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 Sent: Wednesday, October 19, 2005 2:55 PM
 To: Filings@psc.state.fl.us
 Cc: Adelman, David; Boyd Jr., C. Everett
 Subject: E-FILING: Docket No. 041269-TP, ITC^DeltaCom petition for confidential classification and affidavit
 Attachments: ITCD-No. 04-01269; Affidavit - Jerry Watts.pdf

Attached for filing please find (1) a petition for confidential classification (5 pages) and (b) a supporting affidavit (3 pages) on behalf of ITC^DeltaCom Communications, Inc. in Docket No. 04-1269.

Please contact me or C. Everett Boyd at (850) 907-2502 if there are any questions.
Thank you,

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<<ITCD-No. 04-01269>> <<Affidavit - Jerry Watts.pdf>>

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**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION
TALLAHASSEE, FLORIDA**

In re: Petition to Establish Generic Docket
To Consider Amendments to Interconnection
Agreements Resulting from Changes of
Law.

Docket No. 041269-TP

**ITC^DELTA COM'S REQUEST
FOR CONFIDENTIAL CLASSIFICATION**

I. INTRODUCTION

ITC^DeltaCom Communications, Inc. ("ITC^DeltaCom" or "the Company") hereby requests, pursuant to Fla. Stat. § 366.093 and F.A.C. Rule 25-22.006, that the information specified herein, which was filed by Competitive Carriers of the South, Inc. ("CompSouth") on September 30, 2005, receive confidential classification. As discussed below and in the attached Affidavit of Jerry Watts, the materials filed by CompSouth contain sensitive, proprietary information regarding the ITC^DeltaCom network. Disclosure of the information at issue would serve no compelling public interest, and would be highly damaging to ITC^DeltaCom's legitimate business interests. Accordingly, confidential treatment is warranted.

II. DISCUSSION

On September 30, 2005, CompSouth filed its Response to BellSouth's First Request for Production of Documents. (ITC^DeltaCom is a member of CompSouth.) CompSouth's response to Request for Production 1 included information regarding a portion of ITC^DeltaCom's proprietary network configuration. (The response was filed in redacted form, and is hereinafter referred to as the "Redacted Response.") The redacted information is known to BellSouth but has not heretofore been shared with ITC^DeltaCom's competitors or with the

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general public. In conjunction with the September 30 filing, CompSouth filed a notice of intent to request confidential classification of the material contained in Response No. 1.

ITC^DeltaCom is making this separate request in support of, and consistent with, CompSouth's request.

Fla. Stat. § 366.093(1) provides that "any records received by the Commission which are shown and found by the Commission to be proprietary confidential business information shall be kept confidential and shall be exempt" from disclosure under the Public Records Act.

Proprietary, confidential business information is defined as information that 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.

Fla. Stat. 366.093(3). Section 366.093 further provides that proprietary confidential business information includes, but is not limited to, "[i]nformation relating to competitive interests, the disclosure of which would impair the competitive business of the provider of the information."

Fla. State. § 366.093(3)(e).¹

As shown in the accompanying affidavit of Jerry Watts, Vice President of Government and Industry Affairs for ITC^DeltaCom, the information in the Redacted Response is information that was developed by, and is the exclusive property of, ITC^DeltaCom. Watts Aff. at ¶ 5. The manner in which the Company's network is configured is unique to ITC^DeltaCom

¹ Section 366.093 does not provide for the Commission to weigh the public's interest in disclosure against the Company's interest in confidentiality; once it is determined that information qualifies as "proprietary confidential business information," the owner of the information is entitled to confidentiality. However, it should be noted that there is no strong public interest in seeing diagrams and descriptions of the configuration of ITC^DeltaCom's network elements, and that any such interest would be exceedingly small as compared with the considerable competitive injury the Company could suffer if confidentiality were denied.

and was developed at considerable expense to the Company, and is information that would have potential value if obtained by a competitor. Watts Aff. at ¶ 8. If the information were made public, a competitor could attempt to duplicate the network architecture used by ITC^DeltaCom to gain a competitive advantage. Watts Aff. at ¶¶ 8-9. ITC^DeltaCom would suffer significant competitive injury if its confidential proprietary business information were made available to competitors. Watts Aff. at ¶ 10.

ITC^DeltaCom has imposed and enforced procedures to maintain the confidentiality of its network architecture design. Watts Aff. at ¶ 7. At no time has ITC^DeltaCom publicly disseminated the documents or information for which confidentiality is requested, other than limited disclosure required in connection with a legal or regulatory proceeding, or subject to a binding confidentiality agreement. Watts Aff. at ¶ 6.

Because the information contained in the Redacted Response is proprietary confidential business information that ITC^DeltaCom has not previously disclosed to the public, that relates to the competitive business interests of ITC^DeltaCom, and that would injure the legitimate business interests of ITC^DeltaCom if disclosed to the public and to competitors, ITC^DeltaCom requests that the Commission declare the information to be confidential and afford it the confidential treatment provided by Fla. Stat. § 366.093. Specifically, ITC^DeltaCom requests that the redacted contents of CompSouth's Response to Request for Production 1 be withheld for the duration of the activity in this Docket, and that all copies of the un-redacted Exhibit be returned to ITC^DeltaCom as soon as the information is no longer necessary for the Commission to conduct its business. Fla. Stat. § 366.093(4).

