

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint by Supra  
Telecommunications and  
Information Systems, Inc.  
against BellSouth  
Telecommunications, Inc.  
regarding BellSouth's alleged  
use of carrier to carrier  
information.

DOCKET NO. 030349-TP  
ORDER NO. PSC-03-1088-CFO-TP  
ISSUED: October 1, 2003

ORDER GRANTING REQUEST FOR CONFIDENTIAL CLASSIFICATION OF  
DOCUMENT NO. 08957-03

On April 18, 2003, Supra Telecommunications and Information Systems, Inc. (Supra) filed its Emergency Petition for Expedited Review of BellSouth Telecommunications, Inc.'s (BellSouth) \$75 Cash Back Promotion and Investigation into BellSouth's Pricing and Marketing Practices. On May 5, 2003, BellSouth filed its Answer to Supra's Emergency Petition.

On June 9, 2003, Supra filed for leave to amend its petition, attaching its Amended Emergency Petition alleging BellSouth's violation of 47 U.S.C. Section 222 and Florida Public Service Commission policies regarding the use of wholesale information in retail marketing. On June 17, 2003, by Order No. PSC-03-0721-PCO-TP, Supra was granted leave to amend its petition. On the same date, Order No. PSC-03-0718-PCO-TP, the Order Establishing Procedure, was issued.

A hearing was held on this matter on August 29, 2003. During the hearing, the deposition transcripts and exhibits of BellSouth's witnesses John A. Ruscilli, Edward Wolfe, Ronald M. Pate and Michelle Summers were entered into the record under protective cover (Document No. 08957-03). BellSouth states that because portions of the transcripts and the exhibits contain confidential information, on September 18, 2003, BellSouth filed a Request for Specified Confidential Classification.

BellSouth contends that the information contained in the transcripts and exhibits contain confidential, proprietary information pursuant to Rule 25-22.006(3)(a), Florida

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FPSC-COMMISSION CLERK

Administrative Code. A line by line justification is contained in Attachment A. BellSouth further states that disclosure of this information would cause competitive harm to BellSouth, provide competitors with an unfair advantage in future negotiations, and would impair BellSouth's ability to resolve matters via commercial arbitration. BellSouth declares that the information is valuable, BellSouth strives to keep it secret, and the information has not been generally disclosed. Therefore, BellSouth requests that the information be classified as confidential, proprietary business information pursuant to Sections 364.24 and 364.183, Florida Statutes, and be held exempt from the public disclosure requirements of Section 119.07, Florida Statutes.

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.

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 would cause competitive harm to BellSouth, provide competitors with an unfair advantage in future negotiations, and would impair BellSouth's ability to resolve matters via commercial arbitration. As such, BellSouth's Requests for Confidential Classification of Document No. 08957-03 is hereby granted.


Based on the foregoing, it is

ORDERED by J. Terry Deason, as Prehearing Officer, that BellSouth Telecommunications, Inc.'s Requests for Confidential Classification of Document No. 08957-03 is hereby granted. 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 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 J. Terry Deason, as Prehearing Officer, this 1st Day of October, 2003.

  
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J. TERRY DEASON  
Commissioner and Prehearing Officer

( S E A L )

LHD

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.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

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 25-22.0376, Florida Administrative Code; or (2) 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**

**BellSouth Telecommunications, Inc.**  
**FPSC Docket No. 030349-TP**  
**Request for Confidential Classification**  
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**REQUEST FOR CONFIDENTIAL CLASSIFICATION OF THE DEPOSITION,  
TRANSCRIPTS AND EXHIBITS OF BELL SOUTH WITNESSES JOHN A. RUSCILLI,  
EDWARD WOLFE, RONALD A. PATE, AND MICHELLE SUMMERS AS  
SUBMITTED INTO THE RECORD OF FPSC DOCKET 030349-TP DURING THE  
HEARING ON AUGUST 29, 2003.**

**Explanation of Proprietary Information**

1. This information reflects BellSouth's business strategy relating to its competitive marketing position. Specifically, this information discusses, describes and evaluates BellSouth's internal systems used in potential strategic responses to various competitive scenarios; key details relating to the substance of such systems as well as developmental time frame information and implementation information; and discusses/evaluates recommendations on these potential competitive response. BellSouth's competitors can use this information to develop their own market strategy with which to thwart BellSouth's effort in this market. Thus, the disclosure of this information to BellSouth's competitors would impair BellSouth's ability to compete and is entitled to confidential classification pursuant to Section 364.183(3)(a) and (3)(e), Florida Statutes. In addition, this information is valuable as it is used by BellSouth in conducting its business and BellSouth strives to keep it secret. Therefore, this information is a trade secret which should be classified as proprietary, confidential business information exempt from the Open Records Act.
2. The subject information contains substantive reference to, or are documents from the BellSouth/Supra Commercial Arbitrations. Both BellSouth and Supra agreed to keep the information of the Commercial Arbitrations confidential. This information is proprietary to BellSouth and includes information containing customer proprietary and business proprietary information. The Commission has always zealously protected customer proprietary and business proprietary information in order to protect the customer's privacy and prevent a competitor of the customer from obtaining an unfair advantage. This information is clearly confidential and proprietary under Florida Statutes, Section 364.24, Section 364.183 and Rule 25-22.006, Florida Administrative Code.

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**LOCATION**

**REASON**

**JOHN RUSCILLI DEPOSITION & EXHIBITS**

Page 85, Lines 11-25	1
Page 86-94	1
Page 95, Lines 1-17	1
Page 113, Lines 3-25	1
Pages 114-125	1
Exhibit Supra-1	2
Exhibit Supra-2	2
Exhibit Supra-3	2

**EDWARD WOLFE DEPOSITION & EXHIBITS**

Page 7 (0018) Lines 3-23; (0019) Lines 1-7	1
Page 8 (0019) Lines 8 through - Page 21 (0056) Line 1	1
Page 22(0057) through Page 27(0070) Line 2	1
Page 34 (0089) Line 6- Page 40(0104) Line 19	1
Page 43 (0113) Line 3 through Page 58 (0150) Line 16	1
Page 58(0151) Line 6 through Page 65	1
Exhibits Supra 1 through Supra -12	1, 2

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**RONALD M. PATE DEPOSITION & EXHIBITS**

Page 64, Lines 22-25	1
Page 65 through Page 69, Line 17	1
Page 101, Line 7 through Page 104, Line 15	1
Page 106, Line 6-12	1
Exhibits Supra-1 through Supra-5	2

**MICHELLE SUMMERS DEPOSITION & EXHIBITS**

Page 13 (0031) Line 1 through Page 13(0034) Line 9	1
Page 18 (0048) Line 1 through Page 19 (0049) Line 17	1
Page 21 (0054) Line 1 through Page 23 (0060) Line 8	1
Page 25 (0064) Line 1 through Page 26(0066) Line 22	1