

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for expedited review and cancellation of BellSouth Telecommunications, Inc.'s Key Customer promotional tariffs and for investigation of BellSouth's promotional pricing and marketing practices, by Florida Digital Network, Inc.

DOCKET NO. 020119-TP

In re: Petition for expedited review and cancellation of BellSouth Telecommunications, Inc.'s Key Customer promotional tariffs by Florida Competitive Carriers Association.

DOCKET NO. 020578-TP

In re: Petition for expedited review and cancellation or suspension of BellSouth Telecommunications, Inc.'s Key Customer tariff filed 12/16/02, by Florida Digital Network, Inc.

DOCKET NO. 021252-TP
ORDER NO. PSC-04-0038-CFO-TP
ISSUED: January 13, 2004

ORDER GRANTING FLORIDA DIGITAL NETWORK'S
REQUEST FOR CONFIDENTIAL CLASSIFICATION OF
DOCUMENT NO. 13383-03 (X-REF DOCUMENT NO. 12818-03)

On June 19, 2003, a Final Order in these consolidated dockets was issued (Order No. PSC-03-0726-FOF-TP). The Final Order was appealed by Florida Digital Network, Inc. (FDN). While compiling the appellate record, it became apparent that a portion of BellSouth Telecommunications, Inc.'s (BellSouth's) post-hearing brief that was confidential had been returned to BellSouth. Because it is part of the record, BellSouth refiled it (see Document No. 13384-03).

DOCUMENT NUMBER-DATE

00518 JAN 13 2004

FPSC-COMMISSION CLERK

The confidential information in the brief pertained to FDN, so FDN filed a Request for Specified Confidential Classification (see Document No. 13382-03). The confidential information is located on page 6, lines 8-13 of BellSouth's brief and describes the number of FDN's facility-based lines available on various dates and their geographic location. FDN claims the information is confidential for two reasons:

1. It is proprietary investment, market deployment, customer location information and competitive interest information. This information is valuable, is used by FDN in conducting its business, and FDN strives to keep it secret. Therefore, such information relates to competitive interests of FDN, the disclosure of which would impair the competitive business of FDN. See Section 364.183(3)(e), Florida Statutes.
2. It is information that FDN strives to keep secret because it is elemental to FDN's business and status in the competitive market place. Therefore, such information is a trade secret. See Section 364.183(3)(a), 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

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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.

Upon review, it appears that FDN treats the information as private, and that disclosure of the information would harm FDN by impairing its ability to compete. Therefore, I find that FDN's request complies with Rule 25-22.006, Florida Administrative Code, and Section 364.183(3), Florida Statutes, and is hereby granted.

Based on the foregoing, it is therefore

ORDERED by Commissioner Braulio L. Baez, as Prehearing Officer, that Florida Digital Network, Inc.'s Request for Specified Confidential Classification of a portion of BellSouth Telecommunication Inc.'s post-hearing brief is hereby granted and incorporated by reference in this order. It is further

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

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By ORDER of Commissioner Braulio L. Baez, as Prehearing Officer, this 13th Day of January, 2004.

for Commissioner Braulio L. Baez



BRAULIO L. BAEZ
Commissioner and Prehearing Officer

(S E A L)

MKS

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, if issued by a Prehearing Officer; 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

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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.