

ORIGINAL

Timolyn Henry

From: LoMonte, Frank D. [Frank.LoMonte@sablaw.com]
 Sent: Wednesday, September 07, 2005 4:33 PM
 To: Filings@psc.state.fl.us
 Cc: Adelman, David; Boyd Jr., C. Everett; NEdwards@itcdeltacom.com
 Subject: E-FILING: Docket No. 041269-TP, ITC^DeltaCom petition for confidential classification and affidavit
 Attachments: Petition - No. 041269; Affidavit - No. 041269

Attached for filing please find (1) a petition for confidential classification (5 pages) and (b) a supporting affidavit (3 pages) on behalf of ITC^DeltaCom Communications, Inc. in Docket No. 04-1269.

Please contact me or C. Everett Boyd at (850) 907-2502 if there are any questions.
Thank you,

Frank D. LoMonte
 Sutherland Asbill & Brennan LLP
 999 Peachtree St., N.E.
 Atlanta, GA 30309-3996
 Direct dial: (404) 853-8321
 Fax: (404) 853-8806
 E-mail: frank.lomonte@sablaw.com

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<<Petition - No. 041269>> <<Affidavit - No. 041269>>

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08476 SEP-7 05

FPSC-COMMISSION CLERK

ORIGINAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION
TALLAHASSEE, FLORIDA

In Re: Generic Proceeding to Examine)
Issues Related to BellSouth's Obligation) Docket No. 041269-TP
To Provide Unbundled Network Elements)
Inc. for Mediation and Dispute Resolution)

**ITC^DELTA COM'S REQUEST
FOR CONFIDENTIAL CLASSIFICATION**

I. INTRODUCTION

ITC^DeltaCom Communications, Inc. ("ITC^DeltaCom" or "the Company") hereby requests, pursuant to Fla. Stat. § 366.093 and F.A.C. Rule 25-22.006, that the diagrams specified herein, which were filed on August 16, 2005, as attachments to the Direct Testimony of Steve Bosworth, receive confidential classification. As discussed below and in the attached Affidavit of Steve Brownworth, Diagrams 1A, 1B, 2A, 2B, 3A, 3B, 4A and 4B contain sensitive, proprietary information. Disclosure of the information at issue would serve no compelling public interest, and would be highly damaging to ITC^DeltaCom's legitimate business interests. Accordingly, confidential treatment is warranted.

II. DISCUSSION

On August 16, 2005, ITC^DeltaCom filed the Direct Testimony of Steve Bosworth in this docket, along with a series of diagrams (1A, 1B, 2A, 2B, 3A, 3B, 4A and 4B, hereinafter referred to as "the Diagrams") reflecting ITC^DeltaCom's proprietary network configuration. ITC^DeltaCom filed the Diagrams in redacted form, and simultaneously filed an un-redacted version, for Commission use only, along with a Notice of Intent to Request Confidential

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Classification. This petition elaborates upon the bases for confidentiality discussed in the Notice of Intent.

Fla. Stat. § 366.093(1) provides that “any records received by the Commission which are shown and found by the Commission to be proprietary confidential business information shall be kept confidential and shall be exempt” from disclosure under the Public Records Act.

Proprietary, confidential business information is defined as information that 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.

Fla. Stat. 366.093(3). Section 366.093 further provides that proprietary confidential business information includes, but is not limited to, “[i]nformation relating to competitive interests, the disclosure of which would impair the competitive business of the provider of the information.”

Fla. State. § 366.093(3)(e).¹

As shown in the accompanying affidavit of Steve Brownworth, Vice President of Systems Planning for ITC^DeltaCom, the information redacted from the Diagrams is information that was developed by, and is the exclusive property of, ITC^DeltaCom. Brownworth Aff. at ¶ 5. The manner in which the Company’s network is configured is unique to ITC^DeltaCom and was developed at considerable expense to the Company, and is information that would have considerable value if obtained by a competitor. Brownworth Aff. at ¶ 8. If the

¹ Section 366.093 does not provide for the Commission to weigh the public’s interest in disclosure against the Company’s interest in confidentiality; once it is determined that information qualifies as “proprietary confidential business information,” the owner of the information is entitled to confidentiality. However, it should be noted that there is no strong public interest in seeing diagrams and descriptions of the configuration of ITC^DeltaCom’s network elements, and that any such interest would be exceedingly small as compared with the considerable competitive injury the Company could suffer if confidentiality were denied.

