

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Consideration of
BellSouth Telecommunications,
Inc.'s entry into interLATA
services pursuant to Section 271
of the Federal Telecommuni-
cations Act of 1996.

DOCKET NO. 960786-A-TL
ORDER NO. PSC-01-2482-CFO-TL
ISSUED: December 20, 2001

ORDER GRANTING US LEC OF FLORIDA, INC.'S REQUEST FOR
CONFIDENTIAL CLASSIFICATION OF DOCUMENT NO. 14576-01
(X-REF 13660-01)

Pursuant to Section 271(d)(3) of the Telecommunications Act of 1996 (the Act), the Federal Communications Commission (FCC) has 90 days to issue a written determination approving or denying a Bell Operating Company's (BOC) application for interLATA authority. Further, the FCC is directed to consult with the appropriate State Commission before making a determination regarding the BOC's entry into the interLATA market. Specifically, the Act requires the FCC to consult with the State Commission in order to verify the BOC's compliance with the requirements of Section 271(c) of the Act. On June 28, 1996, we opened this docket to begin to fulfill our consultative role. The matter was set for hearing.

After hearing, having considered the record, by Order No. PSC-97-1459-FOF-TL, issued November 19, 1997, we rendered findings on whether BellSouth had met the requirements of Section 271(c). Specifically, we found that BellSouth was not eligible to proceed under Track B at that time, because it had received qualifying requests for interconnection that if implemented would meet the requirements of Section 271(c)(1)(A), also known as Track A. Our evaluation of the record on whether BellSouth met the requirements of Section 271(c)(1)(A) indicated that while there was a competitive alternative in the business market, there was not sufficient evidence to determine whether there was a competitive alternative in the residential market. Thus, based on the evidence in the record, we found that BellSouth had not met all of the requirements of Section 271(c)(1)(A).

On March 6, 2001, BellSouth filed a Motion to Request Scheduling Conference. On March 28, 2001, a status conference was

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conducted with all of the parties. Thereafter, by Order No. PSC-01-0832-PCO-TL, issued March 30, 2001, the schedule for this proceeding was established. A hearing was conducted in this matter on October 11-12 and 17-18, 2001. Pursuant to Rule 25-22.006, Florida Administrative Code, on November 19, 2001, US LEC of Florida, Inc. (US LEC) filed a Request for Confidential Classification of Document No. 14576-01. This request seeks confidential classification of US LEC's Late-filed Exhibit No. 44.

Specifically, US LEC asserts that the information contained in this exhibit includes market share and market penetration data that is proprietary and confidential. Further, US LEC contends that the public disclosure of this information would damage US LEC's competitive interests.

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.

Upon review, it appears that the information for which US LEC seeks confidential classification is information that if disclosed, would cause harm to US LEC or its ratepayers by impairing US LEC's ability to compete. Therefore, I find that US LEC's request complies with Rule 25-22.006, Florida Administrative Code, and Section 364.183, Florida Statutes, and is hereby granted.

Based on the foregoing, it is

ORDERED by Commissioner J. Terry Deason, as Prehearing Officer, that US LEC of Florida, Inc.'s Request for Confidential Classification of Document No. 14576-01 (X-ref 13660-01), is hereby granted and incorporated by reference into this Order. It is further

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ORDERED that pursuant to Section 364.183, Florida Statutes, and Rule 25-22.006, Florida Administrative Code, any confidentiality granted to 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 J. Terry Deason as Prehearing Officer, this 20th day of December, 2001.



J. TERRY DEASON
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.

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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, 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 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.