



ORIGINAL

Public Service Commission

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COMMISSION CLERK

DATE: May 9, 2007
TO: Adam Teitzman, Attorney, General Counsel's Office
FROM: Division of Regulatory Compliance and Consumer Affairs (Freeman, Vandiver)
RE: Docket 060598-TL, Recommendation concerning BellSouth Telecommunications, Inc. (BellSouth's) requests for confidential classification concerning staff's working papers prepared during the audit titled "BellSouth Telecommunications, Inc. Audit to Verify 2005 Storm Costs", Documents Numbered 09896-06 and 10431-06, and working papers prepared during the supplemental audit titled "BellSouth Telecommunications Inc. Audit to Verify 2005 Storm Costs Revised November 17, 2006", Documents Numbered 10765-06 and 11421-06

Introduction

This recommendation pertains to 2 sets of audit working papers obtained or prepared during an initial and a supplemental examination of BellSouth's 2005 Storm Costs. Both examinations were assigned audit control number 06-255-1-1; i.e.,

"BellSouth Telecommunications, Inc. Audit to Verify 2005 Storm Costs", Documents Nos. 09896-06 and 10431-06", and

"BellSouth Telecommunications Inc. Audit to Verify 2005 Storm Costs Revised November 17, 2006", Documents Nos. 10765-06 and 11421-06.

Chronology of Events – Initial Audit

On October 27, 2006, at the audit exit conference, BellSouth requested that certain portions of staff's working papers prepared during the audit titled "BellSouth Telecommunications, Inc. Audit to Verify 2005 Storm Costs", be held in a temporary confidential status in accordance with Rule 25-22.006(3)(a)2., Florida Administrative Code (FAC).

On October 27, 2006, staff filed those working papers with the Commission Clerk (Document 09896-06).

On November 13, 2006, BellSouth filed its request for confidential classification for certain portions of the working papers pursuant to Section 364.24 and Section 364.183, Florida Statutes (F.S.), and Rule 25-22.006, FAC. The BellSouth request included redacted copies of the materials for public use (Exhibit B, Document 10432-06) and copies of the materials with the sensitive portions highlighted (Document 10431-06).

CMP _____
COM _____
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DOCUMENT NUMBER-DATE

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May 9, 2007

BellSouth Telecommunications, Inc. Request

On January 18, 2007, after discussions with the staff, BellSouth filed an Amended Request for Specified Confidential Classification concerning its November 13, 2007 request. In a second staff follow-up, the utility reduced its request until all staff concerns set out in the April 20, 2007, letter to the utility were resolved. This recommendation reflects all amendments to BellSouth's request for confidential classification for audit documents pertaining to the initial examination of the utility's 2005 storm costs.

Chronology of Events -- Supplemental Audit

On November 22, 2006, at the supplemental audit exit conference, BellSouth requested that certain portions of staff's working papers prepared during the supplemental audit titled "BellSouth Telecommunications, Inc. Audit to Verify 2005 Storm Costs Revised November 17, 2006", be held in a temporary confidential status in accordance with Rule 25-22.006(3)(a)2., FAC.

On November 22, 2006, staff filed those supplemental working papers with the Commission Clerk (Document 10765-06).

On December 13, 2006, the Division of Competitive Markets & Enforcement staff (Wright) recommended that document 10765-06 be held as confidential. This staff recommendation allowed Document No. 10765-06 to be held in a "temporary confidential" status pursuant to Rule 25-22.006(3)(a)2., FAC and in a "claimed confidential" status pursuant to Rule 25-22.006(5), FAC.

On December 13, 2006, BellSouth filed its request for confidential classification for certain portions of the working papers pursuant to Section 364.24 and Section 364.183, F.S., and Rule 25-22.006, FAC. The BellSouth request included redacted copies of the materials for public use (Exhibit B, Document 11420-06) and copies of the materials with the sensitive portions highlighted (Document 11421-06).

Current Status

Currently, Documents 09896-06 and 10431-06 from the initial audit and Documents 10765-06 and 11421-06 from the supplemental audit are currently held by the Commission Clerk as confidential pending resolution of BellSouth's requests for confidential classification.

Pursuant to Section 119.07, F.S., documents submitted to this Commission are public records. The only exceptions to this law are specific statutory exemptions and exemptions granted by governmental agencies pursuant to the specific items of a statutory provision. Subsections 364.183(3)(c) and (e), F.S., provide the following exemptions:

May 9, 2007

BellSouth Telecommunications, Inc. Request

Subsection 364.183, F.S., provides; *"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. Proprietary confidential business information includes but is not limited to:*

....

