as well as orders of other forums. BellSouth respectfully submits that denial of this Motion for Reconsideration constitutes an acceptance of flawed logic and ignores the inequities and disastrous ramifications that result. The Commission Panel has a duty to reverse the Prehearing Officer's Order and to reestablish the parties' confidence in the Commission's treatment of confidential information.

BACKGROUND

At the close of business on April 1, 2002, Supra Telecommunications and Information Systems, Inc.'s ("Supra")'s Chairman and CEO, Olukayode A. Ramos, sent a letter with attached exhibits to Commissioner Palecki ("Supra Letter" or "Letter"). Several portions of the Supra Letter as well as certain exhibits to the Letter contained substantive references to the private commercial arbitration proceedings between the parties. Pursuant to a previous Interconnection Agreement approved by this Commission, both BellSouth and Supra are contractually bound to keep the proceedings of the private arbitrations confidential.

In the Letter, Supra recognized that the Letter and attachments contained confidential information. Supra claimed, however, that the subject information had become public because BellSouth purportedly had waived the confidential nature of the information by allegedly disclosing certain confidential information to Commission Staff. Specifically, Supra alleged that BellSouth informed Staff of (1) amounts that Supra paid to BellSouth as a result of and pursuant to the commercial arbitration proceedings; and (2) the amount that Supra still owes

BellSouth. Supra provided no evidence whatsoever to support its assertion that BellSouth waived its rights to treat certain information confidential or that BellSouth improperly disclosed confidential information to Commission Staff.

Supra gave BellSouth no notice of its filing of this confidential information. Consequently, on April 2, 2002, the next business day, BellSouth immediately filed a Notice of Intent for certain portions of the Supra Letter, claiming that the Letter and attachments contained confidential information and thus should be exempt from public disclosure. In the Notice of Intent, BellSouth informed the Commission that, contrary to Supra's statements in the Letter, BellSouth did not waive any of its rights regarding the confidentiality of the commercial arbitration proceedings. Supra filed a Response to BellSouth's Notice of Intent on April 5, 2002.

Pursuant to Rule 25-22.066, Florida Administrative Code, BellSouth filed its Request for Confidential Classification for the Supra Letter on April 22, 2002. BellSouth filed an Amended Request for Confidential Classification on April 23, 2002 to correct a typographical error and to add an additional paragraph, which was omitted from the original filing. In the Amended and Original Request for Confidential Classification, BellSouth argued that the identified portions of the Supra Letter were entitled to confidential classification because they constituted proprietary confidential business information under Section 364.183, Florida Statutes. Specifically, BellSouth argued that the subject information was entitled to confidential treatment pursuant to Section 364.183 because (1) both Supra and BellSouth are contractually bound under a previous Interconnection

Agreement to keep the proceedings of the private arbitration confidential; (2) the confidential nature of the commercial arbitration proceedings has been confirmed by the Federal District Court for the Southern District of Florida, in Civil Action No. 01-3365; (3) BellSouth treats the subject information as private and it has not been generally disclosed; (4) BellSouth has not waived its rights regarding the confidentiality of the commercial arbitration proceedings; and (5) the information contained customer specific account information. Supra filed an Objection to BellSouth's Request for Confidential Classification on May 1, 2002.

As a result of BellSouth claiming that the Supra Letter contained confidential information, the Commission, upon information and belief, did not and has not posted the Letter on its website or otherwise made it publicly available.

On May 15, 2002, the Prehearing Officer denied BellSouth's Request for Confidential Classification on the sole basis that, because Supra submitted the April 1, 2002 letter as a public document, it immediately became a matter of public record and therefore not subject to protection under Section 364.183. Order No. PSC-02-0663-TP. Specifically, the Prehearing Officer stated: "The letter submitted by Supra on April 1, 2002, was submitted as a public document and as such, became a matter of the public record. Once disclosed, it is not possible to 'put the chicken back in the egg' so to speak." Id. at 3.

LAW AND ARGUMENT

A motion for reconsideration is appropriate if the Commission overlooked or failed to consider a point of fact or law. See Diamond Cab Co. of Miami v.

