

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-05-0511-CFO-TP  
ISSUED: May 9, 2005

ORDER GRANTING REQUEST FOR SPECIFIED CONFIDENTIAL  
CLASSIFICATION OF SPECIFIED BELLSOUTH TELECOMMUNICATIONS, INC.  
DOCUMENTS (DOCUMENT NOS. 01419-05, 02131-05, 01903-05, AND 02134-05)

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.

BellSouth Telecommunications, Inc. (BellSouth) has filed several Requests for Specified Confidential Classification encompassing Document Nos. 01419-05 and 02131-05, BellSouth's Responses to Staff's Second Request for Production of Documents Nos. 33, 36, 37, 45, 50, 55. As well as Document Nos. 01903-05 and 02134-05, BellSouth's Responses to Staff's Third Request for Production of Documents Nos. 59 and 66.

II. Analysis

In its requests, BellSouth 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, 36, 37, 45, 50, 55 as set forth in Attachment A, which is attached and incorporated in this Order by reference. BellSouth also asks for protection of the specific pages and line numbers of BellSouth's Responses to Staff's Third Request for Production of Documents Nos. 59 and 66 as set forth in Attachment B, which is attached and incorporated in this Order by reference. BellSouth contends that this information contains business information related to the competitive interests of itself and/or XO and is proprietary.

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

DOCUMENT NUMBER-DATE

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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, 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 BellSouth seeks confidential classification is information that, if disclosed, would cause harm to BellSouth's and/or XO's competitive interests and its business operations. Furthermore, this appears to be information that would otherwise be protected under Section 364.24, Florida Statutes. 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, BellSouth's request for confidential classification is hereby granted.

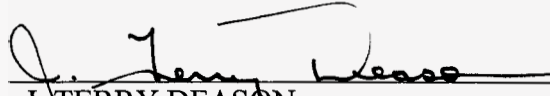
Based on the foregoing, it is

ORDERED by Commissioner J. Terry Deason, as Prehearing Officer, that BellSouth Telecommunications, Inc.'s Requests for Specified Confidential Classification of Document Nos. 01419-05, 02131-05, 01903-05 and 02134-05 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 9th day of May, 2005.



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.

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.