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RECORDS AND
REPORTING

February 4, 2000

ORIGINAL

Blanca S. Bayo, Director
Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

Re: Docket No. 991376-TL

Dear Ms. Bayo:

Enclosed for filing in the above-referenced docket are the original and 15 copies of Citizens' Response and Objection to GTE's Request for a Temporary Protective Order.

Please indicate the time and date of receipt on the enclosed duplicate of this letter and return it to our office.

Sincerely,

Charles J. Beck
Deputy Public Counsel

CJB:bsr

Enclosures

- AFA _____
- APP _____
- CAF _____
- CUJ _____
- CTR _____
- EAG _____
- LEA 1 _____
- MAS 3 _____
- OPU _____
- RRR _____
- SEC 1 _____
- WAV _____
- OTH _____

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FPSC-BUREAU OF RECORDS

DOCUMENT NUMBER-DATE

01605 FEB-48

FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Initiation of Show Cause)
Proceedings against GTE Florida,)
Inc., for Violation of Service Standards)

Docket no. 991376-TL
Filed February 4, 2000

ORIGINAL

**CITIZENS' RESPONSE AND OBJECTION TO GTE'S REQUEST FOR A
TEMPORARY PROTECTIVE ORDER**

The Citizens of Florida (Citizens), by and through Jack Shreve, Public Counsel, file this response and objection to the request for a temporary protective order filed by GTE Florida Incorporated (GTE) on January 27, 2000.

1. On September 20, 1999, the Citizens served a set of requests for production of documents on GTE. On November 18, 1999, GTE filed a notice of intent to seek confidential classification of every document produced in response to the requests for production of documents.

2. Rule 25-22.006(6)(c), Florida Administrative Code, provides the following:

"(6) Discovery...

(c) When a utility or other person agrees to allow Public Counsel to inspect or take possession of utility information for the purpose of determining what information is to be used in a proceeding before the Commission, the utility may request a temporary protective order exempting the information from Section 119.07(1), F.S. If the information is to be used in a proceeding before the Commission, then the utility must file a specific request for a protective order under Paragraph (a) above. If the information is not to be used in a proceeding before the Commission, then Public Counsel shall return the information to the

utility in accordance with the record retention requirements of the Department of State.

3. On January 13, 2000, Citizens provided a notice to GTE that we intended to use a number of documents produced by GTE in this proceeding. According to Rule 25-22.006(6)(c), Florida Administrative Code, GTE was then required to file a specific request for a protective order. Instead, GTE requested a temporary protective order, stating its understanding that that it would only be required to file a specific request for a permanent protective order until 21 days after the hearing.

4. GTE must file for a permanent protective order now. If the Commission allows GTE's misreading of Rule 25-22.006(6)(c) to stand, the inevitable result will be that all significant evidence at the hearing will be confidential and closed to the public. To make matters worse, the information would be confidential without GTE ever making a showing before hearing that any of the information is entitled to confidential treatment.

5. The Commission has previously taken strong positions on the side of open government. For example, in Commissioner Clark's *Order Denying Request for Confidentiality*, order no. PSC-97-1416-CFO-TI issued November 13, 1997 (attachment 1), Commissioner Clark stated:

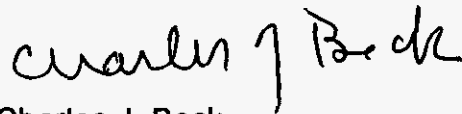
"The right of access to governmental records is an important and longstanding Florida tradition embodied in both Florida Statutes and the Declaration of Rights provision of the state Constitution. The Public Records Law is to be liberally construed in favor of open government, and exemptions from disclosure 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. 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." *Order Denying Request for Confidentiality* at 3.

See also Commissioner Jacob's *Order on Reconsideration of Order No. PSC-98-0768-CFO-TL*, order no. PSC-98-0811-CFO-TL issued June 18, 1998 (attachment 2).

6. As it stands now, there is not one line of any document produced by GTE that is not covered by its request for a temporary protective order. GTE must limit its request only to those matters in the documents that it truly believes contain confidential information, and the Commission should then closely evaluate that request as described in Commissioner Clark's order.

7. The evidence in this proceeding will review the extent of GTE's willful violations of the Commission's quality of service rules and the reasons for those violations. This is the public's business, and the openness of the proceeding should not be thwarted by GTE's procedural efforts to make all significant evidence confidential at the hearing.

WHEREFORE, the Citizens respectfully request the Prehearing Officer to deny GTE's request for a temporary protective order and instead require GTE to file a specific request for a protective order justifying every claim of confidentiality.



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Fla. Bar. No. 217281

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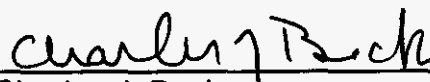
(850) 488-9330

Attorneys for the Citizens
of Florida

**DOCKET NO. 991376-TL
CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a copy of the foregoing has been furnished by U.S.