(c) Security measures, systems, or procedures.

....

(e) Information relating to competitive business interests, the disclosure of which would impair the competitive business of the provider of the information...."

Further, Subsection 364.24(2), F.S., provides; *"Any officer or person in the employ of any telecommunications company shall not intentionally disclose customer account records except as authorized by the customer or as necessary for billing purposes, or required by subpoena, court order, other process of court, or as otherwise allowed by law."*

According to Section 364.183, F.S., and Rule 25-22.006, FAC, the utility has the burden of demonstrating that materials qualify for confidential classification. According to Rule 25-22.006(4)(c), FAC, the utility must meet this burden by demonstrating that the information is proprietary confidential business information, the disclosure of which will cause the utility, the provider of the information or the ratepayer harm.

Staff Analysis of the Requests

Material Presented to the Commission

Where possible, staff recommends that Telecommunications material be granted a "Claim of Confidentiality"; however, the material covered by these requests is not eligible for a Rule 25-22.006(5), FAC, "Claim of Confidentiality" because the sensitive material was used in a Commission proceeding and presented to the Commission as a hearing exhibit (Hearing Transcript, Document 11235-06, Page 8, and Exhibit 21). Rule 25-22.006(5)(c), FAC, prohibits a claim of confidentiality when "the materials will be used in a Commission proceeding."

We recommend the confidential material from these two audits be processed as a Rule 25-22.006(4), FAC, request for confidentiality.

Listing of Audit Working Papers Presented Here and the Listing of Documents Presented in Hearing Exhibit 21 Do Not Match

During an audit, staff auditors make requests for information from a utility using a numbered document request form. The utility responds to this request and indicates which part of the utility response is confidential and which part of the utility response is not confidential.

From the viewpoint of the utility, the utility can identify each numbered document request and their **unaudited** response. Using the audit working papers, the auditor can track if each audit request is completely answered and what audit procedures have been performed using the utility response.

In the request for confidential classification, the auditor's confidential documents and comments are provided in working paper order and are provided using two listings, one for each audit.

Hearing Exhibit 21 provides a single listing of confidential documents by document request number order combining documents from the 2 audits into one combined listing. Thus, the listing of confidential audit working papers and the listing of confidential documents provided in Hearing Exhibit 21 do not match. Nevertheless, information from the confidential audit working papers were introduced at the Hearing.

To better reconcile the auditor's working paper listings to the Hearing Exhibit 21 listing, this detailed recommendation matches the auditor's working paper number to the Hearing Exhibit 21 document request number for each item.

Sensitive Information Found in the Initial Audit

Reading BellSouth's filing covering staff's initial audit, as amended, reveals that the sensitive material consists of:

Customer-Specific Account Information.

BellSouth pleads that customer-specific data such as customer name should not be disclosed as release of this information would harm the competitive businesses of BellSouth. In addition, Section 364.24, F. S. prohibits the release of customer account records.

Customer-specific data may be granted a confidential classification based upon the provisions of Section 364.183, F.S. Recently, the following Commission decisions have granted a confidential classification to customer-specific information: Order No. PSC-02-1268-CFO-GU, issued October 25, 2002 in Docket 020003-GU, and Order No. PSC-00-1569-CFO-EG, issued August 31, 2000, in Docket No. 000002-EG.

After reading the material here, staff agrees this is customer-specific account information which may be protected on the basis that release of this information may harm the competitive businesses of BellSouth. Staff therefore recommends that this information be granted a confidential classification.

Budget, Financial, and Strategic Information

BellSouth pleads that budget, financial, and strategic information should not be disclosed as release of this information would harm the competitive businesses of BellSouth.

Section 364.183(3)(e), F.S., provides that the Commission may grant a confidential classification to sensitive competitive business information if release of this information will impair the competitive business of the provider of that information. After reading the material here, staff agrees this is sensitive budget, financial and strategic information which may be protected on the basis that release of this information may harm the competitive businesses of BellSouth. Staff therefore recommends that the specified information be granted a confidential classification.

Drawings and Other Information about BellSouth's Network

BellSouth pleads that drawings and other information about BellSouth's network should not be disclosed as release of this information would impair BellSouth's ability to keep the communications network secure. Our review of the information indicates that the information includes equipment type and locations, as well as drawings. This information would be considered important to the network security.

Section 364.183(c), F.S., provides that security measures, systems, or procedures may be granted a confidential classification. Therefore, staff recommends that these sensitive drawings and other information about BellSouth's network be granted a confidential classification.

