

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Implementation of requirements arising from Federal Communications Commission's triennial UNE review: Local Circuit Switching for Mass Market Customers.

DOCKET NO. 030851-TP

In re: Implementation of requirements arising from Federal Communications Commission's triennial UNE review: Location-Specific Review for DS1, DS3 and Dark Fiber Loops, and Route-Specific Review for DS1, DS3 and Dark Fiber Transport.

DOCKET NO. 030852-TP

ORDER NO. PSC-04-0170-PCO-TP

ISSUED: February 18, 2004

ORDER GRANTING CONFIDENTIALITY AND SECOND PROTECTIVE ORDER

I. Case Background

In response to the Federal Communications Commission's ("FCC") August 21, 2003, Triennial Review Order ("TRO"), this Commission opened two dockets to ascertain whether a requesting carrier is impaired by lack of access to certain incumbent local exchange companies' network elements.

A Protective Order was issued on Nov. 7, 2003, to ensure the continued protection of all proprietary information being used in these proceedings.

II. Authority

This Order is issued pursuant to the authority granted by Rule 28-106.211, Florida Administrative Code, which provides that the presiding officer before whom a case is pending may issue any orders necessary to effectuate discovery, prevent delay, and promote the just, speedy, and inexpensive determination of all aspects of the case.

III. Purpose of the Order

For these proceedings, our staff sent out a standardized data request to CLECs and AAVs throughout the state. The information provided in response to the data request has been submitted as confidential by a number of the respondents and a formal request for confidentiality has been filed addressing at least one response.

DOCUMENT NUMBER-DATE

02347 FEB 18 04

FPSC-COMMISSION CLERK

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 principle 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.

Upon consideration of the information provided in response to the staff's data request, I conclude that the information submitted meets the definition of proprietary confidential business information set forth in Section 364.183, Florida Statutes. The information includes market deployment information, as well as other specific network information, the release of which would be highly detrimental to a company in that it would give competitors an unfair competitive advantage. Because the definition of proprietary confidential business information would be applicable to any company's information filed in response to the data request, all responses submitted by the companies as confidential shall be treated as such.

Furthermore, because this information is integral to the proceeding and because it is important that the parties have some ability to access and use this information for purposes of hearing, the provisions of the generic Protective Order issued on Nov. 7, 2003, shall be expanded to specifically address the dissemination and handling of the confidential responses to staff's data request. Specifically, the parties will be allowed to obtain, upon request to staff counsel, a copy of the confidential data request responses. The use and handling of the information by the parties is then subject to specific restrictions and sanctions set forth below:

- (a) Copies of confidential data request responses shall be clearly identified as confidential;
- (b) Commission staff shall maintain a record of which parties have obtained a copy of the confidential responses;

- (c) Copies of confidential data responses will only be provided directly to a parties' counsel, or to a representative of the party that has been previously identified as someone that is not involved in marketing and pricing decisions for the party; and
- (d) Upon receipt of the confidential material, a party shall treat the information as confidential and shall only disseminate the information to: (1) its counsel; and (2) its witnesses in this proceeding, or other consultants and experts retained for purposes of this proceeding, as long as such persons are not also involved in making marketing and pricing decisions for the party;
- (e) At the conclusion of the hearings and after the appellate period has run, parties must return their copy of the information to the Commission for destruction.
- (f) Any party found to have willfully violated any provision of this Order will be subject to penalties as set forth in Section 364.285, Florida Statutes, as well as procedural sanctions within the context of this proceeding, including, but not limited to, being barred from conducting cross-examination at hearing using any confidential information provided in response to the staff's data request.

I also remind the parties that the Commission's hearings are conducted in the Sunshine, and as such, in spite of the amount of confidential information submitted, will not be closed. Parties must, therefore, be prepared to conduct cross-examination regarding any confidential material in a manner that does not reveal confidential information, and should be prepared to confer with opposing counsel on matters regarding confidential information in order to avoid revealing confidential information. Finally, parties must provide copies in red folders of any confidential exhibits, that they intend to use on cross-examination.

IV. Ruling

Based upon the foregoing, the responses to staff's data request that have been filed as confidential shall be granted confidential treatment for the reasons outlined herein. Furthermore, I find the outlined procedures comply with Rule 25-22.006, Florida Administrative Code, regarding protection of proprietary information in Commission proceedings. In view of the amount of confidential information that will likely be used at the hearing, and the complexity of handling such information, the requirements set forth are appropriate. This Order will govern the handling of the proprietary information filed in response to staff's data request in these Dockets, and is intended to supplemental the provisions of the Orders Establishing Procedure, the first Protective Order, and the Prehearing Orders.

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Based upon the foregoing, it is

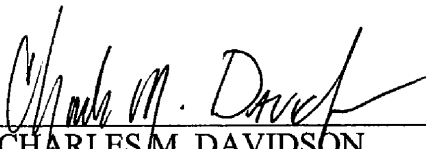
ORDERED by Commissioner Charles M. Davidson, as Prehearing Officer, that the responses to the Commission staff's data request in these Dockets that have been filed as confidential documents shall be granted confidential treatment as set forth herein. It is further

ORDERED that the provisions of this Order shall govern the handling of the confidential data request responses in these proceedings unless otherwise modified by the Prehearing Officer or the Commission. 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 Charles M. Davidson, as Prehearing Officer, this 18th day of February, 2004.



CHARLES M. DAVIDSON
Commissioner and Prehearing Officer

(SEAL)

JLS/BK

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.