

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint of Florida  
Competitive Carriers Association  
against BellSouth  
Telecommunications, Inc.  
regarding BellSouth's practice  
of refusing to provide  
FastAccess Internet Service to  
customers who receive voice  
service from a competitive voice  
provider, and request for  
expedited relief.

DOCKET NO. 020507-TL  
ORDER NO. PSC-03-0974-CFO-TL  
ISSUED: August 28, 2003

ORDER GRANTING DELTACOM'S REQUEST FOR SPECIFIED CONFIDENTIAL  
CLASSIFICATION FOR DOCUMENT NO. 07351-03

On June 12, 2002, the Florida Competitive Carriers Association (FCCA) filed a Complaint against BellSouth Telecommunications, Inc. (BellSouth) and a Request for Expedited Relief seeking relief from BellSouth's practice of refusing to provide its FastAccess service to customers who receive voice service from an Alternative Local Exchange Carrier (ALEC). By Order No. PSC-02-0935-PCO-TL, issued July 12, 2002, the request for expedited relief was denied. On July 21 and 22, 2003, an administrative hearing was held in the above matter.

On August 11, 2003, ITC^DeltaCom Communications, Inc. (DeltaCom) filed its Request for Specified Confidential Classification certain discovery responses provided by DeltaCom to Hearing Exhibit No. 2 and Hearing Exhibit No. 8, Document No. 07351-03. Attachment A, attached hereto and incorporated herein, contains the confidential portion of Hearing Exhibit No. 2, specifically, Interrogatory No. 4 of BellSouth's Third Set of Interrogatories, page 5, lines 8, 9, 10, and 11. DeltaCom contends that it considers the information contained on lines 8, 9, 10, and 11 of the response on page 5 to be proprietary and confidential. DeltaCom contends that the information on these lines includes specific numbers of lines by category and DeltaCom treats this information as proprietary and confidential and intends to continue

DOCUMENT NO. 07351-03  
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to treat this information as proprietary. DeltaCom asserts that public disclosure of this information would provide competitors and potential competitors with information as to marketing overall business strategy and would provide competitor and potential competitors with an advantage to the detriment of DeltaCom and its customers. DeltaCom contends that it has not generally disclosed this information and the information is proprietary, confidential business information pursuant to Section 364.183(3), Florida Statutes, and exempt from public disclosure.

Attachment B, attached hereto and incorporated herein, contains the confidential portion of Hearing Exhibit No. 8, specifically, Supplemental Response to Item 7 of BellSouth's First Set of Interrogatories, hand numbered page 1, lines 10, 11, 12, 13, 14, and 15. DeltaCom contends that the information contained in the confidential portions of the responses relates to competitive interests, the disclosure of which would impair the competitive interest of DeltaCom. DeltaCom asserts that the responses contain information relative to internal operations and procedures as well as customer specific numbers. DeltaCom states that it treats this information as confidential proprietary business information and does not generally disclose this information or does it intend to. DeltaCom asserts that public disclosure of such information would provide valuable information to competitors and potential competitors to the disadvantage of DeltaCom and its customers. DeltaCom contend that the information is and should be classified as proprietary, confidential business information pursuant to Section 364.183(3), Florida Statutes, and exempt from public disclosure.

Attachment C, attached hereto and incorporated herein, contains the confidential portion of Hearing Exhibit No. 8, specifically, Supplemental Response to Item 20 of BellSouth's First Set of Interrogatories, hand number page 2, lines 5, 6, 7, 8, 9, 10, 11, and 12. DeltaCom contends that the information contained in the confidential portions of the response relates to competitive interest and disclosure would impair the competitive interest of DeltaCom and adversely affect DeltaCom and its customer. DeltaCom assert that specifically, the response contains information relative to business arrangements and plans and discussions with providers regarding business arrangements. DeltaCom states that it treats this information as proprietary and confidential. DeltaCom

contends that disclosure of this information would provide competitors and potential competitors with valuable information as to DeltaCom's business plans and would impair the ability of DeltaCom to contract for services on favorable terms. DeltaCom asserts that the information is treated by DeltaCom as proprietary and confidential is not released publicly in any other manner. DeltaCom contends that the information is and should be classified as proprietary, confidential business information pursuant to Section 364.183, Florida Statutes.

Florida law presumes that documents submitted to governmental agencies shall be public records. The only exceptions to this presumption are the specific statutory exemptions provided in the law and exemptions granted by governmental agencies pursuant to the specific terms of a statutory provision. This presumption is based on the concept that government should operate in the "sunshine." Rule 25-22.006(4)(c), Florida Administrative Code, provides that it is the Company's burden to demonstrate that the documents fall into one of the statutory examples set out in Section 364.183, Florida Statutes, or to demonstrate that the information is proprietary confidential information, the disclosure of which will cause the Company or its ratepayers harm.

Section 364.183(3), Florida Statutes, in pertinent part, provides:

The term "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.

