

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for arbitration
of unresolved issues in
negotiation of interconnection
agreement with BellSouth
Telecommunications, Inc. by
ITC^DeltaCom Communications,
Inc. d/b/a ITC^DeltaCom.

DOCKET NO. 030137-TP
ORDER NO. PSC-03-1210-CFO-TP
ISSUED: October 24, 2003

ORDER GRANTING BELLSOUTH'S REQUEST FOR SPECIFIED CONFIDENTIAL
CLASSIFICATION FOR DOCUMENT NO. 07625-03 (X-REF. 06803-03)

On February 7, 2003, ITC^DeltaCom Communications, Inc. (ITC^DeltaCom or DeltaCom) filed its Petition for Arbitration With BellSouth pursuant to the Telecommunications Act of 1996. On March 4, 2003, BellSouth Telecommunications, Inc. filed its response to the ITC^DeltaCom's Petition. On September 3 and 4, 2003, an administrative hearing was held in the above matter.

On August 18, 2003, BellSouth filed its Request for Specified Confidential Classification for its responses and documents provided in response to Staff's 1st Request for Production, Item No. 4, Document No. 07625-03 (x-ref. 06803-03). Attachment A, attached hereto and incorporated herein, contains a detailed justification of the confidentiality of the information at issue. BellSouth contends that its response to Staff's 1st Request for Production Item No. 4 contains competitive business information that is considered confidential and proprietary to BellSouth. BellSouth asserts that treated and intends to continue to treat the information for which confidential classification is sought as private, and this information has not been generally disclosed.

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

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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 information in accordance with Section 364.183, Florida Statutes, and Rule 25-22.006, Florida Administrative Code. Disclosure of this information would give BellSouth's competitors an artificial competitive advantage, allowing them to successfully compete against BellSouth without the usual market trial and error. As such, BellSouth's Request for Specified Confidential Classification of Document No. 07625-03 (x-ref. 06803-03) is hereby granted.

Based on the foregoing, it is


ORDERED by Commissioner Braulio L. Baez, as Prehearing Officer, that BellSouth Telecommunications, Inc.'s Request for Specified Confidential Classification of Document No. 07625-03 (x-ref. 06803-03), as set forth in Attachment A, is hereby granted and incorporated by reference into this Order. It is further

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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 24th Day of October, 2003.

 for Commissioner Braulio Baez

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.

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ATTACHMENT A

ATTACHMENT A

**BellSouth Telecommunications, Inc.
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8/18/03**

**REQUEST FOR CONFIDENTIAL CLASSIFICATION OF BELL SOUTH'S RESPONSE
TO STAFF'S 1ST REQUEST FOR PRODUCTION OF DOCUMENTS, ITEM NO. 4 AS
FILED JULY 28, 2003, IN FLORIDA DOCKET NO. 030137-TP**

Explanation of Proprietary Information

1. This information contains competitive business information. This information is concerning bids or other contractual data, the disclosure of which would impair the efforts of BellSouth or its affiliates to contact for goods or services on favorable terms. This information is used by BellSouth in conducting its business and BellSouth strives to keep it secret, therefore, such information should be classified as proprietary, confidential business information, exempt from the Open Records Act. Fl. Stat. § 364.183 (3)(d).

Location

Reason

Response to Request for Production, No. 4

Entire Document

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