

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of ICG Telecom Group, Inc. for arbitration of unresolved issues in interconnection negotiations with BellSouth Telecommunications, Inc.

DOCKET NO. 990691-TP  
ORDER NO. PSC-99-2442-CFO-TP  
ISSUED: December 14, 1999

ORDER GRANTING REQUEST FOR CONFIDENTIAL CLASSIFICATION  
OF PORTIONS OF DOCUMENT NO. 11268-99

On October 27, 1997, this Commission approved a one-year agreement between ICG Telecom Group, Inc. (ICG), and BellSouth Telecommunications, Inc. (BellSouth), providing for interconnection services from BellSouth to ICG. That agreement expired on October 27, 1998, but the parties mutually agreed to extend it pending finalization of a successor agreement. Negotiations for a successor agreement failed, and on May 27, 1999, ICG filed a Petition for Arbitration, seeking the assistance of the Commission in resolving the remaining unresolved issues.

On September 20, 1999, ICG filed a request for confidential classification of its answers to BellSouth's Interrogatories 17, 19, and 27, Document No. 11268-99. ICG asserts that these exhibits include negotiated volume and term discounts, the number of access lines being served by ICG in each state in which it does business, and specific frame relay elements ICG has requested from BellSouth. ICG asserts that this information is considered proprietary, that it treats this information as confidential and that this information has not otherwise been disclosed. ICG further asserts that the information is sensitive and of commercial value, and that public disclosure of this information could harm ICG's business operations, and thus, ICG's ability to compete.

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

DOCUMENT NUMBER-DATE

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one of the statutory examples set 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 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.

Based on the definition of proprietary confidential business information in Section 364.183(3), Florida Statutes, it appears that the information for which ICG seeks confidential classification is information that, if disclosed, would cause harm to the company or its ratepayers because disclosure would harm ICG's business operations by impairing its ability to compete. Thus, this information qualifies as proprietary business information under Section 364.183, Florida Statutes, and Rule 25-22.006, Florida Administrative Code. It shall, therefore, be granted confidential treatment in accordance with those provisions.

It is therefore

ORDERED by Commissioner Susan F. Clark, as Prehearing Officer, that the request by ICG Telecom Group, Inc. for confidential classification of information in its responses to Interrogatories Number 17, 19, and 27, Document No. 11268-99 is granted.

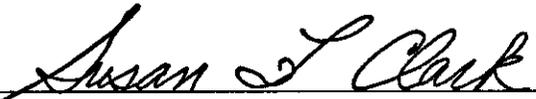
ORDERED that pursuant to Section 364.183, Florida Statutes, and Rule 25-22.006, Florida Administrative Code, any confidentiality granted to the material specified herein shall expire eighteen (18) months from the date of the issuance of this

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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 Susan F. Clark, as Prehearing Officer, this 14th day of December, 1999.

  
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SUSAN F. CLARK  
Commissioner and Prehearing Officer

( S E A L )

CLF

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.

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

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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 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.