Based on the definition of proprietary confidential business information in Section 364.183(3), Florida Statutes, it appears that the material described herein is proprietary business

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information in accordance with Section 364.183, Florida Statutes, and Rule 25-22.006, Florida Administrative Code. Disclosure of this information would give DeltaCom's competitors an artificial competitive advantage, allowing them to successfully compete against DeltaCom without the usual market trial and error. As such, DeltaCom's Request for Specified Confidential Classification of Document No. 07351-03 is hereby granted.

Based on the foregoing, it is

ORDERED by Commissioner Braulio L. Baez, as Prehearing Officer, that ITC^DeltaCom Communications, Inc.'s Request for Specified Confidential Classification of Document No. 07351-03, as set forth above, is hereby granted and incorporated by reference into this Order. It is further

ORDERED that pursuant to Section 364.183, Florida Statutes, and Rule 25-22.006, Florida Administrative Code, the confidentiality granted to the material specified herein shall expire eighteen (18) months from the date of the issuance of this Order, in the absence of a renewed request for confidentiality pursuant to Section 364.183, Florida Statutes. It is further

ORDERED that this Order will be the only notification by the Commission to the parties concerning the expiration of the confidentiality time period.

By ORDER of Commissioner Braulio L. Baez, as Prehearing Officer, this 28th Day of August, 2003.

  
for Commissioner Braulio Baez  
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BRAULIO L. BAEZ  
Commissioner and Prehearing Officer

( S E A L )

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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.

1 c. The total number of lines that DeltaCom provides using resold BellSouth lines in  
2 Florida, designated by Florida deaveraged UNE rate zones 1, 2, and 3;

3 d. The total number of lines that DeltaCom provides in Florida using exclusively its  
4 own facilities, designated by Florida deaveraged UNE rate zones 1, 2, and 3.

5 DELTACOM'S RESPONSE: Subject to, and without waiving its General  
6 Objections, DeltaCom states in response to this question, including the subparts:

7 DeltaCom does not track number of lines by zone.

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 Response provided by: James Pearsall, Sr., Manager Industry Relations

13 INTERROGATORY NO. 5: From the time period January 2000 to present,  
14 state the total number of customers that refused to migrate voice service to DeltaCom  
15 because he or she had FastAccess service with BellSouth.

16 ITC^DELTACOM'S RESPONSE: Subject to, and without waiving its General  
17 Objections, DeltaCom states in response to this question: Based on a survey of Sales personnel,  
18 DeltaCom estimates that approximately 30% of the sales contacts do not select DeltaCom local  
19 service due to the consumer's inability to utilize BellSouth's FastAccess service in conjunction  
20 with DeltaCom local voice service.

21 Further, complaints have been lodged against DeltaCom as a result of not being able to  
22 provide voice service to a customer who also has ADSL service provided through BellSouth. Not  
23 only does DeltaCom have to deal with this anticompetitive issue but DeltaCom gets the bad press

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint of the Florida  
Competitive Carriers Association  
Against BellSouth Telecommunications, Inc.  
and Request for Expedited Relief

Docket No. 020507-TP  
Served: January 10, 2003

ITC^DeltaCom Communications, Inc.'s Supplemental Response to BellSouth  
Telecommunications, Inc.'s Interrogatories  
And Production of Document Requests

INTERROGATORIES

1 7 If the answer to Interrogatory No. 6 is in the affirmative, please:

2 ii. State the total number of customers to whom ITC^DeltaCom is providing  
3 Broadband Service and/or DSL service in Florida, including stating the total  
4 number of residential and business customers being provided such service;

5 ITC^DELTACOM'S SUPPLEMENTAL RESPONSE:

6 ITC^DeltaCom objects that providing the number of its customers is not relevant and  
7 is a trade secret. Notwithstanding its objections, ITC^DeltaCom has the following  
8 supplemental information part of which is confidential and which is being produced subject  
9 to a protective agreement:

10 [REDACTED]  
11 [REDACTED]  
12 [REDACTED]  
13 [REDACTED]  
14 [REDACTED]  
15 [REDACTED]

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16 Response provided by: David Freytag

1 discovery of admissible evidence. ITC^DeltaCom further objects on the basis that the  
2 information sought by the interrogatory is privileged as a trade secret. Notwithstanding its  
3 objections, ITC^DeltaCom has the following supplemental information part of which is  
4 confidential and which is being produced subject to a protective agreement:

5 [REDACTED]  
6 [REDACTED]  
7 [REDACTED]  
8 [REDACTED]  
9 [REDACTED]  
10 [REDACTED]  
11 [REDACTED]  
12 [REDACTED]

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13 Response provided by David James and David Freytag

14 iv. Identify all documents referring or relating to such an agreement or discussions.

15 ITC^DELTA COM'S SUPPLEMENTAL RESPONSE:

16 See response to iii above.

17 29. Do you contend that any state or federal laws, rules, or regulations are violated  
18 when BellSouth does not provide FastAccess service to carriers that offer DSL service (as  
19 contrasted to carriers that do NOT offer DSL service)? If the answer to the foregoing  
20 Interrogatory is in the affirmative, state all facts and identify all documents that support this  
21 contention.

22 ITC^DELTA COM'S SUPPLEMENTAL RESPONSE: