

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition by ITC^DeltaCom
Communications, Inc. d/b/a
ITC^DeltaCom for arbitration of
certain unresolved issues in
interconnection negotiations
between ITC^DeltaCom and
BellSouth Telecommunications,
Inc.

DOCKET NO. 990750-TP
ORDER NO. PSC-99-2525-CFO-TP
ISSUED: December 23, 1999

ORDER GRANTING REQUEST FOR
CONFIDENTIAL TREATMENT OF DOCUMENTS NOS. 10533-99, 10534-99,
12763-99, AND 12894-99

On June 11, 1999, ITC^DeltaCom Communications, Inc. d/b/a ITC^DeltaCom (ITC^DeltaCom) filed a Petition for Arbitration pursuant to 47 U.S.C. 252(b) to arbitrate certain unresolved issues in the interconnection negotiations between ITC^DeltaCom and BellSouth Telecommunications, Inc. (BellSouth). On July 6, 1999, BellSouth filed its response. This matter went to hearing on October 27-29, 1999.

ITC^DeltaCom filed Requests for Specified Confidential Classification, asking that certain documents treated as proprietary confidential business information, in accordance with Section 364.183(3), Florida Statutes, and Rule 25-22.006, Florida Administrative Code. No response was filed.

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, provides:

DOCUMENT NUMBER-DATE

15705 DEC 23 99

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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.

On September 2, 1999, ITC^DeltaCom requested that Exhibit MT-2 of the direct testimony of Michael Thomas (Document No. 10533-99) be treated as a confidential document. The Exhibit shows the resale, ordering, and provisioning intervals that ITC^DeltaCom has experienced for completion of local service request orders made over the six months prior to September 2, 1999. ITC^DeltaCom states that public disclosure of the information would impair its ability to compete in the marketplace because competitors could use the information to ITC^DelatCom's disadvantage.

Also on September 2, 1999, ITC^DeltaCom requested that Exhibits TAH-1, TAH-2 and TAH-3 to the direct testimony of Thomas Hyde (Document No. 10534-99) be treated as confidential. Exhibit TAH-1 contains the names of ITC^DeltaCom's customers, their locations, a description of problems experienced by these customers concerning unbundled loop cutovers, and analyses by ITC^DeltaCom assigning responsibility for the problems to BellSouth. Exhibit TAH-2 contains the names of ITC^DeltaCom's customers, their locations, a description of problems experienced by these customers concerning unbundled loop cutovers, and analyses by BellSouth assigning responsibility for the problems to ITC^DelatCom or to one of BellSouth's divisions. Exhibit TAH-3 contains more recent trouble reports from ITC^DeltaCom customers. ITC^DeltaCom states that that public disclosure of the information in Exhibits TAH-1, TAH-2, and TAH-3 would impair its ability to compete in the marketplace because competitors could use the information to ITC^DelatCom's disadvantage.

On October 18, 1999, ITC^DeltaCom requested that certain responses to Staff's First Request for Production of Documents be treated as confidential. The request pertained specifically to the

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documents submitted in response to production requests 2(a), 5, 11, and 14. All responses to Staff's First Request for Production of Documents have been assigned Document No. 12763-99 by our Division of Records and Reporting. The information for which ITC^DeltaCom requested confidential treatment includes: 1) the provisioning and ordering intervals for ITC^DelatCom's resale orders; 2) customer names and descriptions of problems they have experienced as a result of BellSouth's use of long copper loops or outdated Universal Digital Loop Carrier (customer problem tickets); 3) customer names along with notations describing problems with orders due to delays by BellSouth; and 4) customer names and examples of problems they have experienced due to lack of nondiscriminatory access to OSS. ITC^DeltaCom states that if this information were made available to its competitors, they could use it to the disadvantage of ITC^DeltaCom.

On October 20, 1999, ITC^DeltaCom requested that its response to No. 23 of staff's Second Request for Production of Documents (Document No. 12894-99) be treated as confidential. ITC^DeltaCom states that this document contains contractual terms and other data exchanged between ITC^DeltaCom and BellSouth during interconnection negotiations, and that public disclosure of this information would impair ITC^DeltaCom's ability to contract with other incumbent local exchange companies on favorable terms.

Upon consideration, I find that the information described above satisfies the requirements of Section 364.183(3), Florida Statutes, and Rule 25-22.006, Florida Administrative Code, and should therefore be treated as proprietary confidential business information. ITC^DeltaCom owns or controls the information and treats the information as private. The public disclosure of the information could cause harm to ITC^DeltaCom's business operations by impairing its ability contract for goods and services on favorable terms, and by putting ITC^DeltaCom at a competitive disadvantage.

Based on the foregoing, it is therefore

ORDERED by E. Leon Jacobs, Jr., as Prehearing Officer, that the request by ITC^DeltaCom Communications, Inc. for confidential treatment of information in Documents Nos. 10533-99, 10534-99, 12763-99, and 12894-99 is granted.

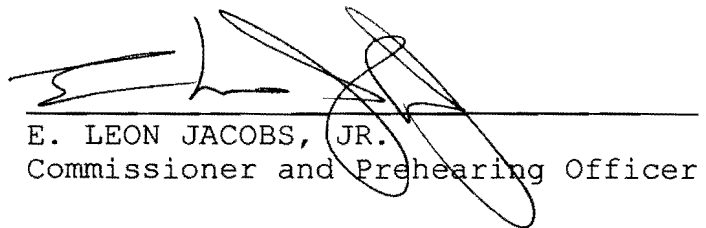
ORDERED that pursuant to Section 364.183, Florida Statutes, and Rule 25-22.006, Florida Administrative Code, any

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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 E. Leon Jacobs, Jr. as Prehearing Officer, this 23rd day of December, 1999.



E. LEON JACOBS, JR.
Commissioner and Prehearing Officer

(S E A L)

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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.

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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; (2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or (3) 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 Records and Reporting, 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.