Sutherland Asbill & Brennan LLP
2282 Killearn Center Boulevard
Tallahassee, Florida 32309-3576
(830) 894-0015

David I. Adelman
Charles B. Jones, III
Frank D. LoMonte
Sutherland Asbill & Brennan LLP
999 Peachtree Street, NE
Atlanta, Georgia 30309
(404) 853-8206

Nanette Edwards
ITC^DeltaCom Communications, Inc.
7037 Old Madison Pike, Suite 400
Huntsville, AL 35806
(256) 382-3900

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing is being forwarded via U.S. mail, to:

Beth Keating
Staff Counsel
Florida Public Service Commission
Division of Legal Services
25430 Shumard Oak Boulevard
Tallahassee, FL 32399-0850
bkeating@psc.state.fl.us

Andrew D. Shore
Nancy B. White
c/o Nancy H. Sims
150 South Monroe Street, Suite 400
Tallahassee, FL 32301
(305) 347-5558

R. Douglas Lackey
Suite 4300, BellSouth Center
675 Peachtree Street, NE
Atlanta, Georgia 30375
(404) 335-0765

on this the 7th day of September, 2005.

_____/s/_____
C. Everett Boyd, Jr.

AFFIDAVIT OF STEVE BROWNORTH

Steve Brownworth, after having been first duly sworn, deposes and states as follows:

1.

I am Steve Brownworth and I am Vice President of Systems Planning for ITC^DeltaCom Telecommunications, Inc., in West Point, Georgia. I am over 18 years of age. This affidavit is based on my personal knowledge.

2.

In my capacity as Vice President of Systems Planning, I am responsible for the network architecture of the local and long-distance voice network, data network, and fiber-optic transport network for ITC^DeltaCom.

3.

I am the same Steve Brownworth who caused to be filed my written testimony and three exhibits on August 16, 2005, in Docket No. 041269-TP, accompanied by a series of exhibits.

4.

Several of the exhibits were filed in redacted form because they contain detailed diagrams illustrating and describing elements of ITC^DeltaCom's proprietary telecommunications network architecture. These exhibits are: Diagrams 1A, 1B, 2A, 2B, 3A, 4A, and 4B, hereinafter referred to as "the Redacted Diagrams."

5.

The information contained in the Redacted Diagrams was created by, and is the exclusive property of, ITC^DeltaCom.

6.

ITC^DeltaCom has never disseminated the Redacted Diagrams, or their contents, for inspection by the public or by any ITC^DeltaCom competitor, other than in connection with a legal or regulatory proceeding in which disclosure was required, or under the protection of a legally binding confidentiality agreement.

7.

ITC^DeltaCom has established and enforced internal procedures by which its network configurations are kept confidential. These procedures include but are not limited to dissemination to only those key personnel that have a need to know.

8.

The information contained in the Redacted Diagrams was developed by network personnel for ITC^DeltaCom for its exclusive use, and would have substantial value to a competitor if disclosed. For example, a competitor could copy the manner in which ITC^DeltaCom configures its network, so as to be able to advertise that its services were the same as those provided by ITC^DeltaCom, or to offer services indistinguishable from those offered by ITC^DeltaCom or otherwise use the configurations to gain a competitive advantage.

9.

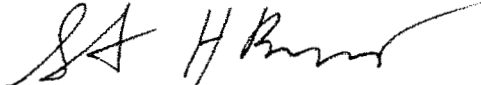
The manner in which a Competitive Local Exchange Carrier configures its network elements affects the manner in which service is delivered to commercial end users, and therefore, is a significant factor differentiating the offerings of one CLEC from another.

10.

ITC^DeltaCom would suffer substantial competitive injury if the proprietary confidential business information contained in the Redacted Diagrams was to be disseminated publicly.

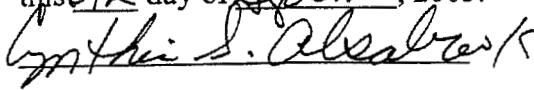
11.

This concludes my affidavit.



Steve Brownworth

Sworn to and subscribed before me
this 6th day of September, 2005.



Notary Public

My Commission expires: MY COMMISSION EXPIRES FEB. 1, 2006