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TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

DATE: May 26, 2004
TO: Jeremy L. Susac, Senior Attorney, General Counsel
FROM: John J. Duffey, Operations Review Specialist, Division of Competitive Markets & Enforcement
RE: 040467-01P Staff opinion on confidentiality of BellSouth redactions -- BST Sales report.

Attached is a March 29, 2004 letter from BellSouth counsel, Nancy White, which states a "Request for Specified Confidential Classification" related to the staff's Follow up Review of BellSouth Telecommunications, Inc. Sales Methods and Practices. This memo will state staff's opinion as to the confidentiality of certain passages and information contained in the Review.

BellSouth states two reasons why it believes specified information in the Review is confidential. The first reason relates to the company's competitive interests and the disadvantages it would suffer if information associated with vendor contracts and vendor specific pricing for services rendered to BellSouth were revealed. The second reason given is that BellSouth considers information to be proprietary when the information is related to methods, practices, policies and procedures for sales personnel. Attachment A of the appended Request sets forth both of the two reasons stated in greater detail and also cites the Review content it considers confidential.

Below is staff's opinion on the Review content specified by BellSouth:

- 1. Page 25, lines 9, 28 and 30. Staff agrees with the company. The requested redaction should be upheld. The dollar amounts of penalties associated with unauthorized sales or slamming by vendors is confidential. Moreover, staff recognizes that the penalties are a good control and the dollar amounts are appropriate.
2. Page 25, lines 34-36. Staff disagrees with BellSouth. The requested redaction should be denied.

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unethical or shoddy practices and are important to *Review* readers' understanding. If all vendors were not held to the same contractual goal for similar services, staff would be quite concerned.

3. Page 26, lines 30-33. Staff disagrees with BellSouth. The requested redaction should be denied.

4. The text cited by BellSouth is part of a public document transmitted to staff over the unsecured public internet by a third party in e-mail attachments. BellSouth did not provide the document, nor did staff request it. FPSC e-mails are public record. Moreover, the *Miami Herald* is in possession of the same document by means of a public records request made to FPSC after it was received.

4. Page 28, line 17-33. Staff disagrees with BellSouth. The requested redaction should be denied.

BellSouth seeks to redact three sales scripts used by its customer representatives. Staff believes that these are examples of assumptive sales techniques, an important topic in the *Review*.

The first two bulleted scripts are already public record and cannot legally be removed from public view. They were provided to staff via e-mail by a third party and are in the possession of the Miami Herald by means of a public records request made to FPSC after it was received. The first two scripts are several years old and obsolete. Scripts are changed frequently according to changing sales strategies, the emergence of new products, and the removal of products.

The third bulleted script was provided to FPSC staff by BellSouth. It not only matches the first two scripts, but every day may be read by BellSouth thousands of times to any caller who contacts BellSouth sales or service personnel. It cannot be considered secret. It can be copied or recorded by any caller at anytime. Further, the script is modified by each representative who puts the suggested script into their own words and presents it in their own way. Thus, the script is not static, seldom used verbatim, nor may it exist for any length of time. The script is three years old. Scripts become obsolete quickly as new products are introduced, new packages are pitched, and new goals and market strategies are implemented. BellSouth is constantly discarding, revising, and adding new suggested scripts for its representatives' use.

5. Page 29, lines 18-22. Staff disagrees with BellSouth. The requested redaction should be denied.

BellSouth seeks to black out an entire paragraph which is staff's description of a five year old document instructing its customer representatives how to overcome a caller's objections to new services and make a sale. The paragraph does not quote the document except by title and four words that illustrate its tone.

Moreover, the document described in the text is a public record provided by a third party to staff by email. The document itself cannot be shielded from public view. The *Miami Herald* is also in possession of the document by means of a public records request made to FPSC after it **was** received.

6. Page 29, lines 27-38. Staff disagrees with BellSouth. The requested redaction should be denied.

As above, these scripts are a matter of public record. They have been provided by staff to the *Miami Herald* by means of a public documents request and were given to staff by a third party via FPSC e-mail. The scripts show how BellSouth customer representatives overcome callers' objections to pitches for new products and services. Further, the scripts are dated and of little, if any current value. Similar scripts are openly read and pitched in the representatives' own words thousands of times daily and are subject to any caller recording them. They are obsolete, not secret and are seldom used verbatim.

