

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Complaint of Florida Digital Network, Inc. d/b/a FDN Communications against BellSouth Telecommunications, Inc. for resolution of certain billing disputes and enforcement of unbundled network element (UNE) orders and interconnection agreements.

DOCKET NO. 030829-TP
ORDER NO. PSC-04-0632-CFO-TP
ISSUED: June 29, 2004

ORDER GRANTING BELLSOUTH'S REQUEST FOR SPECIFIED CONFIDENTIAL CLASSIFICATION OF DOCUMENT NO. 06414-04 (X-REFERENCE DOCUMENT NO. 05835-04)

On August 18, 2003, Florida Digital Network, Inc. d/b/a FDN Communications (FDN) filed a Complaint for Resolution of Certain Billing Disputes and Enforcement of UNE Orders and Interconnection Agreements with BellSouth Telecommunications, Inc. (BellSouth). On September 3, 2003, BellSouth filed its Answer and Counterclaim stating that FDN has breached its contractual obligations with BellSouth. On September 23, 2003, FDN filed its Answer to the counterclaim. On November 21, 2003, FDN filed a Motion to Amend its petition. That Motion was granted by Order No. PSC-03-1391-PCO-TP, issued on December 10, 2003.

On June 8, 2004, BellSouth filed its Response to FDN's 3rd request for PODs (No. 5). On that same date, pursuant to Rule 25-22.006(3)(a), Florida Administrative Code, BellSouth filed its Request for Specified Confidential Classification of those documents. In its request, BellSouth seeks confidential classification of the entire response to POD No. 5. (Document No. 06414-04, x-reference Document No. 05835-04)

BellSouth asserts that the public disclosure of this information would cause competitive harm to BellSouth and provide competitors with an unfair advantage.

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 forth 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.

DOCUMENT NUMBER-DATE
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FPSC-COMMISSION CLERK

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 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 inspection, based on the definition of proprietary confidential business information in Section 364.183(3), Florida Statutes, it appears that the material contained in these documents 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 the documents identified in Attachment A is hereby granted.

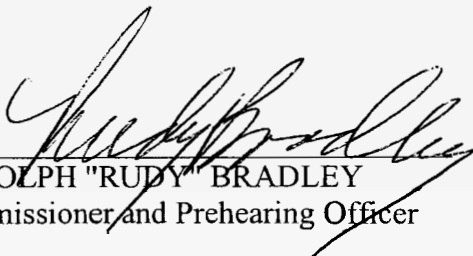
ORDERED by Commissioner Rudolph “Rudy” Bradley, as Prehearing Officer, that BellSouth Telecommunications, Inc.’s Request for Confidential Classification of Document No. 06414-04 (x-reference Document No. 05835-04), as set forth in the body of this Order and also in Attachment A, which is incorporated herein by reference, is 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 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 Rudolph "Rudy" Bradley, as Prehearing Officer, this
29th day of June, 2004



RUDOLPH "RUDY" BRADLEY
Commissioner and Prehearing Officer

(SEAL)

LF

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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6/10/04**

**REQUEST FOR CONFIDENTIAL CLASSIFICATION OF BELL SOUTH'S RESPONSE TO
FDN'S THIRD REQUEST FOR PRODUCTION, NO. 5 FILED MAY 20, 2004, IN FPSC
DOCKET 030829-TP**

Explanation of Proprietary Information

1. This information contains competitive business information. The subject information includes internal methods and procedures, and job aids. This information is valuable, it is used by BellSouth in conducting its business and BellSouth strives to maintain the confidentiality of this information. Therefore, such information is a trade secret which should be classified as proprietary, confidential business information pursuant to Section 364.183(3)(e), Florida Statutes and is exempt from the Open Records Act.

LOCATION

REASON

POD No. 5

Entire Document:

Bates Range BSTFDN3RD000296 – B STFDN3RD000480

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