

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Request for Confidential ) DOCKET NO. 921114-TL  
Classification of Certain Items ) ORDER NO. PSC-93-0470-CFO-TL  
in Response to Data Request for ) ISSUED: 03/29/93  
Telecommunications )  
Infrastructure )  
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ORDER GRANTING IN PART AND DENYING IN PART  
CONFIDENTIALITY REQUESTED  
BY GTE FLORIDA INCORPORATED

On November 3, 1992, GTE Florida Incorporated (GTEFL) submitted a Request for Confidential Classification to the Florida Public Service Commission (Commission). The Request pertains to certain information which was submitted in response to a data request by the Commission staff. The data request was initiated in an undocketed project investigating the current and projected status of the telecommunications infrastructure in the State of Florida. Staff responded that the original request was facially deficient and on December 3, 1992, GTEFL submitted an Amended Request which corrected the facial deficiency. On December 31, 1992, GTEFL submitted an amendment to the amended request which agreed to allow the use of the requested confidential information to develop certain aggregate amounts for public reporting and declassified information pertaining to the number of business access lines on a wire center-by-wire center basis. On March 2, 1993, GTEFL filed a Second Amendment to the Amended Request wherein GTEFL agrees to allow the publication of three footnotes which address audio conference services, video conference services and telecommuting.

Florida law provides, in Section 119.01, Florida Statutes, that documents submitted to governmental agencies shall be public records. This law derives from the concept that government should operate in the "sunshine." The only exceptions to this law are specific statutory exemptions and exemptions granted by governmental agencies pursuant to the specific terms of a statutory provision.

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Accordingly, pursuant to Section 364.183, Florida Statutes, (1991), and Rule 25-22.006, F.A.C., it is the company's burden to show that the material submitted qualifies for specified confidential classification. Rule 25-22.006 provides that the company may fulfill its burden by demonstrating that the documents fall into one of the statutory examples set forth in Section 364.183 or by demonstrating that the information is proprietary confidential business information, the disclosure of which will cause the company or its ratepayers harm.

In its Request for Confidential Classification, and subsequent amendments, GTEFL outlines what it believes to be justification for confidential treatment. Although GTEFL addresses the different groups of data separately, a common theme in the Request is that disclosure of the information would harm GTEFL by putting it at a competitive disadvantage. The data in question is divided into five general schedules included in the utility's request for confidential classification. This order will address each schedule separately.

Schedules A.1.2 and A.1.3 contain the fastest available transmission speeds for voice, data, and video transport services for December 31, 1996 and December 31, 2001. GTEFL states that this information pertains to an area of telecommunications that is growing and facing increasing levels of competition. The utility argues that the information would give competitors advance knowledge of the level of technical sophistication which the utility intends to introduce over the next decade and that competitors could use this information to target their marketing efforts and capital investment in order to beat GTEFL to the market.

The information concerning transmission speeds does not concern any trade secrets or marketing plans. It is merely the utility's best guess on what will be available at the turn of the century. Moreover, these transmission speeds will not be unique to GTEFL or any other company because they will be industry standards. The transmission speeds must be compatible with speeds offered by other utilities and service providers. Therefore, GTEFL's argument that they suffer competitive harm by the disclosure of this information is hollow. Accordingly, the information in Schedules

A.1.2 and A.1.3 will not be considered confidential proprietary business information as defined in Section 364.183, Florida Statutes.

Schedule A.2.1 contains the total number of subscribers, business and residential, for twenty-nine services and applications and the number of offices where these services and applications are available. The utility provides justification for fifteen services (Automatic Call Distribution, Centrex Intercom, Centrex Station Message Detail Recording, Toll Restriction, Fractional T-1, T-1, Digital Private Line with Speed Greater than T-1, Bandwidth on Demand, Pay Per View, Enhanced 800, Audio Conference Services, Video Conference Services, Voice Messaging, Telemedicine, and Distance Learning). The utility argues that there are competitive services. The remaining fourteen services (Custom Calling Features, Caller ID, Direct Inward Dialing, Hunting, Dial-It Restriction, Trunk Signalling, Group Alerting and Dispatch, Switched 56(kb/s), Data over Voice (line), ISDN-Basic, ISDN-Primary, Least Cost Routing, Video Dial Tone, and Telecommuting) are not currently facing competition but will likely face significant competition in the near future.

GTEFL argues that disclosure of the current demand on a service-by-service basis would allow its competitors to tailor its marketing efforts to the consumer group with the greatest demand or least developed demand on a service-by-service basis.