Mail or hand-delivery to the following parties on this 4th day of February, 2000.



Charles J. Beck

Kimberly Caswell
GTE Florida Incorporated
P.O. Box 110, FLTC0007
Tampa, FL 33601-0110

Cathy Bedell
Division of Legal Services
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

Rick Moses
Communications Division
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399

991376.m2

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Request for specified
confidential classification of
PATS Access Lines Quarterly
Report by BellSouth
Telecommunications, Inc.

DOCKET NO. 970658-TL
ORDER NO. PSC-97-1416-CFO-TL
ISSUED: November 13, 1997

ORDER DENYING REQUEST FOR CONFIDENTIALITY

By memorandum dated September 23, 1991, the Commission requested that all local exchange companies (LECs) submit pay telephone data on a quarterly basis for both LEC and non-LEC pay telephone stations. The Commission has authority to request such information under Section 364.183(1), Florida Statutes.

On April 21, 1997, BellSouth Telecommunications, Inc. (BellSouth), filed a quarterly report of pay telephone access lines. At that time, BellSouth also filed a Notice of Intent to Request Confidential Classification. On May 12, 1997, the Request for Confidential Classification was filed by BellSouth. The information for which BellSouth requests confidentiality are payphone address (street location, city, and state) and billing name of providers.

Under Section 119.01, Florida Statutes, all documents submitted to this Commission are public record. The only exceptions to this law are documents which are exempt pursuant to specific statutory terms or provisions. Moreover, under Section 364.183, Florida Statutes, and Rule 25-22.006, Florida Administrative Code, the person requesting confidential treatment of materials has the burden of demonstrating that the materials qualify for confidential classification.

In its Request for Confidential Classification, BellSouth stated that the information is confidential and proprietary pursuant to Sections 119.07(30)(w) and 364.183, Florida Statutes. BellSouth stated the information provided is customer specific information, including telephone numbers, names and addresses, and billing names and addresses. Finally, BellSouth states that it has treated and intends to continue to treat the material as private and the material has not been generally disclosed.

The statutory reference BellSouth intended to cite is Section 119.07(3)(r), Florida Statutes. That section provides:

All records supplied by a telecommunications company, as defined by s. 364.02, to a state or local governmental agency which contain the name, address and telephone number of subscribers are confidential and exempt from the provisions of subsection (1) and s. 24(a), Art. 1 of the State Constitution.

The information BellSouth seeks to protect is the location of each pay telephone station, its telephone number, and the billing name and address for each of the stations within its territory. The information on pay telephone providers is not within the scope of subscribers the statute contemplated to protect. A reading of the other exemptions within section 119.07(3) reveal the intent to protect the safety of individuals. Where such individual is a business for hire to the general public, concerns for safety are eliminated.

For the foregoing reason alone, BellSouth's request could be denied. However, adding to the reasons for denial of this request is that BellSouth's request would result in BellSouth enjoying a competitive advantage over the payphone providers. Federal Communications Commission (FCC) Order 96-388, adopted and released September 20, 1996, states in part:

In this proceeding, we advance the twin goals of Section 276 of the Act of "promot[ing] competition among payphone service providers and promot[ing] the widespread deployment of payphone services to the benefit of the general public" In general, we believe that vigorous and unfettered competition is the best way of achieving Congress' dual objectives. Unfortunately, various barriers -- regulatory, structural, economic, and technological -- stand in the way of having a fully competitive market providing payphone services In this Report and Order, we take critical steps necessary to remove these barriers. . . . We also order that subsidies from basic telecommunications services paid to some carriers for providing payphone services be terminated as soon as it is practicable Similarly, we allow BOCs [Bell Operating Companies] to negotiate with payphone location providers in selecting and contracting with the telecommunications carriers

that provide interLATA service from their payphones, but only after they have put in place nonstructural safeguards necessary to protect against a BOC from unlawfully subsidizing its payphone operations from its local exchange services or otherwise negating in anti-competitive behavior. Paragraphs 2 - 4.

The FCC order also requires that a BOC create a separate affiliate for their payphone operations or maintain its payphone assets on the carrier's books but treat the assets as nonregulated. Paragraph 157.

The FCC's intent is to create "vigorous and unfettered competition" in the payphone industry and to discontinue all advantages and subsidies that the local exchange companies enjoy in the payphone market. Allowing one competitor to control information, which the others are not privy to, creates an unbalanced playing field. By requesting confidentiality for the quarterly report, BellSouth could use its access to all of its competitors payphone information to engage in anti-competitive behavior in the payphone market.

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. 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.

