

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Implementation of Florida )  
Telecommunications Access System )  
Act of 1991. )  
\_\_\_\_\_)

DOCKET NO. 910496-TP  
ORDER NO. 25435  
ISSUED: 12/3/91

ORDER GRANTING IN PART AND DENYING IN PART CONFIDENTIALITY

AT&T Communications of the Southern States, Inc. ("AT&T") seeks specified confidential classification for some of the information which is being submitted in AT&T's response (the "Response") to the Florida Public Service Commission's Request for Proposals ("RFP") for Telecommunications Relay Service ("TRS").

The Telecommunications Access System Act of 1991 states, in Section 427.704(3)(d):

To the extent a bidder desires any portion of its proposal to be considered proprietary, confidential, business information, the bidder shall make such request concurrent with filing its proposal and justify its request as provided in Section 364.183.

AT&T lists several portions of its Response which it alleges meet the confidentiality requirements in the statute and in Commission Rule 25-22.006(4)(a). These are:

- Communications Assistants Proficiency Exam (pp. 97-99 in their entirety).
- Communications Assistants (Operator) Training Plan (pp. 103-107 in their entirety except for the headings at I and II).
- Communications Policy and Procedures Manual (p. 130 except for the headings at I, II, and III; pp. 131-144, except for the words "contents," "general," and "calling card calls").
- Staffing Levels (page 145, each of the three columns).
- Job Descriptions (page 149, except for the first three sentences; pages 150, 154, 155, 157, 162, 165, 168; pages 151, 152, 164, except for the major headings; page 156, 158-161, 161-167, except for the first paragraph and the major headings; page 163, except for the first two paragraphs).

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FILED IN PUBLIC RECORDS SECTION

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- Disability Awareness Tracing Plan (pages 207-211, in their entirety).
- Disaster Recovery Plan (p. 220, the last full paragraph; p. 221, the first two paragraphs).
- Service Expansion (p. 225, the columns, and the last line).
- Consumer Input Plan (pp. 275-77, in their entirety).
- Bilingual Operators (p. 281, first two lines of the second paragraph).
- Unsolicited Features.
- Outreach Plan (pp. 283-89, in their entirety, except for the first two paragraphs on p. 283, and the first two paragraphs on p. 286).
- Grade of Service (p. 83, first paragraph, last two sentences, and last paragraph; Price Proposal Introduction, p. D, last paragraph; Price Proposal Format).

AT&T provides as justification for confidential treatment that the information provides specific details concerning AT&T's provision of TRS, the release of which could cause competitive harm to AT&T. The basis for this harm is that there are several other jurisdictions that are presently considering or soon will be considering TRS. AT&T plans to compete with other carriers to provide the service in those jurisdictions. AT&T says, "the public disclosure of the information would result in an unfair and unreasonable competitive advantage for AT&T's competitors in that it would provide them with valuable personnel, operating and marketing information that is not otherwise publicly available." Also, AT&T has incurred substantial expense to prepare this information which, if released, could be used by those competitors in the preparation of their bid responses in other jurisdictions to the detriment of AT&T, according to AT&T.

Rule 25-22.006, F.A.C., on Confidential Information, requires in Section (4) that in the line-by-line justification for

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confidential classification, the utility must demonstrate how the information asserted to be confidential qualifies as one of the statutory examples in Section 364.183(3). The rule further states that if no statutory example is applicable, then the utility or other person shall include a statement explaining how the ratepayers or the person's or utility's business operations will be harmed by disclosure.

Rule 25-22.006(4)(d), Florida Administrative Code, also states that the request shall include an affirmative statement that the material for which confidential classification is sought is intended to be and is treated by the utility or other person as private and has not been disclosed. Subsection (4)(e) of the rule states that the burden of proof shall be on the utility or other person to show that the material contains bona fide proprietary confidential business information. A request for confidential treatment which fails to identify the material in sufficient detail to permit a reasoned analysis or which fails to provide the required justification for classification may be denied or insufficient on its face.

We note in passing that none of the other bidders for this contract award requested any confidential treatment. It is our understanding that at least two of the bidders, like AT&T, are vying for projects in other jurisdictions.

-- Communications Assistants Proficiency Exam (p. 97-99 in their entirety).

This information does not warrant confidential treatment. It is general in nature and does not rise to the standards set forth in Section 364.183. While Section 364.183(d) provides confidential treatment for "information concerning bids or other contractual data, the disclosure of which would impair the efforts of the company to contract for goods or services on favorable terms," we do not believe that AT&T has demonstrated that disclosure of this information would impair AT&T's ability to contract for services on favorable terms. While other companies may obtain the information and use it in some way in seeking contract awards in other jurisdictions, this proficiency exam does not seem to be a critical monetary piece of the contract bid.

