

BEFORE THE TENNESSEE PUBLIC SERVICE COMMISSION
NASHVILLE, TENNESSEE

IN RE: *APPLICATION OF BELL SOUTH TELECOMMUNICATIONS, INC. FOR A
PRICE REGULATION PLAN*

Docket No. 95-02614

PROTECTIVE ORDER

In order to expedite the flow of discovery material, facilitate the prompt resolution of disputes as to the confidentiality of such material, adequately protect material entitled to be kept confidential and ensure that protection is afforded only to material so entitled; it is, pursuant to Rule 26.03 of the Tennessee Rules of Civil Procedure, ORDERED:

1. For the purpose of this Protective Order (the "Order"), proprietary or confidential information, hereinafter referred to as "CONFIDENTIAL INFORMATION" shall mean documents and information in whatever form which contain or constitute trade secrets or other confidential research, development or commercial information, and which has been so designated by the producing party. Producing party is defined as the party creating the confidential information as well as the party having actual physical possession of such information. Additionally, all summaries, notes, extracts, compilations or other direct or indirect reproduction from or of any protective materials, shall be entitled to protection under this Order. Documents containing CONFIDENTIAL INFORMATION shall be specifically marked as proprietary or confidential, or words to that effect, on the face of each such document or, alternatively,

on the portion of the document containing the CONFIDENTIAL INFORMATION. Any document so designated shall be handled in accordance with this Order.

2. CONFIDENTIAL INFORMATION shall be disclosed only to the following persons:

- (a) counsel of record for the parties in this case and associates, secretaries, and paralegals actively engaged in assisting counsel of record in this and the designated related proceedings;
- (b) in-house counsel for the parties;
- (c) officers, directors, or employees of the parties, including employees of the Consumer Advocate Division, for the purpose of assisting counsel in this proceeding; provided, however, that CONFIDENTIAL INFORMATION shall be shown only to those persons having a need to know, who execute an affidavit in the form of that attached to this Order;
- (d) outside consultants and expert witnesses employed or retained by the parties or their counsel, who have access to CONFIDENTIAL INFORMATION solely for evaluation, testing, testimony, preparation for trial or other services related to this docket, provided that to the extent that any party seeks to disclose CONFIDENTIAL INFORMATION to any outside consultant or expert witness, such party shall give five (5) days' written notice to the producing party of intention to disclose CONFIDENTIAL INFORMATION. During such notice period, the producing party may move to prevent or limit disclosure for cause, in which case no disclosure shall be made until the Administrative Law Judge rules on the motion. Any such motion shall be filed within three (3) days after service of the notice. Any response shall be served within three (3) days after service of the motion. All service shall be by hand delivery or by facsimile. The burden shall be on the requesting party to establish grounds for permitting disclosure of CONFIDENTIAL INFORMATION.

3. Prior to disclosure of CONFIDENTIAL INFORMATION to any employee, officer or director of the parties, including any employee of the Consumer Advocate Division, or outside consultant or expert witness employed or retained by a party, counsel shall provide a copy of this Order to such employee, officer, or

director, or outside consultant, or expert witness, who shall sign an affidavit in the form of that attached to this Order attesting that he or she has read a copy of this Order, that he or she understands and agrees to be bound by the terms of this Order, and that he or she understands that unauthorized disclosure of the documents stamped CONFIDENTIAL or PROPRIETARY constitutes a violation of this Order. This affidavit shall be signed in the presence of and be notarized by a notary public. Counsel of record for each party shall provide the producing party a copy of each such Affidavit and shall keep the Affidavits executed by the parties' experts or consultants on file at their respective offices.

4. If any party or non-party subject to this Order inadvertently fails to designate documents as CONFIDENTIAL in accordance with the provisions of this Order when producing such documents, such failure shall not constitute a waiver of confidentiality; provided the party or non-party who has produced the document shall notify the recipient of the document in writing within ten (10) days of discovery of such inadvertent failure to designate the document as CONFIDENTIAL. At that time, the recipient will immediately treat the subject document as CONFIDENTIAL. An inadvertent failure to designate a document as CONFIDENTIAL shall not, in any way, affect the Commission's determination as to whether the document is entitled to CONFIDENTIAL status.

