

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Complaint of XO Florida, Inc. against BellSouth Telecommunications, Inc. for alleged refusal to convert circuits to UNEs; and request for expedited processing.	DOCKET NO. 041114-TP ORDER NO. PSC-05-0466-CFO-TP ISSUED: April 29, 2005
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ORDER GRANTING REQUEST FOR SPECIFIED CONFIDENTIAL
CLASSIFICATION OF SPECIFIED XO FLORIDA, INC.
DOCUMENTS (DOCUMENT NO. 01890-05)

I. Case Background

On September 22, 2004, XO Florida, Inc. filed a complaint against BellSouth Telecommunications, Inc. for alleged refusal to convert special access circuits to UNEs and request for expedited processing. By Order No. PSC-04-1068-PCO-TP, XO's request for expedited processing was denied. Subsequently, pursuant to Order No. PSC-04-1147-PCO-TP, this matter has been set for an administrative hearing.

On February 23, 2005 XO Florida, Inc. (XO) filed a Request for Specified Confidential Classification for Document No. 01890-05, BellSouth's Responses to Staff's Second Request for Production of Documents Nos. 33, 45, 50, 55.

II. Analysis

In its request, XO asks for protection of the specific pages and line numbers of BellSouth's Responses to Staff's Second Request for Production of Documents Nos. 33, 45, 50, 55, as set forth in Attachment A, which is attached and incorporated in this Order by reference. XO contends that release of this information would provide its competitors with an undue competitive advantage in that they would have access to this competitively sensitive, confidential information.

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.

DOCUMENT NUMBER-DATE

04171 APR 29 05

PSC-COMMISSION CLERK

Section 364.183(3), Florida Statutes, states that "proprietary confidential business information" is:

[o]wned 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 information for which XO seeks confidential classification is information that, if disclosed, would cause harm to XO's competitive interests and its business operations. Thus, this information qualifies as proprietary confidential business information under Section 364.183, Florida Statutes, and Rule 25-22.006, Florida Administrative Code. As such, XO's request for confidential classification is hereby granted.


Based on the foregoing, it is

ORDERED by Commissioner J. Terry Deason, as Prehearing Officer, that XO Florida, Inc.'s Request for Specified Confidential Classification of Document No. 01890-05 as set forth herein are hereby granted. It is further

ORDERED that pursuant to Section 364.183, Florida Statutes, and Rule 25-22.006, Florida Administrative Code, any 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 J. Terry Deason, as Prehearing Officer, this 29th day of April, 2005


J. TERRY DEASON
Commissioner and Prehearing Officer

(S E A L)

JPR

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 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.

ATTACHMENT A

DOCKET NO. 041114-TP

**XO COMMUNICATIONS SERVICES, INC'S
FIRST REQUEST FOR SPECIFIED CONFIDENTIAL CLASSIFICATION**

Explanation of Proprietary Information

1. The copies contain **CONFIDENTIAL XO** information regarding XO's circuits and/or customer information. This information is related to XO's ongoing business affairs and can be used by XO's competitors to harm its competitive interests. Section 364.183, Florida Statutes, allows for an exemption from the disclosure requirements of section 119.07, Florida Statutes, when disclosure would "impair the competitive business of the provider of the information." Therefore, the information should be shielded from disclosure pursuant to section 119.07, Florida Statutes and section 24(a), Art. 1 of the State Constitution.

2. The copies contain **CONFIDENTIAL XO** information regarding negotiations between XO and BellSouth. This information is related to XO's ongoing business affairs and can be used by XO's competitors to harm its competitive interests. In addition, disclosure of the information could impair XO's ability to contract for goods or services on favorable terms. Section 364.183, Florida Statutes, allows for exemptions from the disclosure requirements of section 119.07, Florida Statutes, when disclosure would "impair the efforts of the company . . . to contract for goods or services on favorable terms" or would "impair the competitive business of the provider of the information" Therefore, the information should be shielded from disclosure pursuant to section 119.07, Florida Statutes and section 24(a), Art. 1 of the State Constitution.

BellSouth's Response to Staff's Second Request for Production, No. 33

<u>Bates Number</u>	<u>Line(s)</u>	<u>Reason</u>
STFF2POD001229-1230	All	1
STFF2POD001234-1259	All	1

BellSouth's Response to Staff's Second Request for Production, No. 45

<u>Bates Number</u>	<u>Line(s)</u>	<u>Reason</u>
STFF2POD001321-1392	All	2
STFF2POD001394-1414	All	2
STFF2POD001417-1423	All	2

BellSouth's Response to Staff's Second Request for Production, No. 50²

<u>File Name</u>	<u>Worksheet(s)</u>	<u>Lines</u>	<u>Reason</u>
4-18-02	All	All	1
04-30-02	All	All	1
4-30-02	All	All	1
05-10-02	All	All	1

² These documents were provided on a disk that BellSouth filed with the Commission. A hard copy was not provided to the Commission or to XO.

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BellSouth's Response to Staff's Second Request for Production, No. 55

Bates Number

Line(s)

Reason

STFF2POD001430-1468

All

1