

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Protest by U.S. Sprint Communi-) cations Company, Ltd., of Tentative) Ruling of Nonconfidentiality of 1987) Construction and Capacity Report.) _____)	DOCKET NO. 890253-TI
In re: Protest by Telus Communications,) Inc., of Tentative Ruling of Non-) confidentiality of 1988 Annual Report.) _____)	DOCKET NO. 890322-TI
In re: Protest by U.S. Sprint Communi-) cations Company, Ltd., of Tentative) Ruling of Nonconfidentiality of 1988) Annual Report.) _____)	DOCKET NO. 890323-TI
In re: Protest of MCI Telecommunica-) tions Corporation of Tentative Ruling of) Nonconfidentiality Regarding Certain) Network Capacity Information) Contained in its 1988 Annual Report.) _____)	DOCKET NO. 890517-TI ORDER NO. 21362 ISSUED: 6-9-89

The following Commissioners participated in the disposition of this matter:

MICHAEL MCK. WILSON, Chairman
THOMAS M. BEARD
BETTY EASLEY
GERALD L. GUNTER
JOHN T. HERNDON

ORDER GRANTING CONFIDENTIAL CLASSIFICATION
TO IXC CONSTRUCTION AND CAPACITY REPORTS

Rule 25-24.480(6), F.A.C., requires interexchange companies (IXCs) to file, each year, construction and capacity reports showing their construction and capacity increases of the past year and their proposed plans for the foreseeable future. The reports must contain information regarding: interexchange construction; terminals; switches; and network capacity. Also, with their reports, companies must include maps of newly installed routes.

Recently, when several companies file their capacity and construction reports, they also filed requests that the information regarding capacity and location of their routes be classified as confidential. Because our staff was unconvinced that the disclosure of this information would harm the companies or the ratepayers, our Office of General Counsel issued tentative rulings denying these requests. U.S. Sprint Communications, Ltd. (Sprint), Telus Communications, Inc. (Telus), and MCI Telecommunications Corporation (MCI) protested these tentative rulings. Sprint also protested the ruling regarding its 1987 construction and capacity report. These protests are the subject of this order.

Since filing their protests, Telus and Sprint have filed motions to amend their requests for specified confidential classification. Attached to those motions were their amended

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confidentiality requests which reduced the amount of information that they were seeking to be classified as confidential.

Originally, Sprint and Telus sought to keep not only capacity, but location of routes confidential as well. In Sprint's amended request, it is no longer asking confidential classification of its points of presence. Telus' amended request, more in line with MCI's request, only seeks confidential treatment of capacity information. The companies also clarify their reasoning for justifying confidential classification. Because their amended motions give this Commission more information upon which to base its decision and will allow the Commission to dispose of these separate protests in a uniform manner, we will grant the companies' motions.

Essentially, the companies argue that information regarding capacity is highly sensitive business information, which, if publicly disclosed, would be detrimental to their competitive positions in the highly competitive interexchange marketplace. They assert that the information qualifies for confidential classification as a trade secret under section 364.183(3)(a), Florida Statutes.

All of the companies state that they take precautions to maintain the secrecy of their capacity information. They fear that if a competitor acquired this information, it could analyze the capacity of their networks, identify areas they are or could be capacity constrained, and would then focus its marketing efforts on those areas to their competitive disadvantage. The companies also argue that if the capacity weaknesses were known to their lessor carriers, they would be in a vulnerable bargaining position when negotiating their service contracts. The same can be said regarding their lessee carriers.

The companies also argue that the decisions to establish certain amounts of capacity between various routes were based upon their own costly research and planning efforts. To give a competitor information regarding route by route capacity is, the companies contend, tantamount to giving it the benefits of such costly research and planning free of charge. Although our staff members were sympathetic to the pleadings of the company, they remained unpersuaded that the capacity information in the companies' annual reports qualified for confidential classification.

We agree with the utilities on this issue. Since this information is useful to the Commission, it would appear to be, ipso facto, useful to competitors and, thus, harmful to the protesters. Therefore, we shall grant the requests of MCI and the amended requests of Sprint and Telus.

Notwithstanding the foregoing, staff may continue to use capacity information in reports and workpapers, provided the information is used in the aggregate or in some other fashion that will not identify any particular IXC, its vendors, or its capacity.

In consideration of the foregoing, it is

ORDERED that Telus' and Sprint's motions to amend their confidentiality request is hereby approved. It is further

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ORDERED that the confidentiality request of MCI and the amended confidentiality requests of Telus and Sprint are hereby granted. It is further

ORDERED that staff may continue to use capacity information in reports and workpapers, provided the information is used in the aggregate or in some other fashion that will not identify any particular IXC, its vendors, or its capacity.

By ORDER of the Florida Public Service Commission this 9th day of JUNE, 1989.

STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)

WJB

by: Kary Flynn
Chief, Bureau of Records

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), Florida Statutes (1985), to notify parties of any administrative hearing or judicial review of Commission orders that may be available, as well as the procedures and time limits that apply to such further proceedings. 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 the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) 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 by filing a notice of appeal with the Director, Division of Records and Reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.

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