5. Papers filed in this proceeding which contain, quote, paraphrase, compile or otherwise disclose documents covered by the

terms of this Order shall be marked CONFIDENTIAL by the party filing such papers. Any papers filed in this proceeding that contain, quote, paraphrase, compile or otherwise disclose documents covered by the terms of this Order, or any information contained therein, shall be filed and maintained with the Executive Director of the Commission in sealed envelopes marked CONFIDENTIAL and labeled with reference to this Order. Such envelopes shall not be opened or their contents reviewed by anyone except upon order of the Commission or the Administrative Law Judge after due notice to counsel of record.

6. Documents, information and testimony designated as CONFIDENTIAL, in accordance with this Order, may be disclosed in testimony at the hearing of this proceeding and offered into evidence used in any hearing related to this action, subject to the Tennessee Rules of Evidence and to such future orders as the Commission or the Administrative Law Judge may enter. Any party intending to use documents, information, or testimony designated CONFIDENTIAL shall inform the producing party and the Commission, or the Administrative Law Judge, at the earliest opportunity of such proposed use; and shall advise the Commission, or the Administrative Law Judge, and the producing party before use of such information during cross-examination so that appropriate measures can be taken by the Commission or the Administrative Law Judge, and/or requested by the producing party in order to protect the confidential nature of the information.

7. Except for documents filed with the Commission, all documents covered by the terms of this Order that are disclosed to

the requesting party shall be maintained separately in files marked CONFIDENTIAL and labeled with reference to this Order at the offices of the requesting party's counsel of record.

8. If a produce document contains information so sensitive that it should not be recopied by anyone, the document shall bear the additional legend "COPYING PROHIBITED." Application for relief from this restriction against copying may be made to the Commission, or the Administrative Law Judge, wit notice to counsel so designating the document.

9. Nothing herein shall be construed as preventing any party from continuing to sue and disclose any information (a) that is in the public domain, or (b) that subsequently becomes part of the public domain through no act of such party, or (c) that is disclosed to it by a third party, where said disclosure does not itself violate any contractual or legal obligation, or (d) that is independently developed by a party, or (e) that is known or sued by it prior to this proceeding. The burden of establishing the existence of (a) through (e) shall be upon the party attempting to use or disclose such information.

10. Any party may contest the designation of any document or information as CONFIDENTIAL by applying to the Commission, or Administrative Law Judge, for a ruling that the documents information, or testimony should not be so treated. All documents, information and testimony designated as CONFIDENTIAL, however, shall be maintained as such until the Commission, or the Administrative Law Judge, orders otherwise.

11. Nothing in this Order shall prevent any party from

asserting any objection to discovery other than an objection based upon grounds of confidentiality.

12. Non-party witnesses shall be entitled to invoke the provisions of this Order by designating information disclosed or documents produced for use in this action as CONFIDENTIAL, in which event the provisions of this Order shall govern the disclosure of information or documents provided by the non-party witness.

13. No person authorized under the terms herein to receive access to documents, information, or testimony designated as CONFIDENTIAL shall be granted access until such person has complied with the requirements set forth in paragraph 3 of this Order.

14. Any person to whom disclosure or inspection is made in violation of this Order shall be bound by the terms of this Order.

15. Upon an order becoming final in this proceeding or any appeals resulting from such an order, all documents and information designated CONFIDENTIAL and all copies thereof shall be returned to counsel for the party who produced (or originally created) them within fifteen (15) days or counsel in possession of such documents shall certify to counsel for the producing party that all such documents and that all extracts and summaries showing or referring to such documents and information and all copies thereof have been destroyed.

16. After termination of this proceeding, the provisions of this Order relating to the secrecy and confidential nature of CONFIDENTIAL DOCUMENTS, information and testimony shall continue to be binding upon parties herein and their officers, employers, employees, agents, and/or others for five years unless this Order

is vacated or modified.

17. Nothing herein shall prevent entry of a subsequent order, upon an appropriate showing, requiring that any documents, information or testimony designated as CONFIDENTIAL shall receive protection other than that provided herein.

ENTERED THIS 31st day of October, 1995.

R. B. Christian II