7. Page 30, lines 1-22. Staff disagrees with BellSouth. The requested redaction should be denied.

The requested redaction includes text from a paragraph on the preceding page . It and the following first bulleted paragraph are verbatim from a public document provided by a third party and already given to the *Miami Herald* through a public records request. The succeeding bulleted paragraph is verbatim from a BellSouth provided document and comports in tone and substance with the preceding paragraphs. It is a BellSouth script modified to suit each representative and is openly read to any caller thousands of times every day. It cannot be considered secret, is seldom used verbatim, and is obsolete.

8. Page 30, lines 26-35. Staff disagrees with BellSouth. The requested redaction should be denied.

As stated above, the script, to the extent it is even currently used, is openly read daily to thousands of callers. It cannot be considered secret. It can be copied or recorded by any caller at anytime. Further, the script is modified by each representative who puts the suggested script into their own words and presents it in their own way. Thus, the script is not static, nor may it exist for any length of time. Scripts become obsolete very quickly as new products are introduced, new packages are pitched, and new goals and market strategies are implemented. BellSouth is constantly discarding, revising, and adding new suggested scripts for its representatives' use.

9. Page 37, lines 23 and 25. Staff disagrees with BellSouth. The requested redaction should be denied.

BellSouth states that reason number 1, contained on page 1 of Attachment A to the appended March 29 letter, supports their request to black out this portion of the **Review**. Reason number one is strictly related to the confidentiality of “information associated with vendor contracts and vendor specific pricing negotiated by BellSouth.” The information cited in this paragraph, indeed the entire Section of the **Review**, is in no way related to BellSouth vendors.

BellSouth does not even propose to redact the **Review’s** account of the process, only certain monthly numbers of referrals of BellSouth employees for sales ethics violations. The numbers are used to illustrate trends in ethics referrals, particularly how many referrals came from one “gate.” The reader should know that there’s a greater problem with one gate more than another. Removal of the numbers inhibits that. Further, it buttresses staffs recommendation to the company that comparative data needs to be generated and used to minimize problems in certain sectors. Staff believes BellSouth’s motive is primarily related to concerns over its image.

10. Page 38, lines 1 and 3. Staff disagrees with BellSouth. The requested redaction should be denied.

BellSouth states that reason number 1, contained on page 1 of Attachment A to the appended March 29 letter, supports their request to black out this portion of the **Review**. Reason number one is strictly related to the confidentiality of “information associated with vendor contracts and vendor specific pricing negotiated by BellSouth.” The information cited in this paragraph, indeed this entire Section of the **Review**, is in no way related to BellSouth vendors. Staff comment in the second paragraph of #8 above applies here as well.

11. Page 38, lines 12, 15-17, and 19-20. Staff disagrees with BellSouth. The requested redaction should be denied.

BellSouth states that reason number 1, contained on page 1 of Attachment A to the appended March 29 letter, supports their request to black out this portion of the **Review**. Reason number one is strictly related to the confidentiality of “information associated with vendor contracts and vendor specific pricing negotiated by BellSouth.” The information cited in this paragraph, indeed this entire Section of the **Review**, is in no way related to BellSouth vendors.

Here, BellSouth proposes to black out the number of callers affected by fraud and gross customer abuse by BellSouth employees. Staff considers this to be important data that shows the extent of harm to BellSouth customer due to ethics violations. BellSouth’s motive seems to be rooted more in public relations than in a true proprietary concern. Staff identified a weakness that affects hundreds of thousands of BellSouth customers each year. By redacting the numbers associated with staffs discussion, BellSouth eliminates the public’s ability to understand the extent of the problem. This information cannot be considered proprietary.

12. Page 43 lines 28, 29, 32, 34-37. Staff disagrees with BellSouth. The requested redaction should be denied.

BellSouth states that reason number 1, contained on page 1 of Attachment A to the appended March 29 letter, supports their request to black out this portion of the *Review*. Reason number one is strictly related to the confidentiality of “information associated with vendor contracts and vendor specific pricing negotiated by BellSouth.” The information cited in this paragraph, indeed this entire Section of the *Review*, is in no way related to BellSouth vendors.

BellSouth is proposing to black out numbers indicating the extent of fraud, unwanted sales, products added to bills against customer wishes and slamming. Did Not Order form are submitted by BellSouth personnel when a customer claims that an unwanted service appears on their bill. The evidence proposed for redaction lead to staff's recommendation that sales scripts be fully tested before being put into the field. By redacting the numbers associated with staffs discussion, BellSouth eliminates the public's ability to understand the extent of the problem. BellSouth's motive should be considered as an attempt at PR damage control. This information cannot be considered proprietary.

cc: Lisa Harvey
Carl Vinson

Attachments