

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Request for confidential) DOCKET NO. 920179-TL  
classification for information ) ORDER NO: PSC-92-0472-PCO-TL  
provided in response to requests) ISSUED: 6/9/92  
in Contract Audit No. 91-232-3-1)  
by UNITED TELEPHONE COMPANY OF )  
FLORIDA )  
\_\_\_\_\_)

ORDER GRANTING CONFIDENTIAL TREATMENT

On February 26, 1992, United Telephone Company of Florida (United or the Company) filed a request for confidential classification for portions of documents provided pursuant to a Contract Audit conducted by our Staff and used in the draft Audit Report dated February 3, 1992. The results of the Contract Audit have been incorporated into Docket No. 910980-TL, United's rate case. The documents are titled as follows:

- A. Beverly Hills/Homosassa Springs Vendor Analysis dated July 1990.
- B. Cape Haze Vendor Analysis dated November 1990.
- C. West Kissimmee and North Fort Myers Vendor Selections dated April 28, 1989.
- D. Volume Purchase Agreement between United Telecommunications, Inc. and Northern Telecom, Inc. with cover letter dated November 28, 1990.
- E. Draft Final Audit Report, Contract Audit No. 91-232-3-1, with cover letter dated February 3, 1992.

Florida law provides, in Section 119.01, Florida Statutes, that documents submitted to governmental agencies shall be public records. The only exceptions to this law are specific statutory exemptions, and exemptions granted by governmental agencies pursuant to the specific terms of a statutory provision. This law derives from the concept that government should operate in the "sunshine." It is our view that parties must meet a very high burden when requesting a protective order or specified confidential classification of documents submitted during a proceeding before this Commission.

Pursuant to Section 364.183, Florida Statutes, and Rule 25-22.006, Florida Administrative Code, it is the Company's burden to show that the material submitted is qualified for specified confidential classification. Rule 25-22.006, provides that the Company may fulfill its burden by demonstrating that the documents

DOCUMENT NUMBER-DATE

05933 JUN-9 1992

FPSC-RECORDS/REPORTING

fall into one of the statutory examples set out in Section 364.183, or by demonstrating that the information is proprietary confidential information the disclosure of which will cause the Company or its ratepayers harm.

To this end, United asserts the following:

A. Beverly Hills/Homosassa Springs Vendor Analysis dated July 1990.

Page 6 - dollar amounts in columns A, B and C, on lines 7-11, 14-18, and 21-25.

B. Cape Haze Vendor Analysis dated November 1990.

1. Page 5 - dollar amounts and percentages in columns A, B, C and D, on lines 20-30.

2. Page 6 - dollar amounts and percentages in columns A, B, C and D, on lines 4-14.

C. West Kissimmee and North Fort Myers Vendor Selections dated April 28, 1989.

1. Page 3 - dollar amounts in columns A-F, on lines 11-18.

2. Page 4 - dollar amounts in columns A-F, on lines 12-21.

E. Draft Final Audit Report, Contract Audit No. 91-232-3-1, with cover letter dated February 3, 1992.

1. Page 13 - dollar amounts and percentages on lines 12 and 15.

2. Page 14 - dollar amounts and percentages on lines 11 and 14.

3. Page 23 - dollar amounts on lines 5 and 15-23.

4. Page 24 - dollar amounts on lines 8, 10 and 11.

Section 364.183(3)(d) and (e), describes the term proprietary confidential business information to include "information concerning bids or other contractual data, the disclosure of which

would impair the efforts of the company or its affiliates to contract for goods or services on favorable terms," and "information relating to competitive interests, the disclosure of which would impair the competitive business of the provider of the information."

The Company asserts that all of the above listed items contain specific quotation or cost information of Northern Telecom, Inc. (NTI) or AT&T, or allow the computation of quotation or cost amounts. Thus, the Company claims that the information falls within the provisions of the statutory sections cited above.

The Company further states that the quotation and cost amounts cited were submitted or developed in a competitive setting. The quotation amounts are submitted to United by the competing vendors, and the cost amounts are developed by United from computer programs. These computer programs enable United to estimate costs to the Company of products of each of the vendors in a variety of configurations.

United intends to continue to solicit bids and quotations, compute cost amounts and buy products from these two vendors as they are the primary providers of telecommunications switching equipment. United asserts that disclosure of the amounts bid or quoted and cost amounts would enable these competitors to obtain competitive information about one another to the detriment of United and its ratepayers. Presumably, such information could be used to raise bid, quote or cost amounts if one competitor finds it is significantly under-bidding the other or providing significantly lower cost amounts.

