

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
ORDER NO. PSC-04-0191-CFO-TP
ISSUED: February 23, 2004

ORDER GRANTING REQUEST FOR SPECIFIED CONFIDENTIAL CLASSIFICATION OF SPECIFIED FLORIDA DIGITAL NETWORK, INC. DOCUMENTS

I. Case Background

In response to the Federal Communications Commission's ("FCC's") 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.

Florida Digital Network, Inc. d/b/a FDN Communications (FDN) has filed Requests for Specified Confidential Classification for certain documents. The chart below shows the date of the request and the document at issue.

Month of Request	Document No.	Attachment
January		
16 th	13550-03 00671-04	A
16 th	00303-04 00387-04 00674-04(x-ref 00774-04)	B
20 th	00347-04 00779-04	C

II. Analysis

In its request, FDN asks for protection of the specific pages and line numbers as set forth in Attachments A through C, which are attached and incorporated in this Order by reference. FDN contends that release of this information would provide its competitors with an undue competitive advantage in that they would have access to this competitively sensitive, confidential information.

DOCUMENT NUMBER DATE

02644 FEB 23 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 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, states that "proprietary confidential business information" is:

[o]wned 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 information for which FDN seeks confidential classification is information that, if disclosed, would cause harm to FDN's competitive interests and its business operations. Thus, this information qualifies as proprietary confidential business information under Section 364.183, Florida Statutes, and Rule 25-22.006, Florida Administrative Code. As such, FDN's request for confidential classification is hereby granted.

Based on the foregoing, it is

ORDERED by Commissioner Charles M. Davidson, as Prehearing Officer, that FDN Communications Inc.'s Requests for Specified Confidential Classification of the documents as set forth herein are hereby granted. 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 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.

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By ORDER of Commissioner Charles M. Davidson, as Prehearing Officer, this 23rd
day of February, 2004.



CHARLES M. DAVIDSON
Commissioner and Prehearing Officer

(SEAL)

JLS/JPR

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.

ATTACHMENT A

FDN Communications
FPSC Docket No. 030851-TP
Request for Confidential Classification
January 16, 2004

**REQUEST FOR CONFIDENTIAL CLASSIFICATION OF FDN'S RESPONSES
TO STAFF'S INTERROGATORY NO. 11**

Reasons for Claim for Proprietary Information Status

1. This information contains 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. This information contains 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.

<u>FDN's Responses to Staff's Interrogatory No. 11</u>	<u>Reason</u>
All line, all pages	1, 2
All lines, all pages	1, 2

ATTACHMENT A

FDN Communications
FPSC Docket No. 030851-TP
Request for Confidential Classification
January 16, 2004

**REQUEST FOR CONFIDENTIAL CLASSIFICATION OF THE RUBUTTAL
TESTIMONY OF JOHN A. RUSCILLI OF BELL SOUTH**

Reasons for Claim for Proprietary Information Status

1. This information contains 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. This information contains 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.

<u>FDN's Responses to Staff's Interrogatory No. 11</u>	<u>Reason</u>
Page 10, line 23 through and including line 25	1, 2
Page 11, line 1 through and including line 6	1,2

ATTACHMENT A

FDN Communications
FPSC Docket No. 030851-TP
Request for Confidential Classification
January 17, 2004

**REQUEST FOR CONFIDENTIAL CLASSIFICATION OF FDN'S RESPONSES
TO BELLSOUTH'S THIRD DOCUMENT REQUEST**

Reasons for Claim for Proprietary Information Status

1. This information contains 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. This information contains 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.

<u>FDN's Responses to BellSouth's RPOD Nos. 23</u>	<u>Reason</u>
Switching Spreadsheet Column A through and including Column AV Line 4 through and including Line 136	1, 2
Transport Spreadsheet Column A through and including Column AP Line 7 through and including Line 16	1, 2
<u>FDN's Responses to BellSouth's RPOD Nos. 24</u>	<u>Reason</u>
Sprint 1 st ROG Column A through and including Column Q Line 3 through and including Line 96	1, 2
AT&T Spreadsheet Column A through and including Column E Line 5 through and including Line 133	1, 2