King, 148 So. 2d 889 (Fla. 1962). In the instant matter, the Prehearing Officer failed to consider the following facts and points of law, all of which mandate that the Commission Panel reconsider the Order and grant BellSouth's Request for Confidential Classification.

I. BellSouth and Supra Are Contractually Obligated to Maintain the Subject Information as Confidential.

First, reconsideration is warranted because the Prehearing Officer failed to consider that both Supra and BellSouth are contractually bound by a previous Interconnection Agreement ("AT&T Agreement" or "Agreement") to keep the proceedings of the private arbitration confidential. Specifically, Section 15.1 of Attachment 1 to that Agreement provides:

> BellSouth, [Supra], and the Arbitrator(s) will treat any arbitration proceeding, including the hearings and conferences, discovery, or other related events, as confidential, except as necessary in connection with a judicial challenge to, or enforcement of, an award, or unless otherwise required by an order or lawful process of a court or government body.

Furthermore, the CPR Rules for Non-Administered Arbitration ("CPR Rules"), made applicable to the arbitration by the parties (see Interconnection Agreement, Attachment 1, Section 5.1), likewise requires confidentiality: "the parties, the arbitrators and CPR shall treat the proceedings, and related discovery and the decisions of the tribunal, as confidential . . . unless otherwise required by law or to protect the legal right of a party." CPR Rules, Rule 17.

Accordingly, there can be no question that both Supra and BellSouth contemplated and agreed to keep the commercial arbitration proceedings

confidential and not subject to public disclosure. Thus, the information is subject to confidential protection under Section 364.183, Florida Statutes.[1]

The Prehearing Officer erred in finding that the information was not entitled to confidential treatment merely because Supra, in violation of its contractual obligations, submitted the information in a public filing. Namely, the Prehearing Officer erred in finding that Supra's submission of the confidential information somehow stripped the subject information of its confidential status. The parties are required to treat the subject information as confidential pursuant to the previous AT&T Agreement. Supra's failure to comply with its obligations under that Agreement constitutes a breach of the Agreement. This breach does not remove or otherwise strip the subject information of its confidential status. Rather, contrary to the Prehearing Officer's decision, Supra's breach gives BellSouth certain rights; it does not take those rights away.

Simply put, the Order effectively absolves Supra of its breach and sanctions Supra's violation of the previous Interconnection Agreement and CPR Rules. This Order will only encourage Supra and other parties to breach their contractual obligations regarding the treatment of confidential information, because they will know, based on the Order, that they can willfully violate confidentiality obligations without fear of repercussion from the Commission or even an acknowledgement of such obligations by the Commission. Such a result defeats the purpose of protective or nondisclosure agreements, which the

[1] This conclusion is buttressed by the fact that, on September 19, 2001, Supra and BellSouth filed a Joint Request for Confidential Classification under Section 364.183, Florida Statutes for information filed in this proceeding that was the subject of or arose out of the commercial arbitration proceeding. This Joint Request was submitted by Supra and BellSouth before Judge King's October 31, 2001 Order discussed in Section II, infra, requiring all filings related to the commercial arbitration panel to be filed under seal and kept confidential.

Commission has previously recognized and ordered. See In re: Determination of Appropriate Disclosure Requirements, Docket No. 991837-EI, Order No. PSC-00-1080-PCO-EI (Jun. 5, 2000) (stating that nothing in the Commission "rules discourages or prohibits the sharing of confidential information pursuant to protective agreements or protective orders of this Commission."); In re: Complaint by Allied Universal Corp. and Chemical Formulators, Inc., Docket No. 000061-EI, Order No. PSC-00-1171-CFO-EI (Jun. 27, 2000) (recognizing that the Commission rules authorize the Commission to grant protective orders).

Accordingly, because the Order fails to consider these facts, and instead interprets Supra's breach as somehow declassifying the confidential information, the Order should be reversed.

