

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Implementation of requirements arising from Federal Communications Commission triennial UNE review: Local Circuit Switching for Market Customers.

DOCKET NO. 030851-TP

In re: Implementation of requirements arising from Federal Communications Commission's triennial UNE review: Location-Specific Review for DS1, DS3 and Dark Fiber Loops, and Route-Specific Review for DS1, DS3 and Dark Fiber Transport.

DOCKET NO. 030852-TP

ORDER NO. PSC-03-1263-PCO-TP

ISSUED: November 7, 2003

PROTECTIVE ORDER GOVERNING
HANDLING OF CONFIDENTIAL INFORMATION

I. Case Background

In response to the Federal Communications Commission's (FCC) August 21, 2003, Triennial Review Order (TRO), this Commission opened two dockets to ascertain whether impairment exists within the state and local markets. Docket No. 030851-TP was initiated to address local circuit switching for mass market customers, and Docket No. 030852-TP was initiated to address the location-specific review for DS1, DS3, and dark fiber loops and route-specific review for DS1, DS3, and dark fiber transport. Pursuant to the TRO, the state commission must complete such proceedings within nine months from the TRO's effective date. By Order Nos. PSC-03-1054-PCO-TP and PSC-03-1055-PCO -TP, issued September 22, 2003, the procedural schedules and hearing dates for both dockets were established.

II. Authority

This Order is issued pursuant to the authority granted by Rule 28-106.211, Florida Administrative Code, which provides that the presiding officer before whom a case is pending may issue any orders necessary to effectuate discovery, prevent delay, and promote the just, speedy, and inexpensive determination of all aspects of the case.

III. Purpose and Scope of Protective Order

This Order's purpose is to protect confidential and proprietary information that is submitted in these dockets from public disclosure. The confidential and proprietary information will be elicited from parties and non-parties to address the obligations of ILECs to unbundle

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network elements and to develop an efficient loop migration process. This means that ILECs and CLECs may be required to provide responses to discovery and data requests about their network and facilities that may include proprietary business information and customer account information. The materials subject to this Protective Order include any information submitted to this Commission that the provider of the information deems confidential or proprietary. Although Florida law presumes that documents submitted to governmental agencies, or entities operating on the agency's behalf, shall be public records, the law provides for specific statutory exemptions. Pursuant to Section 364.183, Florida Statutes, proprietary confidential business information obtained by the Commission or on its behalf shall be protected. Pursuant to Section 364.24, Florida Statutes, customer account records are also protected from disclosure unless authorized by the customer or as otherwise provided by law.

IV. Confidential Information to be Protected

In view of the amount of confidential information likely to be used in this process by parties and non-parties and the complexity of handling such information, it is appropriate to issue a Protective Order governing the handling of all confidential information in this proceeding, which shall include the following conditions:

1. The dissemination of any proprietary information to any party to this proceeding will be limited to: (a) parties' and non-parties' counsel; (b) other employees of a party or non-party; (c) consultants or experts retained by a party or non-party, who are not engaged in strategic or competitive decision-making, including, but not limited to, the sale, marketing or pricing of any products or services on behalf of the receiving party; and (d) the Commission staff. Any proprietary information submitted, by any party or non-party, to the Commission or to Commission staff must be clearly identified as confidential. The Commission's staff will then be able to protect the proprietary information obtained during the course of this proceeding as confidential information in accordance with Section 364.183, Florida Statutes.
2. Before any copies of confidential information are provided to the Commission's staff, the copies must be identified in accordance with the Commission's procedures for tracking confidential information. The Commission's staff shall make no additional copies of confidential information. Upon conclusion of the hearing in this matter, the Commission's staff shall ensure that all confidential information provided to them is returned to the provider.
3. The use of any proprietary information protected under this Order shall be limited to Docket Nos. 030851-TP and 030852-TP.

4. The provisions of this Order will continue to govern all proprietary information until: (a) a final determination is made on specific items of information for which confidential treatment is requested or claimed, in accordance with Rule 25-22.006(4) or 25-22.006(5), Florida Administrative Code, or (b) a court of competent jurisdiction determines that specific items of information are non-confidential. If the Commission or a court of competent jurisdiction determines specific items of information to be non-confidential, this Order will cease to apply to such non-confidential information, but will remain in effect as to the remainder of the information.
5. This Order will not apply to information already in the public domain.
6. This Order will supplement the procedure for use of confidential information set forth in the subsequent Prehearing Order and the Orders Establishing Procedure issued in these Dockets.

V. Ruling

The outlined procedures comply with Rule 25-22.006(6), Florida Administrative Code, regarding protection of proprietary information in Commission proceedings. In view of the amount of confidential information that will likely be used at the hearing, and the complexity of handling such information, the requirements set forth are appropriate. This Order will govern the handling of all proprietary information in these Dockets until a final determination is made on specific items of information for which confidential treatment is requested. It should also be noted that parties filing claims for confidential treatment pursuant to Rule 25-22.006(5), Florida Administrative Code, must be mindful of the further requirements of Rule 25-22.006(8)(b), Florida Administrative Code, should such information ultimately be entered into the record of the proceeding.

It is, therefore

ORDERED by Commissioner Charles M. Davidson, as Prehearing Officer, that the provisions of this Order shall govern the conduct of this proceeding unless otherwise modified by the Prehearing Officer or the Commission.

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By ORDER of Commissioner Charles M. Davidson, as Prehearing Officer, this 7th
Day of November, 2003



CHARLES M. DAVIDSON
Commissioner and Prehearing Officer

(SEAL)

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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.

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.