

**Eric Fryson**

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**Sent:** Tuesday, November 13, 2012 4:26 PM  
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**Subject:** Docket No. 090538-TP - BullsEye Request for Confidential Classification  
**Attachments:** Docket No. 090538-TP - BullsEye Request for Confidential Classification.pdf

Attached for electronic filing in the above-referenced docket, please find *BullsEye Telecom, Inc.'s Request for Confidential Classification*. If you have any questions, please do not hesitate to contact us.

a. Persons responsible for filing:

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b. Docket No.: 090538-TP – Amended Complaint of Qwest Communications Company, LLC against MCImetro Access, et al.

c. Filed on behalf of: BullsEye Telecom, Inc.

d. Total pages: 7

e. Brief Description: BullsEye Telecom, Inc. Request for Confidential Classification

Respectfully submitted,

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DOCUMENT NUMBER - DATE

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FPSC-COMMISSION CLERK

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

Amended Complaint of QWEST COMMUNICATIONS COMPANY, LLC, Against MCIMETRO ACCESS TRANSMISSION SERVICES, LLC (D/B/A VERIZON ACCESS TRANSMISSION SERVICES), TW TELECOM OF FLORIDA, L.P., GRANITE TELECOMMUNICATIONS, LLC, BROADWING COMMUNICATIONS, LLC, BUDGET PREPAY, INC., BULLSEYE TELECOM, INC., DELTACOM, INC., ERNEST COMMUNICATIONS, INC., FLATEL, INC., NAVIGATOR TELECOMMUNICATIONS, LLC, PAETEC COMMUNICATIONS, INC., SATURN TELECOMMUNICATIONS SERVICES, INC. (D/B/A EARTHLINK BUSINESS), US LEC OF FLORIDA, LLC, WINDSTREAM NUVOX, INC., AND JOHN DOES 1 THROUGH 50.

Docket No. 090538-TP

Filed: November 13, 2012

**BULLSEYE TELECOM, INC.'S REQUEST FOR CONFIDENTIAL CLASSIFICATION**

BullsEye Telecom, Inc. ("BullsEye") by and through its undersigned counsel and in accordance with Section 364.183, Florida Statutes (F.S.) and Rule 25-22.006, Florida Administrative Code (F.A.C.), hereby requests that the Florida Public Service Commission ("Commission") enter an order protecting from public disclosure portions of the Rebuttal Testimony of Peter K. LaRose, as more specifically identified herein and as enumerated in Attachment A to this Request. In support of its request, BullsEye states as follows:

1. On August 9, 2012, BullsEye submitted the pre-filed Rebuttal Testimony of Peter K. LaRose. The August 9<sup>th</sup> filing included both a redacted version and a confidential version (with confidential portions highlighted) of the LaRose Rebuttal Testimony,<sup>1</sup> which was accompanied by a claim for confidential treatment in accordance with Rule 25-22.006. At the

<sup>1</sup> Since redacted and confidential versions have already been filed with the Commission (assigned Document Nos. 05421-12 and 05422-12, respectively), BullsEye respectfully refers the Commission to those documents for a copy of the material subject to this Request.

October 23, 2012 hearing in this matter, Mr. LaRose's Rebuttal Testimony was entered into the hearing record as if it was read by Mr. LaRose.

2. Page 8 of Mr. LaRose's Rebuttal Testimony contains proprietary confidential business information, which is the subject of this request. Annexed hereto as Attachment A to this Request is a matrix identifying the specific portions of the LaRose Rebuttal Testimony for which BullsEye is seeking confidential classification, along with the justifications therefor.

3. These portions of Mr. LaRose's Rebuttal Testimony pertain to a nationwide settlement agreement between BullsEye and AT&T. The information contains trade secrets and relates to BullsEye's competitive interests, which if disclosed would impair BullsEye's competitive business and hinder BullsEye's ability to contract for goods and services on favorable terms and thus ultimately harm BullsEye and its business operations.

4. Specifically, the information for which BullsEye seeks confidential classification is protected from public disclosure as "proprietary confidential business information" under Section 364.183(3), F.S., which defines that term as:

[i]nformation, 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. The term includes, but is not limited to:

(a) Trade secrets.

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(d) Information concerning bids or other contractual data, the disclosure of which would impair the efforts of the company or its affiliates to contract for goods or services on favorable terms.

(e) Information relating to competitive interests, the disclosure of which would impair the competitive business of the provider of the information.

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5. The portions of Mr. LaRose's Rebuttal Testimony at issue in this request fall within this definition, because such information is treated as confidential by BullsEye and details the parties' settlement of a nationwide dispute over the payment of switched access charges for certain traffic.