II. The Order Effectively Allows Supra to Violate a Federal Court Order.

Second, the Prehearing Officer's Order potentially violates an October 31, 2001 Order of the Federal District Court for the Southern District of Florida in Civil Action No. 01-3365, wherein Judge King held that both Supra and BellSouth are required under the previous Agreement to keep all information related to the commercial arbitration proceedings confidential. As stated by Judge King:

> The exception to the confidentiality provision does not permit the parties to disclose information and evidence produced during the arbitration proceedings and other related matters (including an arbitration award), beyond a judicial proceeding or unless by order of a court or a government body. Further, the Arbitral Tribunal, in its Order dates July 20, 2001, concluded that the arbitration award may contain proprietary or confidential information, which the parties agreed to be held in confidence in accord with the terms of the Agreement. Therefore, to unseal the

> filings in this cased would contravene the confidentiality provision with which the parties agreed.

See October 31, 2002 Order in Civil Action No. 01-3365, at p.5-6 ("Federal Court Order"). As a result of Judge King's Order and the confidentiality obligations of the previous Agreement, all filings and orders in the Federal Court case are required to be filed and kept under seal, except for the October 31, 2001 Order quoted above.

Importantly, the "judicial proceeding" exception to the parties' confidentiality obligations noted by Judge King, is inapplicable to the Supra Letter. An administrative proceeding before the Commission would be considered, in appropriate circumstances, a quasi-judicial proceeding. See, e.g., Reedy Creek Utilities Co. v. Florida Public Service Commission, 418 So.2d 249, 253 (Fla. 1982) (defining FPSC as a "quasi-judicial body"); Myers v. Hawkins, 362 So.2d 926, 932 (Fla. 1978) (term "judicial tribunal" in sunshine provision of Florida Constitution does not include the FPSC). As noted by Judge King, the exception is limited to "judicial proceedings" -- i.e., court proceedings where the award is either confirmed or enforced -- and not to quasi-judicial proceedings. Thus, the term "judicial proceeding" cannot be read to include any administrative proceeding in which Supra is a party.[2]

[2] As evidenced by Supra's Opposition to BellSouth's Motion to Stay Order No. PSC-02-0663-CFO-TP regarding the Prehearing Officer's denial of BellSouth's request for confidential classification, Supra will probably argue that the instant arbitration is a "judicial proceeding" and thus the filing of the Letter was permissible under the previous Agreement. The Commission should note that this anticipated response is directly contrary to Supra's previous filings in this docket, wherein it unequivocally stated that the Commission was a "quasi-legislative rate-making" agency whose primary authority did not include any quasi-judicial authority. See Supra's Legal Brief on Issue 1 and Renewed Motion for Indefinite Stay. Apparently, the Commission, according to Supra, is a quasi-judicial entity only when it is beneficial to Supra. In any event, even if the instant proceeding came within the "judicial proceeding" exception to the parties' confidentiality

By denying BellSouth's request to grant confidential classification to the confidential information contained in the Supra Letter, thereby finding that the information is public, the Prehearing Officer is assisting Supra's violation of the Federal Court's Order. Stated another way, the Prehearing Officer's Order is effectively encouraging Supra's violation of the Federal Court's Order as well as Supra's violation of its contractual obligations with BellSouth. In failing to consider the fact that a Federal Court previously confirmed that the subject information is confidential, under seal, and not subject to public disclosure, the Prehearing Officer erred and the Order denying BellSouth's request for confidential classification should be reversed.

III. The Order Violates a Previous Commission Order.

Third, reconsideration is warranted because the Prehearing Officer previously determined in Order No. PSC-02-0293-CFO-TP that a portion of the information that was included in the Supra Letter, including references to the June 5, 2001 commercial arbitration award, was entitled to confidential classification.[3] Now, directly contrary to that Order, the Prehearing Officer has found the same information to be not entitled to confidential treatment solely because Supra attempted to publicly disclose the subject information, thereby

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obligations (which is denied), that fact would not strip the information of its confidential status. Rather, Supra could submit the information to the Commission as long as it maintained its confidential status and sought the appropriate protection. Coming within the exception of a permissible disclosure does not alleviate Supra's obligations to keep the information confidential, which Supra breached by intentionally disclosing confidential information in a public filing.