Letters supporting disclosure of this information were filed by the Department of Property Appraisal of Metropolitan Dade County, the Hardee County Property Appraiser, and the Orange County Property Appraiser. Each of the property appraisers stated that the information is critical to the preparation of an accurate and equitable county tax roll. The Appraisers argued

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that without the information, a fair, accurate, and full personal property assessment on equipment owned by BellSouth would be impeded.

The Orange County Property Appraiser cited to Statutes relating to the Department of Revenue (Chapter 195, Florida Statutes) and County Property Appraisers (Chapter 193, Florida Statutes). Specifically, the statutes provide for the confidential classification and treatment of information received for the purpose of determining property values. The statutes refer to information received from individuals, but not from other agencies. Elsewhere in the Statutes, the Legislature has provided for the specific sharing of confidential information among state agencies. (Section 213.053, Florida Statutes.) There is not, however, a provision where the Commission is to share information with the Department of Revenue (DOR). The information DOR and the County Appraisers seek must be obtained as a public record.

The public will benefit by having access to this information, however, because the request fails on its face, it is not necessary to address the concerns of the property appraisers. BellSouth has not met its burden by proving how 'disclosure of the information would cause harm to the ratepayers or the company's business operations' as required by Section 364.183(3), Florida Statutes.

It is, therefore,

ORDERED by Commissioner Susan F. Clark, as prehearing Officer, that the claim by BellSouth Telecommunications Inc., for confidential classification and treatment of the payphone street, city and state location and the billing name of the provider contained in its quarterly reports is denied. It is further

ORDERED that, upon this order becoming final, the docket should be closed.

By ORDER of Commissioner Susan F. Clark, as prehearing officer, this 13th day of November, 1997.

/s/ Susan F. Clark
SUSAN F. CLARK, Commissioner
and Prehearing Officer

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This is a facsimile copy. A signed copy of the order may be obtained by calling 1-850-413-6770.

(S E A L)

DWC

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.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, 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 and/or wastewater utility by filing a notice of appeal with the Director, Division of Records and reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition by residents of Ft. White requesting extended area service between Ft. White exchange in Columbia County and Gainesville exchange in Alachua County.

DOCKET NO. 971627-TL
ORDER NO. PSC-98-0811-CFO-TL
ISSUED: June 18, 1998

ORDER ON RECONSIDERATION OF ORDER NO. PSC-98-0768-CFO-TL

By Order No. PSC-98-0098-FOF-TL, issued January 15, 1998, the Commission required ALLTEL Florida, Inc. (ALLTEL) to file a traffic study of the route under consideration for Extended Area Service (EAS) in this Docket. On April 14, 1998, ALLTEL filed the required study along with a Request for Confidential Classification of specific information contained in the study, Document No. 04245-98. ALLTEL asserted that the information for which it sought confidential treatment is treated by ALLTEL as confidential and had not been disclosed, except in accordance with a protective agreement.

Specifically, ALLTEL sought confidential treatment of information regarding the numbers of main stations, messages, M/A/M and percentage of customers making two or more calls, call distribution data for the Ft. White/Gainesville route, and the number of access lines. ALLTEL asserted that as the telecommunications market becomes increasingly competitive, this information would increase in value and that release of this information would allow potential competitors to harm ALLTEL's ability to compete. Based upon ALLTEL's assertions, it appeared appropriate to grant ALLTEL's request. Thus, by Order No. PSC-98-0768-CFO-TL, issued June 4, 1998, I granted ALLTEL's request for confidential treatment.

On June 8, 1998, however, Commission staff received further details from ALLTEL regarding the information for which it had requested confidential treatment. ALLTEL informed our staff that the information presented in Document No. 04245-98 was derived from Carrier Access Billing System (CABS) billing data, and was aggregate information for several of the larger IXCs. Therefore, while the information is route specific, it is not company specific. Therefore, disclosure of this information would not harm the company or its ratepayers.

In view of this new information, I find that this information should not be afforded confidential treatment. 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. Therefore, upon reconsideration, I reverse Order No. PSC-98-0768-CFO-TL. Document No. 04245-98 does not qualify as confidential business information in accordance with Section 364.183, Florida Statutes.

Based on the foregoing, it is therefore

ORDERED by Commissioner E. Leon Jacobs, as Prehearing Officer, that because ALLTEL's assertions of confidentiality were erroneous, Order No. PSC-98-0768-CFO-TL is reversed and confidential treatment for Document No. 04245-98 is denied. It is further

By ORDER of Commissioner E. Leon Jacobs, Jr. as Prehearing Officer, this 18th Day of June, 1998.

/s/ E. Leon Jacobs, Jr.
E. LEON JACOBS, JR.
Commissioner and Prehearing Officer

This is a facsimile copy. A signed copy of the order may be obtained by calling 1-850-413-6770.

(S E A L)

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.

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 25-22.038(2), 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.