Sensitive Information Concerning the Supplemental Audit (Revision November 17, 2006)

As indicated, staff prepared a second audit report in this case generating a second set of sensitive working papers. On December 13, 2006, BellSouth prepared a second request for confidential classification covering this second set of sensitive audit working papers.

Reading the BellSouth filing concerning staff's second set of working papers reveals the sensitive material consists of;

Detailed Budget, Financial and Strategic Information.

Section 364.183(3)(e), F.S., provides the Commission may grant a confidential classification to sensitive competitive business information if release would impair the competitive business of the provider of that information.

For the information at issue here, BellSouth pleads: "Disclosure of revenue accounting and business costs could give competitors a clear picture of the resources required to provide services. Knowledge of such resource requirements could harm the competitive interests of BellSouth."

After reading the material, we agree that release of this information would cause competitive harm to BellSouth. Therefore, we recommend that this specified material be granted a confidential classification on the basis that it meets the statutory exemption requirements set by Section 364.183(3)(e), F.S.

Material held as Confidential

BellSouth states this information and these documents are proprietary and confidential business information of BellSouth.

Duration of the Confidential Classification Period

BellSouth does not state how long the period of confidential classification should last.

According to the provisions of Section 364.183(4), F.S., absent good cause shown, confidential classification is limited to 18 months. Without cause shown for a longer period, we recommend that the period of confidential classification be set as 18 months. As deemed necessary, the utility may request an extension of the confidential classification before the period tolls.

Staff Recommendation

Based upon reading the filing, and for the reasons presented above, we recommend the utility's requests be granted and that the identified material be granted a confidential classification for 18 months. A detailed summary recommendation, as found, follows:

May 9, 2007

BellSouth Telecommunications, Inc. Request

Detailed Summary Recommendation, As Found

| Working Paper Number | Provided in Response to Staff Request | Description | Line(s) | Recommend | Type of Information Classified Confidential |
|---|---------------------------------------|--|----------------------|-----------|---|
| Documents 09896-06 and 10431-06 – Initial Audit | | | | | |
| 10-1.4 (1 page) | Audit Request No. 1 | Expense Portion of Costs for 2005 Named Storms | All Lines | Grant | Sensitive Competitive Business Information |
| 10-1.5 (1 page) | Audit Request No. 1 | Capital Portion of Costs for 2005 Named Storms | All Lines | Grant | Sensitive Competitive Business Information |
| 10-1.6 (1 page) | Audit Request No. 1 | Cost of Removal | All Lines | Grant | Sensitive Competitive Business Information |
| 10-1.7 through 10-1.19 (13 pages) | Audit Request No. 1 | Monthly Expenses | All Lines | Grant | Sensitive Competitive Business Information |
| 10-1.20 (1 page) | Audit Request No. 1 | Summary of Other | All Lines | Grant | Sensitive Competitive Business Information |
| 10-10.2 through 10-10.10 (9 page s) | Audit Request No. 1 | 75 Spans of Cable | All | Grant | Security Information |
| 10-19.2 | Audit Request No. 1 | CD containing company response to Item 1 of Document Requests 19, 20, 21, 22 | Entire CD 4 files | Grant | Sensitive Competitive Business Information |
| 10-19.6 (1 page) | Audit Request No. 1 | Supplemental Response to Document Request 19 | Lines 1, 2, 3 | Grant | Sensitive Competitive Business Information |

May 9, 2007

BellSouth Telecommunications, Inc. Request

| Working Paper Number | Provided in Response to Staff Request | Description | Line(s) | Recommend | Type of Information Classified Confidential |
|---|--|---|--------------------------|-----------|---|
| Documents 09896-06 and 10431-06 – Initial Audit | | | | | |
| 10-22.2 (1 page) | Audit Request No. 22 | Supplemental Response to Document Request 22 | Lines 1-4,9-12 | Grant | Sensitive Competitive Business Information |
| 10-22.3 (1 page) | Audit Request No. 22 | Supplemental Response to Document Request 22 | Lines 1-3 | Grant | Sensitive Competitive Business Information |
| 10-23.2 | Audit Request Nos. 18 and 23 | CD containing company responses to Document Request 18, 23 | Entire CD 3 files | Grant | Sensitive Competitive Business Information |
| 10-24.2 | Audit Request No. 24 | CD containing company responses to Document Request 24 | Entire CD 1 File | Grant | Sensitive Competitive Business Information |
| 46-1.1 through 46-1.6 (6 pages) | Subpoena Response Commission Document No. 08753-06 | Audit Prepared Schedules of Active CLEC's from Subpoenaed Information, Document Number 08753-06 | Column for Customer Name | Grant | Customer-Specific Account Information |
| 46-2.1 through 46-2.10 (10 pages) | Subpoena Response Commission Document No. 08753-06 | Audit Prepared Schedules of Active CLEC's from Subpoenaed Information, Document Number 08753-06 | Column for Customer Name | Grant | Customer-Specific Information |