Of the twenty-nine services for which GTEFL seeks confidential treatment, twenty-four are tariffed services. When a service is tariffed, it follows that information about the service, including the availability of it, is ascertainable to anyone who wants to know by either looking at the tariff or calling a business office and asking about the tariffed service. Since the information concerning tariffed services contained in Schedule A.2.1 has already been publicly disclosed it does not meet the definition of proprietary confidential business information in Section 364.183, Florida Statutes.

The remaining four services (Voice Messaging, Telecommuting, Telemedicine, and Distance Learning) are not tariffed. The major difference between the tariffed services and the non-tariffed services is the availability or disclosure of the information elsewhere. Because these four services are non-tariff items and

are not available elsewhere, this information may be considered confidential. Accordingly, the information in Schedule A.2.1 pertaining to the four untariffed services is proprietary confidential business information and will be treated as such.

Schedule B.1 contains information, on a wire center basis, for twenty-nine services. The four columns on the schedule contain answers to the following questions: (1) Is the service available in the wire center? (2) Is the service feasible without significant network changes? (3) Is a significant investment in software required to offer the service? (4) Is a significant investment in hardware required to offer the service?

With regard to the first column of information concerning the availability of the services, GTEFL argues that disclosure of the utility's current offerings will provide competitors with an organized presentation of GTEFL's current offerings and could be used to target capital investments so as to focus on the services for which the greatest demand exists. The information in the other three columns is confidential, according to GTEFL, because disclosure of it would allow competitors to target their capital investment so as to focus on those specific wire centers for which the greatest opportunities exist and take advantage of the time, money, and risks which GTEFL has invested in these services without compensating GTEFL and without incurring any costs in acquiring the information.

The information in these schedules is very site specific. However, the availability of a particular service in a particular wire center (column one) is not confidential, if the service is tariffed, because the utility's tariffs on file at the Commission identify which offices the services are provided in. On the other hand, if the service is not tariffed, then information concerning availability of the service in a particular wire center may be considered confidential. Of the twenty-nine services in Schedule B.1, all are tariffed except Voice Messaging, Telecommuting, Telemedicine, and Distance Learning.

These services, which are addressed in the last three columns on the schedule contain information which may be used to gauge where GTEFL is positioned to make future service offerings. The disclosure of this information to the utility's competitors could equip them with marketing plans type information that would

unfairly position these competitors to gain marketing advantages that are not available through their own efforts. Therefore, the information contained in columns 3, 4, and 5 of Schedule B.1 is proprietary confidential business information, in accordance with Section 364.183, Florida Statutes.

Schedules B.2 and B.3 can be considered together. Schedule B.2 contains, on a wire center basis, whether ten types of network architecture (Digital Switching (Host Switch), Tree Branch, Token Ring, Double Star, Triple Star, Ethernet, Passive Optical, Signalling System 7, Wireless (PCN, Microwave, BETR, ect.), or other) are available or planned using copper, fiber, or a hybrid. Schedule B.3 specifically requests, on a wire center basis, whether nine types of network attributes (Channelization, Digital Compression, Packet Switching, Frame Relay, Switched Multimegabit Data Service (SMDS), Fiber Distributed Data Interface (FDDI), Broadband Trials, PCN Trials, and SONET) are available or planned.


GTEFL argues that competitors could review the type of architecture and attributes used by the utility in a specific wire center and unfairly focus their investments on the optimal competitive locations. Moreover, GTEFL asserts that by knowing where the utility is planning to make changes, competitors will know where GTEFL has determined the most attractive markets will be and beat GTEFL to those markets.

This information, when disclosed on a wire center basis, would provide competitors with significant detail of the utility's system and planned system which would lead to an unfair advantage and the type of competitive harm contemplated in Section 364.183, Florida Statutes. Accordingly, all of the information contained in Schedules B.2 and B.3 will be treated as proprietary confidential business information.

Therefore, based on the foregoing, it is

ORDERED by Commissioner Luis J. Lauredo, as Prehearing Officer, that GTE Florida Incorporated's December 23, 1992, Request for Confidential Classification is granted in part and denied in part as set forth in the body of this Order.

By ORDER of Commissioner Luis J. Lauredo, as Prehearing Officer, this 29th day of March, 1993.

  
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LUIS J. LAUREDO, Commissioner and  
Prehearing Officer

( S E A L )

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 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 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

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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.