

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Request for specified
confidential classification of
PATS Access Lines Quarterly
Report by BellSouth
Telecommunications, Inc.

DOCKET NO. 970658-TL
ORDER NO. PSC-97-1416-CFO-TL
ISSUED: November 13, 1997

ORDER DENYING REQUEST FOR CONFIDENTIALITY

By memorandum dated September 23, 1991, the Commission requested that all local exchange companies (LECs) submit pay telephone data on a quarterly basis for both LEC and non-LEC pay telephone stations. The Commission has authority to request such information under Section 364.183(1), Florida Statutes.

On April 21, 1997, BellSouth Telecommunications, Inc. (BellSouth), filed a quarterly report of pay telephone access lines. At that time, BellSouth also filed a Notice of Intent to Request Confidential Classification. On May 12, 1997, the Request for Confidential Classification was filed by BellSouth. The information for which BellSouth requests confidentiality are payphone address (street location, city, and state) and billing name of providers.

Under Section 119.01, Florida Statutes, all documents submitted to this Commission are public record. The only exceptions to this law are documents which are exempt pursuant to specific statutory terms or provisions. Moreover, under Section 364.183, Florida Statutes, and Rule 25-22.006, Florida Administrative Code, the person requesting confidential treatment of materials has the burden of demonstrating that the materials qualify for confidential classification.

In its Request for Confidential Classification, BellSouth stated that the information is confidential and proprietary pursuant to Sections 119.07(30)(w) and 364.183, Florida Statutes. BellSouth stated the information provided is customer specific information, including telephone numbers, names and addresses, and billing names and addresses. Finally, BellSouth states that it has treated and intends to continue to treat the material as private and the material has not been generally disclosed.

The statutory reference BellSouth intended to cite is Section 119.07(3)(r), Florida Statutes. That section provides:

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All records supplied by a telecommunications company, as defined by s. 364.02, to a state or local governmental agency which contain the name, address and telephone number of subscribers are confidential and exempt from the provisions of subsection (1) and s. 24(a), Art. 1 of the State Constitution.

The information BellSouth seeks to protect is the location of each pay telephone station, its telephone number, and the billing name and address for each of the stations within its territory. The information on pay telephone providers is not within the scope of subscribers the statute contemplated to protect. A reading of the other exemptions within section 119.07(3) reveal the intent to protect the safety of individuals. Where such individual is a business for hire to the general public, concerns for safety are eliminated.

For the foregoing reason alone, BellSouth's request could be denied. However, adding to the reasons for denial of this request is that BellSouth's request would result in BellSouth enjoying a competitive advantage over the payphone providers. Federal Communications Commission (FCC) Order 96-388, adopted and released September 20, 1996, states in part:

In this proceeding, we advance the twin goals of Section 276 of the Act of "promot[ing] competition among payphone service providers and promot[ing] the widespread deployment of payphone services to the benefit of the general public" . . . In general, we believe that vigorous and unfettered competition is the best way of achieving Congress' dual objectives. Unfortunately, various barriers -- regulatory, structural, economic, and technological -- stand in the way of having a fully competitive market providing payphone services In this Report and Order, we take critical steps necessary to remove these barriers. . . . We also order that subsidies from basic telecommunications services paid to some carriers for providing payphone services be terminated as soon as it is practicable Similarly, we allow BOCs [Bell Operating Companies] to negotiate with

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payphone location providers in selecting and contracting with the telecommunications carriers that provide interLATA service from their payphones, but only after they have put in place nonstructural safeguards necessary to protect against a BOC from unlawfully subsidizing its payphone operations from its local exchange services or otherwise negating in anti-competitive behavior. Paragraphs 2 - 4.

The FCC order also requires that a BOC create a separate affiliate for their payphone operations or maintain its payphone assets on the carrier's books but treat the assets as nonregulated. Paragraph 157.

The FCC's intent is to create "vigorous and unfettered competition" in the payphone industry and to discontinue all advantages and subsidies that the local exchange companies enjoy in the payphone market. Allowing one competitor to control information, which the others are not privy to, creates an unbalanced playing field. By requesting confidentiality for the quarterly report, BellSouth could use its access to all of its competitors payphone information to engage in anti-competitive behavior in the payphone market.

The right of access to governmental records is an important and longstanding Florida tradition embodied in both Florida Statutes and the Declaration of Rights provision of the state Constitution. The Public Records Law is to be liberally construed in favor of open government, and exemptions from disclosure are to be narrowly construed so they are limited to their stated purpose. Seminole County v. Wood, 512 So. 2d 1000 (Fla 5th DCA 1987), rev. denied 520 So. 2d 586 (Fla. 1986). The determination of whether information is proprietary confidential business information is a matter of discretion. Florida Society of Newspaper Editors, Inc. v. Florida Public Service Commission, 543 So. 2d 1262, 1265 (1st DCA 1989) Rehearing Den. June 12, 1989. When determining whether information should be deemed confidential, the Commission should weigh the public interest in disclosing the information with the potential harm to the entity if the information were disclosed.

Letters supporting disclosure of this information were filed by the Department of Property Appraisal of Metropolitan Dade County, the Hardee County Property Appraiser, and the Orange

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County Property Appraiser. Each of the property appraisers stated that the information is critical to the preparation of an accurate and equitable county tax roll. The Appraisers argued that without the information, a fair, accurate, and full personal property assessment on equipment owned by BellSouth would be impeded.

The Orange County Property Appraiser cited to Statutes relating to the Department of Revenue (Chapter 195, Florida Statutes) and County Property Appraisers (Chapter 193, Florida Statutes). Specifically, the statutes provide for the confidential classification and treatment of information received for the purpose of determining property values. The statutes refer to information received from individuals, but not from other agencies. Elsewhere in the Statutes, the Legislature has provided for the specific sharing of confidential information among state agencies. (Section 213.053, Florida Statutes.) There is not, however, a provision where the Commission is to share information with the Department of Revenue (DOR). The information DOR and the County Appraisers seek must be obtained as a public record.

The public will benefit by having access to this information, however, because the request fails on its face, it is not necessary to address the concerns of the property appraisers. BellSouth has not met its burden by proving how 'disclosure of the information would cause harm to the ratepayers or the company's business operations' as required by Section 364.183(3), Florida Statutes.

It is, therefore,

ORDERED by Commissioner Susan F. Clark, as prehearing Officer, that the claim by BellSouth Telecommunications Inc., for confidential classification and treatment of the payphone street, city and state location and the billing name of the provider contained in its quarterly reports is denied. It is further

ORDERED that, upon this order becoming final, the docket should be closed.

By ORDER of Commissioner Susan F. Clark, as prehearing officer, this 13th day of November, 1997.

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SUSAN F. CLARK, Commissioner
and Prehearing Officer

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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 the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, 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 and/or wastewater utility by filing a notice of appeal with the Director, Division of Records and reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.