-- Communications Assistants (Operator) Training Plan (pp. 103-107 in their entirety except for the headings at I. and II.).

Again, this information is quite general and does not merit the confidential treatment. We do believe this portion of the Response does have a significant dollar impact in the provision of the service, yet we fail to see that AT&T has demonstrated the need for confidential treatment.

- Communications Policy and Procedures Manual (p. 130, except for the headings at I, II and III, pp. 131-144 except the words "contents," "general," "calling card caller.").

This section is merely a listing of various situations which an operator might encounter and should not be treated confidentially.

- Staffing Levels (p. 145, each of the three columns).

This information explains the number of various staff positions that would be used in the center based on various calling levels. This meets the statutory threshold for confidential treatment.

AT&T states that this information divulges the management's structure and the number and type of management and communications assistants needed to staff the TRS Center. Competitors of AT&T could use this information to similarly staff their centers. Also, this information, in combination with other information in the RFP response, could be used to make a fairly accurate estimate of AT&T prices in future bids. Some jurisdictions in which AT&T will be bidding select a TRS provider on the basis of price alone.

This appears to fit squarely within the confidentiality protection granted in Section 364.183, Florida Statutes.

- Job Descriptions (p. 149, except for the first three sentences; pp. 150, 154, 155, 157, 162, 165, 168; pp. 151, 152, 164, except for the major headings; p. 156, 158-161, 166-167, except for the first paragraphs and the major headings; p. 163, except for the first two paragraphs).

We fail to see that confidential treatment should be afforded this broad information.

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- Disability Awareness Tracing Plan (pp. 207-211), in their entirety).

AT&T has failed to provide sufficient justification for keeping this information confidential.

- Disaster Recovery Plan (p. 220, the last full paragraph; p. 221, the first two paragraphs).

AT&T states that a considerable amount of time and expense (including the retention of outside consultants) has gone into the development of these plans and procedures. AT&T urges that disclosure of the information to AT&T's competitors would allow them to implement similar programs without having to conduct the research or incur the development costs -- all to AT&T's competitive disadvantage.

However, AT&T has not sufficiently supported the need to keep this broad information confidential.

- Service Expansion (p. 225, the columns, and the last line).

This information identifies the various types of equipment and number of those pieces of equipment needed at various traffic levels in the center. AT&T states that public disclosure of this information would permit competitors to learn how AT&T provides TRS and to estimate AT&T's costs in providing TRS to AT&T's competitive disadvantage.

We agree and determine it is confidential information pursuant to Section 364.183(3)(d), Florida Statutes.

- Consumer Input Plan (pp. 275-77, in their entirety).

AT&T says that considerable time and expense has gone into the development of these plans. However, we fail to see that AT&T has demonstrated that the information warrants confidential treatment.

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- Bilingual Operators (p. 281, first two lines of the second paragraph).

This information merely suggests the hours during which Spanish-speaking operators will be utilized in the relay service and identifies how many operators would be used during those hours. Since there are a multitude of combination of hours which Spanish-speaking operators could be used, this mere combination of hours should not be treated confidential.

- Outreach Plan (pp. 283-89, in their entirety, except for the first two paragraphs on p. 283, and the first two paragraphs on p. 286).

We fail to see that this plan merits confidential treatment.

- Grade of Service (p. 83, first paragraph, last two sentences, and last paragraph; Price Proposal Introduction, p. D, last paragraph; Price Proposal Format).

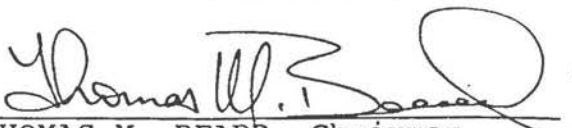
The identified information in the Price Proposal Format should remain confidential, in that it appears to fall within the coverage of Section 364.183(3)(d), Florida Statutes.

However, the information in the introduction is only a recommendation for an alternative blockage level and does not warrant confidential treatment.

In consideration of the above, it is

ORDERED by Chairman Thomas M. Beard, as Prehearing Officer, that the Request for Confidentiality is granted in part, and denied in part, as stated above.

By ORDER of Chairman Thomas M. Beard, this 3rd day of December, 1991.

  
THOMAS M. BEARD, Chairman  
and Prehearing Officer

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), Florida Statutes, to notify parties of any administrative hearings 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.

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 25-22.038(2), Florida Administrative Code, if issued by a Prehearing Officer; 2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or 3) 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 sewer utility. A motion for reconsideration shall be filed with the Director, Division of Records and Reporting, 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.