[3] The fact that both Supra and BellSouth requested that the identified information receive confidential treatment does not change the fact that the Commission previously ordered that this information, which is also contained in the Supra Letter, was entitled to confidential treatment under Section 364.183 as proprietary confidential business information. The simple fact of the matter is that the Commission has already determined that some of the information Supra attempted to make public in the Supra Letter is confidential. Supra willfully violated this Order by disclosing this information.

violating its contractual obligations. Indeed, the Prehearing Officer recognized that Supra violated the confidential nature of the information, and in effect, the Prehearing Officer's previous Order, by not disclosing the subject information pursuant to "'a statutory provision, an order of a court or administrative body, or private agreement. . . .'" Order at 3.

Clearly, the Commission is not in the practice of sanctioning a party's violation of its orders, but this is exactly what the Prehearing Officer's Order does, as it allows Supra to publicly disclose information that the Prehearing Officer previously determined was confidential pursuant to Section 364.183. For this reason, the Prehearing Officer's Order should be reversed.

IV. The Order Misinterprets Section 364.183, Florida Statutes.

Fourth, the Commission Panel should reconsider and reverse the Order because the Prehearing Officer misinterpreted Section 364.183 in finding that the subject information was not entitled to confidential treatment. When interpreting a statute, the Commission must give effect to the Legislature's intent. As stated by the Florida Supreme Court in City of Boca Raton v. Gidman, 440 So. 2d 1277, 1281 (Fla. 1983):

> In construing statutes, it is a primary rule that the intent is the vital part. It is the essence of the law. The primary rule of construction is to ascertain and give effect to that intent.

Further, it is well established that, in interpreting a statute, "[n]o literal interpretation should be given that leads to an unreasonable or ridiculous conclusion or to a purpose not designated by the lawmakers." City of Boca Raton v. Gidman, 440 So. 2d 1277, 1281 (Fla. 1983); see also, Joshua v. City of

Gainesville, 786 So. 2d 432, 435 (Fla. 2000) (quoting Las Olas Tower Co. v. City of Fort Lauderdale, 742 So. 2d 308, 312 (Fla. 4th DCA 1999)) ("'In statutory construction a literal interpretation need not be given [to] the language used when to do so would lead to an unreasonable conclusion or defeat legislative intent or result in a manifest incongruity.'").

Section 364.183(3) defines "proprietary confidential business information" as:

> [I]nformation . . owned or controlled 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 Prehearing Officer interpreted this statute to mean that Supra could unilaterally strip the confidential status of information that both BellSouth and Supra are required to keep confidential by submitting the information to the Commission in a public filing. Specifically, the Prehearing Officer held that, because Supra filed the information as a matter of public record, the subject information had already been disclosed and thus could not constitute "proprietary confidential business information" under Section 364.183(3).

The Prehearing Officer's literal interpretation of Section 364.183(3) leads to the unreasonable conclusion that one party can unilaterally strip the confidential status of another party's information by merely submitting the information in a public filing. Indeed, the Prehearing Officer's Order limits a

party's right to protect certain information that it considers to be confidential to the whim and discretion of another. Such a result is not the intent of the Legislature in adopting Section 364.183 and is contrary to logical application of the statute. As stated by Judge Ramirez in the Third District Court of Appeal, a court "should not blindly follow statutory language in derogation of common sense." Sainz v. State, 811 So. 2d 683, 693 (Fla. App. 3rd DCA 2002) (Ramirez, J. concurring).

Without question, the Legislature's requirement that the information for which confidential classification was sought not be previously disclosed is limited to when a party, on its own volition, previously disclosed the information. In that situation, the Legislature has determined that the information cannot be considered "proprietary confidential business information" because the party has already disclosed the information. This conclusion is supported by the fact that 364.183(3) recognizes that information is considered to have not been "disclosed" if it was given to another party pursuant to a confidentiality agreement. See 364.183(3), Florida Statutes. The Legislature would not have made this exception to the disclosure requirement if a party who receives the confidential information pursuant to a confidentiality agreement could strip the confidential status of the information by unilaterally submitting it in a public filing without the other party's consent, which is exactly what the Prehearing Officer allowed Supra to do in this case.

As can be seen from the above, the Prehearing Officer's analysis and interpretation of Section 364.183(3) leads to unreasonable results that the

Legislature never intended. Accordingly, the Commission Panel should reconsider and reverse the Prehearing Officer's Order and grant BellSouth's request for confidential classification.