Additionally, United contends that disclosure of such information also undermines the fairness afforded to bidders in the bid process and to vendors who provide cost amounts to United. Because of the lack of vendors in the market in which they compete, the bidding process with these two vendors is repetitive. Disclosure of bids, quotes, or cost amounts could enable one competitor to determine the costs, margins and mark-ups of the other and completely undermine the process.

D. Volume Purchase Agreement between United Telecommunications, Inc. and Northern Telecom, Inc. with cover letter dated November 28, 1990.

1. Page 1 - percentage on lines 22 and 23; highlighted text on line 27; text on line 32; and dollar amounts on lines 33-36.
2. Page 2 - percentage on line 8; percentage on line 12; one word of text and percentages on line 15; dollar amount on line 30; number of offices on line 31; dollar amount on line 33; and dollar amounts on lines 35 and 36.
3. Page 3 - one word of text and percentage on line 4; dollar amounts on lines 19, and 22-26; percentage on line 35; and one word of text on line 36.
4. Page 5 - sites listed in column A on lines 3-16; percentage in column E on line 2; dollar amounts in column E on lines 3-16; and dollar amount on line 22.
5. Page 6 - locations on lines 4-27.
6. Page 10 - highlighted text on lines 11, 12, 13, 15, 17, 21, 25-30, 32, 33, 34, 37, 40-46, 48 and 49.
7. Page 11 - highlighted text on lines 2, 7, 8, 10, 11, 15, 22, 23, 24, 29, 30-33, and 35-40.
8. Page 12 - product description and dollar amounts on lines 3, 4 and 5.
9. Page 17 - Description on line 1; dollar amounts on lines 5, 7, 8, 10, 11, 13, 14 and 17; word on line 19; and words on line 21.

United asserts that the contractual information in the Volume Purchase Agreement (VPA) between United Telecommunications, Inc. (UTI) and NTI contains competitive contractual terms and conditions that NTI may or may not offer to others. Making these terms and conditions public would undermine UTI's and United's ability to favorably negotiate discounts with NTI. Specifically, if competitors have knowledge of the percentages and dollar amounts in the contract, then NTI, and consequently UTI and United, would be at a disadvantage in future negotiations. If NTI's competitive

ORDER NO. PSC-92-0472-PCO-TL  
DOCKET NO. 920179-TL  
PAGE 5

position with other customers were undermined in negotiations, UTI's ability to preserve valuable incentives would be affected.

United contends that the locations listed on pages 5 and 6 are generally future planned locations of NTI switch installations. The future plans of UTI are subject to change and renegotiation depending on a number of factors. Making these future plans public could lead to customer expectations which may not be fulfilled, and may also discourage other competitors from continuing to contact UTI or its operating telephone companies with proposals for these locations. Further, the Company asserts that these locations are not necessary to the audit report and no public benefit will be served by disclosure, while the possibility of harm and the lessening of competition does exist with disclosure.

Sections 364.183(3)(d) and (e), Florida Statutes, describe the term "proprietary confidential business information" to include "information concerning bids or other contractual data, the disclosure of which would impair the efforts of the company or its affiliates to contract for goods or services on favorable terms," and "information relating to competitive interests, the disclosure of which would impair the competitive business of the provider of the information." Upon review of the information herein for which confidential classification has been requested, it appears that the information falls within the statutory examples set out in Section 364.183. Thus, the material is qualified for specified confidential classification pursuant to Section 364.183 and Rule 25-22.006, and shall be exempt from the requirements of Section 119.07.

Based on the foregoing, it is

ORDERED by Commissioner Susan F. Clark, as Prehearing Officer, that portions of the documents from Contract Audit No. 91-232-3-1, as identified in the body of this order, are granted confidentiality pursuant to Section 364.183, Florida Statutes.

ORDER NO. PSC-92-0472-PCO-TL  
DOCKET NO. 920179-TL  
PAGE 6

By ORDER of Commissioner Susan F. Clark, as Prehearing  
Officer, this 9th day of JUNE, 1992.

  
SUSAN F. CLARK, Commissioner  
and Prehearing Officer

( S E A L )

PAK

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), 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.

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 25-22.038(2), Florida Administrative Code, if issued by a Prehearing Officer; 2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or 3) 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 Records and Reporting, 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.