May 9, 2007

BellSouth Telecommunications, Inc. Request

| Working Paper Number | Provided in Response to Staff Request | Description | Line(s) | Recommend | Type of Information Classified Confidential |
|---|---------------------------------------|---|-------------------|-----------|---|
| Documents 09896-06 and 10431-06 – Initial Audit | | | | | |
| 10-27.3 | Audit Request Nos. 27,29,32 | CD-Company Response to Document Requests 27, 29, 32 | Entire CD 3 files | Grant | Sensitive Competitive Business Information |
| 47-1 (1 Page) | Audit Request No. 27 | Printout from CD in 10-27.3 | All Lines | Grant | Sensitive Competitive Business Information |
| Documents 10765-06 and 11421-06 – Supplemental Audit (Revision November 17, 2006) | | | | | |
| 10-8.8.1 (1 Page) | Audit Request No. 8 | 2005 Capital Budget | All Lines | Grant | Sensitive Competitive Business Information |
| 10-8.9 through 10-8.10 (2 Pages) | Audit Request No. 8 | 2006 Capital Budget | All Lines | Grant | Sensitive Competitive Business Information |
| 10-8.11 through 10-8.14 (3 Pages) | Audit Request No. 8 | 2005 Expense Budget | All Lines | Grant | Sensitive Competitive Business Information |
| 10-8.15 through 10-8.20 (6 Pages) | Audit Request No. 8 | 2006 Expense Budget | All Lines | Grant | Sensitive Competitive Business Information |
| 10-8.21 through 10-8.24 (4 Pages) | Audit Request No. 8 | Capital Budget Acronyms | All Lines | Grant | Sensitive Competitive Business Information |
| 10-30.8 | Supplemental Audit Request No. 30 | CD Supplemental Document Request 30 Attachments | Entire CD 2 files | Grant | Sensitive Competitive Business Information |
| 10-33.3 to 10-33.11 (9 Pages) | Audit Request No. 33 | Invoices | All Lines | Grant | Sensitive Competitive Business Information |
| 10-33.15 to 10-33.16 (2 Pages) | Audit Request No. 33 | Invoices | All Lines | Grant | Sensitive Competitive Business Information |

May 9, 2007

BellSouth Telecommunications, Inc. Request

| Working Paper Number | Provided in Response to Staff Request | Description | Line(s) | Recommend | Type of Information Classified Confidential |
|---|---------------------------------------|---|--------------------|-----------|---|
| Documents 10765-06 and 11421-06 – Supplemental Audit (Revision November 17, 2006) | | | | | |
| 10-34.2 through 10-34.7 (6 Pages) | Audit Request No. 34 | Invoices | All Lines | Grant | Sensitive Competitive Business Information |
| 10-34.10 through 10-34.11 (2 Pages) | Audit Request No. 34 | Invoices | All Lines | Grant | Sensitive Competitive Business Information |
| 43-2/1 through 43-2.2/3 (2 Pages) | Audit Request No. 29 | 2005 Sample of Materials | All Lines | Grant | Sensitive Competitive Business Information |
| 28,29,32 | Audit Request No. 28 | CD Spreadsheet Audit #28 Vouchers 28,29,32 | Entire CD 10 files | Grant | Sensitive Competitive Business Information |
| 28,29,32 | Audit Request No. 29 | CD Materials Sampled June, Sept, Nov 2005 | Entire CD 3 files | Grant | Sensitive Competitive Business Information |
| 10-8.8 | Audit Request Nos. 8 and 30 | CD Supplemental Request | Entire CD 3 files | Grant | Sensitive Competitive Business Information |
| 10-8.8 | Supplemental Audit Request No. 8 | CD Supplemental Request 8 – Capital Budgets | Entire CD 1 file | Grant | Sensitive Competitive Business Information |

A temporary copy of this recommendation will be held at I:09896-06 & 11421-06 BellSouth Storm Cost RAF.doc for a short period.

CC: Division of Regulatory Compliance and Consumer Affairs (Deamer)
Office of Commission Clerk (Cole, Lockard)