

ORIGINAL

State of Florida



Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

DATE: February 28, 2007

TO: Office of General Counsel (Fudge)

FROM: Division of Regulatory Compliance and Consumer Affairs (Vandiver, Freeman) *F* *Am*

RE: Docket No. 060644-TL – Request by Embarq Florida, Inc. (Embarq), for confidential classification of certain portions of the staff audit report titled “Embarq Florida, Inc., 2005 Storm Recovery Audit as of December 31, 2005”, Audit Control Number 06-277-4-1, Documents 10630-06, 10730-06 and 10731-06 and 10732-06

On November 17, 2006, when copies of certain portions of staff’s audit report and working papers obtained or prepared during the “Embarq Florida, Inc., 2005 Storm Recovery Audit as of December 31, 2005”, were delivered to Embarq at the audit exit conference, the utility requested that these materials be temporarily exempted from public access in accordance with provisions of Rule 25-22.006(3)(a)2., Florida Administrative Code (FAC).

On November 20, 2006, the staff audit manager filed testimony including an exact copy of sensitive audit report page 5 to be used in the pending hearing concerning Embarq’s storm costs (Document No. 10630-06).

On November 22, 2006, audit staff filed those portions of the staff audit report and working papers identified by Embarq as sensitive at the audit exit conference (Document Nos. 10730-06, 10731-06, and 10732-06).

On December 8, 2006, pursuant to the provisions of Section 364.183, Florida Statutes (F.S.) and Rule 25-22.006, FAC, Embarq requested that certain materials prepared during the staff audit be classified as confidential. The utility’s request included redacted copies for public inspection (Document 11270-06) and also indicated that all identified staff working papers were subject to

CMP the request for a confidential classification.

COM On January 4, 2007, the testimony of the staff audit manager was entered into the hearing record, including the sensitive page 5 of the audit report (Document 00118-07, Exhibit 14).

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On February 12, 2007, after discussions with the staff, Embarq clarified its request for confidential classification specifying that page 5 of the audit report was sensitive. The utility also provided the needed justification as to why the audit report page should be granted a confidential classification and included a redacted copy of the audit report page for public review.

Documents 10630-06, 10730-06, 10731-06 and 10732-06 are currently held by the Division of Commission Clerk and Administrative Services as confidential pending disposition of Embarq's request.

Staff Analysis of the Request

The recommended disposition of the documents is affected by Rule 25-22.006(5), Florida Administrative Code (FAC), which provides, in part:

*“(5) Claim of confidential treatment pursuant to section 364.183(1), Florida Statutes (F.S.)
(a) Telecommunications companies or other persons claiming confidential treatment for materials pursuant to section 364.183(1), F.S., shall file with the Division of Records and Reporting one copy of all such materials and include a cover letter stating that confidentiality is being claimed. The telecommunications company or other person also shall file one copy of the material on which the specific information claimed as confidential shall be highlighted. Along with the highlighted copy, the telecommunications company or other person shall file two edited copies which will be made available for public inspection. In the edited copies, the specific information claimed to be confidential shall be blocked out by the use of an opaque marker or other masking device.*

....

(c) 1. The materials to be claimed to be confidential shall be kept confidential until returned to the provider pursuant to subsection 6(d) of this rule, unless the materials will be used in a Commission proceeding or are the subject of a request pursuant to Section 119.07(1), F.S.

2. Any person may file a petition to inspect and examine any material which has been claimed confidential pursuant to 364.183(1), F.S. A copy of the petition must be served on the affected telecommunications company or person which shall have 10 days to file a response as to why the material should remain exempt....”

On December 8, 2007, and as modified on February 12, 2007, Embarq requested a confidential classification for certain materials prepared by the staff during the audit of incurred costs due to storm damage. Those materials included a staff audit report page and portions of the working papers.

Disposition of the sensitive audit working papers

Embarq's request, in part, covers sensitive staff working papers (Documents 10730-06 and 10731-06). These documents may be granted a claim of confidentiality pursuant to the provisions of Rule 25-22.006(5) FAC. This Rule allows a telecommunications company to formally claim a confidential classification for sensitive information if that information is not used in a formal Commission proceeding. The staff working papers were not introduced as evidence in Embarq's storm cost hearing; therefore, these working papers are eligible to be claimed as confidential. We recommend that documents 10730-06 and 10731-06 be recognized as claimed confidential pursuant to Rule 25-22.006(5), FAC. This material is of a sensitive competitive nature and the filing requirements of the Rule have been met. A formal finding of the Commission is not required for information "claimed confidential." The original staff working papers will be destroyed 5 years after docket 060644 is closed.

Sensitive portion of the audit report placed in a hearing transcript

Once material is presented to the Commission and the material is placed in a formal hearing transcript, the material may not be claimed confidential (Rule 25-22.006(5)(c)1., FAC). Instead a confidential classification must be requested and the sensitive nature of the telecommunications material must be described and justified before the Commission may consider holding the material in a confidential classification (Rule 25-22.006(4), FAC).

The sensitive material identified by Embarq in the audit report is reported upon page 5 which presents an exhibit analyzing "carrying costs." This exhibit was placed in the hearing transcript (document 0118-07, Exhibit 14). Embarq has made a request that this information be granted a confidential classification and argues that the material reports sensitive competitive business information and that its release would harm the competitive business of the provider of the information.

We have read the confidential portion of documents 10630-06 and 10732-06. Both contain the sensitive exhibit analyzing "carrying costs." This information, if released, would cause harm to the competitive business of Embarq. Section 364.183(3)(e), F.S., provides that the Commission may grant a confidential classification to this type of information. We therefore recommend that a confidential classification be granted to documents 10630-06 and 10732-06.

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Information Must Be Held as Confidential

To qualify for a confidential classification, the material must be held as private and not released to the public. Embarq asserts: "This information has not been publicly released."

Duration of the Confidential Classification Period

Material that is "claimed confidential" is held by the Commission as confidential until the material is returned to the provider of the information or until the material is destroyed. The staff audit working papers should be treated as "claimed confidential" (Documents 10730-06 and 10731-06).

One page of the audit report cannot be claimed confidential but may be granted a confidential classification. Section 364.183(4), F.S., provides a confidential classification is limited to 18 months absent cause shown (Documents 10630-06 and 10732-06). Without cause shown for a longer period, we recommend that the period of confidential classification be set at 18 months. As deemed necessary, the utility may request an extension of the confidential classification before the period tolls.

Staff Recommendation

Based upon reading the filing, and for the reasons discussed above, we recommend that documents 10730-06 and 10731-06 be recognized as "claimed confidential." We further recommend that documents 10630-06 and 10731-06 be granted a confidential classification for an 18 month period.

A detailed recommendation follows:

Detailed Recommendation:

Staff Work Paper Number	Description	Page	Lines	Recommend 18 Months Confidential Classification	Type of Information
Documents 10630-06 and 10732-06					
Audit Report	Analysis of Carrying Costs	5	All	Grant	Sensitive Competitive Business Information

CC: Bureau of Records (Lockard, Cole)
Division of Regulatory Compliance and Consumer Affairs (Welch)