

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In a re: Investigation into  
pricing of unbundled network  
elements (FDN track).

DOCKET NO. 990649A-TP  
ORDER NO. PSC-02-0306-CFO-TP  
ISSUED: March 8, 2002

ORDER GRANTING REQUEST FOR CONFIDENTIAL TREATMENT OF  
DOCUMENT NO. 01087-02

On May 25, 2001, this Commission issued its Final Order on Rates for Unbundled Network Elements Provided by FDN (Phases I and II), Order No. PSC-01-1181-FOF-TP. Furthermore, we ordered FDN to refile, within 120 days of the issuance of the Order, revisions to its cost study addressing xDSL-capable loops, network interface devices, and cable engineering and installation. The parties to the proceeding were also ordered to refile within 120 days of the issuance of the Order, proposals addressing network reliability and security concerns as they pertain to access to subloop elements. Order No. PSC-01-1904-PCO-TP, issued September 24, 2001, Order No. PSC-01-2189-PCO-TP, issued November 8, 2001, Order No. PSC-01-2399-PCO-TP, issued December 11, 2001, and Order No. PSC-02-0117-PHO-TP, issued January 25, 2002, established the procedure for the hearing regarding FDN's 120-day filing.

On January 29, 2002, Florida Digital Network, Inc. (FDN) filed a Request for Specified Confidential Classification. The request seeks confidential classification of FDN's response to staff's Document Request No. 1, Attachment DR-1B (Document No. 01087-02). Within the request, FDN argues that this document contains non-public, proprietary confidential business information. If released, asserts FDN, this information would allow FDN's competitors to have ready access to nonpublic data that will do substantial competitive harm to FDN. FDN contends that it has treated and intends to continue to treat the information for which confidential classification is sought as private, and that this information has not been generally disclosed.

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

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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.

Specifically, with regard to its response to staff's Document Request No. 1, Attachment DR-1B, FDN contends that the entire document should be protected for the reasons more fully set forth in Attachment A, which is attached and incorporated herein.

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 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.

Based on the definition of proprietary confidential business information in Section 364.183(3), Florida Statutes, it appears that the material described herein is proprietary business information in accordance with Section 364.183, Florida Statutes, and Rule 25-22.006, Florida Administrative Code. Disclosure of this information could be detrimental to FDN's operations, could impair FDN's ability to compete, and its ability to contract for goods and services. As such, FDN's Request for Confidential Classification addressing Document No. 01087-02 is hereby granted. Pursuant to Section 364.183, Florida Statutes, and Rule 25-22.006, Florida Administrative Code, the 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.

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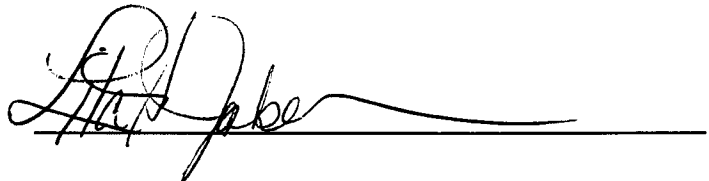
Based on the foregoing, it is therefore

ORDERED by Chairman Lila A. Jaber, as Prehearing Officer, that Florida Digital Network's Requests for Specified Confidential Classification addressing Document No. 01087-02, is hereby granted. 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 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 Chairman Lila A. Jaber, as Prehearing Officer, this 8th Day of March, 2002.

A handwritten signature in black ink, appearing to read 'Lila A. Jaber', is written over a horizontal line.

LILA A. JABER  
Chairman and Prehearing Officer

( S E A L )

WDK

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 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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ATTACHMENT A

**FDN Request for Confidential Classification**  
**Docket No. 990649A**  
**January 28, 2002**

Documents covered by Request:

Attachment DR-1B to FDN's Response to Staff's Document Request No. 1

**Reasons for Confidential/Proprietary Claim**

1. The information contained in Attachment DR-1B to the response to Staff's Document Request No. 1 contains market deployment data utilized by FDN to conduct business. FDN has expended millions of dollars in infrastructure to support market deployment, and a significant portion of this investment will be wasted if Attachment DR-1B is released and competitors are thereby permitted to target the markets FDN has targeted. Therefore, such information should be classified as confidential business information and proprietary information pursuant to Section 364.183(3)(e). In addition, this information has been kept by FDN as a trade secret and is valuable because FDN uses it in conducting its business. Therefore, the information should also be deemed confidential pursuant to Section 364.183(3)(a).

Documents Produced Subject to Claim

Staff Document Request No. 1, Attachment  
DR-1B, Entire Document

Reasons for Claim

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