

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Investigation into the establishment of operations support systems permanent performance measures for incumbent local exchange telecommunications companies. (AT&T FLORIDA TRACK)

DOCKET NO. 000121A-TP
ORDER NO. PSC-09-0246-CFO-TP
ISSUED: April 23, 2009

ORDER GRANTING IN PART AND DENYING IN PART
AT&T FLORIDA'S REQUEST FOR CONFIDENTIAL CLASSIFICATION

I. Background

In September 2008, our staff commenced an audit of Bellsouth Telecommunications, Inc. d/b/a AT&T Florida's ("AT&T Florida") April OSS software release ("April Release"). On December 18, 2008, a final revised Copy of this audit, entitled *AT&T's OSS April 2008 Release Analysis and Resolutions*, was provided to AT&T Florida. On January 9, 2009, AT&T filed its comments regarding the Audit Report ("Comments"). On January 20, 2009, AT&T Florida filed its Request for Confidential Classification of portions of the Comments. In AT&T's Request for Confidential Classification, the company states that the Audit Report contains proprietary confidential business information, and that such information: (1) is treated as proprietary by AT&T Florida; (ii) is not generally disclosed; and (iii) if disclosed, could harm the business operations of AT&T Florida.

On February 3, 2009, Cbeyond Communications, LLC, Deltacom, Inc. and NuVox Communications, Inc. filed an objection to AT&T's Request for Confidential Classification. These companies argue that AT&T's request for confidential classification should be denied because it is facially insufficient. In addition, they argue that even if AT&T's request for confidential classification is deemed facially sufficient for consideration, it should be denied because AT&T has not met its burden of proof.

This Commission has jurisdiction over requests for confidential treatment pursuant to Section 364.183, F.S. That section and Rule 25-22.006, F.A.C., govern the granting and denying of confidential classification.

II. Legal Standard

Pursuant to Section 119.01, Florida Statutes, documents submitted to this Commission are public records. This presumption is based on the concept that government should operate in the "sunshine." The right of access to governmental records is an important and longstanding Florida tradition embodied in both Florida Statutes and the Declaration of Rights provision of the state Constitution. The Public Records Law is to be liberally construed in favor of open government, and exemptions from disclosure are to be narrowly construed so they are limited to their stated purpose. Seminole County v. Wood, 512 So. 2d 1000 (Fla 5th DCA 1987), rev.

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denied 520 So. 2d 586 (Fla. 1986). The determination of whether information is proprietary confidential business information is a matter of discretion. Florida Society of Newspaper Editors, Inc. v. Florida Public Service Commission, 543 So. 2d 1262, 1265 (1st DCA 1989) rehearing den. June 12, 1989. When determining whether information should be deemed confidential, the Commission should weigh the public interest in disclosing the information with the potential harm to the entity if the information were disclosed.

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. 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.

III. Rulings

As reflected in Attachments 1 and 2, the information identified as confidential by AT&T Florida has been reviewed to confirm whether the information sought to be protected qualifies for exemption. Attachment 1 sets forth the information which I find proprietary confidential information within the meaning of Section 364.183, F.S. and Rule 25-22.006, F.A.C. Attachment 2 sets forth the information which I find is not proprietary confidential information within the meaning of Section 364.183, F.S. and Rule 25-22.006, F.A.C.

Based on the foregoing , it is


ORDERED by Commissioner Matthew M. Carter, II, as Prehearing Officer, that the request by Bellsouth Telecommunications, Inc. d/b/a AT&T Florida, for confidential classification for portions of its Comments filed regarding *AT&T's OSS April 2008 Release Analysis and Resolutions* is hereby granted in part and denied in part as set forth in the Attachments 1 and 2 to this Order. 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 identified 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 the material identified in Attachment 2 for which confidential classification has been denied shall be maintained as confidential until the time for filing an appeal has expired, in accordance with Rule 25-22.006(10), Florida Administrative Code. 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 Chairman Matthew M. Carter II, as Prehearing Officer, this 23rd day of April, 2009.



MATTHEW M. CARTER II
Chairman and Prehearing Officer

(S E A L)

TJB

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 Office of Commission Clerk, in the form prescribed by Rule 25-22.0376, 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 1

Review of Request for Specified Confidential Classification

The identified information *meets* the requirements for confidential classification pursuant to Section 364.183, F.S., and Rule 25-22.006(5), F.A.C.

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ATTACHMENT 2

Review of Request for Specified Confidential Classification

The identified information *does not* meet the requirements for confidential classification pursuant to Section 364.183, F.S., and Rule 25-22.006(5), F.A.C.

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