V. The Subject Information Has Not Been Disclosed and the Order Eviscerates a Party's Rights Under Chapter 364 and the Commission's Rules to Protect Confidential Information.

Fifth, contrary to the Prehearing Officer's finding, the contents of the Supra Letter have not been publicly disclosed. As stated above, BellSouth sought confidential treatment of the subject information by filing a notice of intent the morning after receipt of the Letter (the Letter was faxed to BellSouth at the close of business on preceding day). Under Rule 25-22.006(3)(a)(1), the filing of a notice of intent automatically exempts the confidential information from Section 119.07, Florida Statutes, or the "sunshine laws" for a period of 21 days. Further, in order to maintain a claim of confidentiality a party must file a request for confidential classification within this 21-day period, which is exactly what BellSouth did on April 22, 2002. Id. As with the filing of a notice of intent, under Rule 25-22.006(2)(d), any information that is subject to a pending request for confidential classification is exempt from the "sunshine laws."

Accordingly, despite Supra's attempt to violate the confidentiality provisions of the previous Interconnection Agreement, the information was not publicly disclosed because BellSouth filed a notice of intent and a timely request for confidential classification. In compliance with these rules, the Supra Letter has not and is not, upon information and belief, on the Commission's website or

otherwise publicly available.[4] Thus, BellSouth has complied with Chapter 364 and Commission rules in order to preserve the confidential status of the subject information.

The Prehearing Officer's rationale – that a party can waive the confidential status of another party's information by simply including it in a public filing – eviscerates Rule 25-22.006 and a party's rights to prevent disclosure of its confidential business information. This Order allows any party to disclose another party's confidential information by simply including the information in a public filing. Such a rationale cannot be supported by the Commission as it (1) would have a chilling effect on the disclosure of information between the parties and between the parties and the Commission; (2) is directly contrary to a party's rights to protect information that it considers to be confidential under Chapter 364 and the Commission's rules; and (3) would subject the Commission's process for seeking confidential classification to malfeasance and abuse by unscrupulous parties. In short, the effect of this Order is to undermine the confidence of all regulated entities in this State that their confidential business information will be kept private.

VI. BellSouth Is Attempting to Enforce Its Rights in Another Forum.

Sixth, as a result of the Supra Letter, BellSouth is currently attempting to enforce the confidentiality provisions of the expired Agreement in the appropriate forum.[5] Thus, while the Prehearing Officer has determined that the information

[4] BellSouth informed the State Attorney's office of the confidential nature of the subject information.

[5] BellSouth initiated enforcement action after it filed its original and Amended Request for Confidential Classification.

cannot be considered confidential because Supra has already disclosed it, another forum is determining whether Supra violated the Agreement and other prohibitions against disclosure by submitting the Letter. Accordingly, another forum may decide that Supra's actions were improper and order Supra to withdraw the Letter. Thus, in order to avoid inconsistent rulings and circumventing any potential penalty that may be imposed upon Supra, the Commission Panel should reconsider and reverse the Order or at least hold the Order in abeyance until BellSouth's enforcement actions are resolved.

VII. The Public Interest Requires that the Order Be Reversed.

Seventh, it would be against the public interest not to reverse the Prehearing Officer's Order. This is so because the Order rewards Supra for violating a Federal Court Order, a previous Commission Order, as well as its obligations to BellSouth. It is not in the public interest for the Commission to ignore obvious malfeasance let alone sanction it. Similarly, the chilling effect this Order will have on the parties' confidence in the Commission's treatment of confidential information is also against the public interest. Namely, parties will be extremely reluctant to exchange information with opponents and with the Commission if this Order is not reversed because there will be a risk that an opponent can make information public that the parties agreed to keep confidential.

CONCLUSION

For the foregoing reasons, BellSouth respectfully requests that the Commission Panel reconsider Order No. PSC-02-0663-PCO-TP and grant BellSouth's Request for Confidential Classification.

Respectfully submitted this 24th day of May, 2002.

BELLSOUTH TELECOMMUNICATIONS, INC.

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