6. The information includes contractual information, the disclosure of which would impair BullsEye's efforts to contract for goods or services on favorable terms, as described in Section 364.183(3)(d), F.S. Such information requires confidential treatment, because if entities other than AT&T were able to access detailed, sensitive information regarding the settlement, such entities would gain an unfair advantage in any negotiations with BullsEye. In effect, BullsEye would be entering future contract negotiations in competition with itself.

7. Furthermore, as the provider of the information, disclosure of the Rebuttal Testimony information would impair BullsEye's competitiveness, as described in Section 364.183(3)(e), F.S. Publication of the information contained in the Rebuttal Testimony would afford BullsEye's competitors an unfair advantage and thereby jeopardize BullsEye's competitive position. Competitors could, for example, gain insight on BullsEye's rate positions and price competitive services accordingly. In a competitive business any knowledge obtained by a competitor can be used to the detriment of the entity to which it pertains, often in ways that cannot be fully appreciated. This unfair advantage upsets the operation of the market, to the ultimate detriment of the telecommunications consumer.

8. Additionally, the Commission has encouraged settlements of disputes between carriers. If disclosed publicly, such information would allow other parties, and companies not parties to this action, to (a) understand the settlement and compromise positions of the parties and (b) estimate the volume of traffic that BullsEye receives from AT&T and, in turn, estimate

the number of BullsEye's customers. Thus, a finding that settlement data constitutes "proprietary confidential business information" is consistent with public policy, because release of settlement data to the public would have a chilling effect on the ability of parties to settle disputes.

9. BullsEye further notes that public disclosure of the particular data contained in the redacted portions of the LaRose Rebuttal Testimony would be contrary to federal law. The federal Communications Act of 1934 mandates that "[a] telecommunications carrier that receives or obtains proprietary information from another carrier for purposes of providing any telecommunications service shall use such information only for such purpose[.]"<sup>2</sup> Further, the Communications Act specifically protects information related to "the quantity, technical configuration, type, destination, location and amount of use of a telecommunications service subscribed to by any customer of a telecommunications carrier."<sup>3</sup> Since the settlement data relates to the quantity and amount of AT&T's use of BullsEye's services, such data is protected as confidential under federal law and therefore must remain confidential.

10. BullsEye finally notes that affording confidential classification for the information at issue in this Request is supported by the Commission's prior rulings on confidentiality in this docket, which granted confidential status to information relating to the BullsEye-AT&T settlement and settlements of other carriers.<sup>4</sup>

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<sup>2</sup> 47 U.S.C. § 222(b).

<sup>3</sup> 47 U.S.C. §§ 222(c) & (h)(1)(A).

<sup>4</sup> See Order Nos. PSC-12-0523-CFO-TP, PSC-12-0524-CFO-TP, and PSC-12-0525-CFO-TP (issued Oct. 2, 2012).

**WHEREFORE**, BullsEye respectfully requests that the Commission enter an order protecting the information enumerated herein and in Attachment A as proprietary confidential business information that is not subject to public disclosure in accordance with Section 364.183, F.S. and Rule 25-22.006, F.A.C.

Dated: November 13, 2012

Respectfully submitted,

/s/ Andrew M. Klein

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**ATTACHMENT A**

**JUSTIFICATIONS FOR CONFIDENTIAL CLASSIFICATION  
REBUTTAL TESTIMONY OF PETER K. LAROSE (Doc. Nos. 05421-12 and 05422-12)**

PAGE/LINES	DESCRIPTION AND JUSTIFICATION
Page 8, Line 1	Contains highly confidential information about the dollar amount of billing disputes at the time they were settled and resolved as between BullsEye and AT&T. Such information reflects contractual information for unregulated services and thus relates to the competitive interests of BullsEye. Further, the information relates to and reflects the volume of service provided to AT&T, and – if made public – would allow competitors estimate the volume of traffic that BullsEye receives from AT&T and, in turn, estimate the number of BullsEye’s customers, all information that is confidential to BullsEye. Moreover, such data constitutes “customer proprietary network information” pursuant to 47 U.S.C. § 222 required to be kept confidential under federal law.
Page 8, Lines 15 - 21	Contains highly confidential information describing the agreement terms under which BullsEye and AT&T settled a nationwide billing dispute. Such information reflects contractual information for unregulated services and thus relates to the competitive interests of BullsEye. Further, the information relates to and reflects the volume of service provided to AT&T, and – if made public – would allow competitors estimate the volume of traffic that BullsEye receives from AT&T and, in turn, estimate the number of BullsEye’s customers, all information that is confidential to BullsEye. Moreover, such data constitutes “customer proprietary network information” pursuant to 47 U.S.C. § 222 required to be kept confidential under federal law.

**CERTIFICATE OF SERVICE  
DOCKET NO. 090538-TP**

I HEREBY CERTIFY that a true and correct copy of the foregoing was served by electronic delivery and/or U.S. Mail this 13 day of November, 2012, to the following:

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