

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of the Attorney)
General and Public Counsel)
to adopt rules governing 900)
services.)
_____)

DOCKET NO. 910060-TP
ORDER NO. 24404
ISSUED: 4-22-91

ORDER GRANTING CONFIDENTIALITY

By Request and Motion filed March 6, 1991, Sprint Gateways asked that we treat its response to a request from the Division of Communications (CMU) for the names and addresses of Sprint Gateways' 900 information providers as confidential and issue a Permanent Protection Order regarding same. In support, Sprint Gateways cited Rule 25-22.006, F.A.C., noting that:

Staff requested Sprint Gateways to provide the names and addresses of its 900/976 information providers The material for which confidential classification is sought pursuant to this Request and Motion is intended to be and is treated by Spring Gateways as private and has not been disclosed.

That material is further described in Sprint Gateways' Request as

Commercially valuable proprietary information, the disclosure of which would allow Sprint Gateways' competitors to gain an unfair competitive advantage against Sprint Gateways through access to Sprint Gateways' Florida 900 customers. [Emphasis supplied]

CMU's request for this information was pursuant to our Order dated February 12, 1991, granting a Petition to Initiate Rulemaking on 900-976 services, Order No. 24098. Subsection 364.183(3)(e), Florida Statutes (Supp. 1990), defines "proprietary confidential business information" as:

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

On March 19, 1991, the Opposition of the Attorney General and the Citizens to Sprint Gateways' Request for Confidential Classification and Motion for a Permanent Protective Order was

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filed. In that Opposition, arguments were made that 1) insufficient detail was provided to permit the reasoned analysis required by Commission Rule 25-22.006, 2) the FCC has recently proposed rules requiring the disclosure of 900 service provider names and addresses to customers requesting same and this Commission requires such information to appear on telephone bills, 3) that all those calling 900 numbers will receive on their telephone bills the information for which confidentiality is requested.

We decline to adopt these rationales for disclosure of Sprint Gateways' complete 900 customer list. While we agree with the Opposition that the request filed by Sprint Gateways is hardly elaborate, the material at issue is so obviously described by subsection 364.183(3)(e) that we cannot agree that no reasoned analysis as to the applicability of the statute is possible.

Sprint Gateways has stated that disclosure of its 900/976 information providers/customer list "would allow Sprint Gateways' competitors to gain an unfair competitive advantage against Sprint Gateways through access to Sprint Gateways' Florida 900 customers." The arguments in opposition, based on the publication of individual 900 providers' names and addresses in telephone bills, do not address the legitimate competitive concern as to the complete list. The mere fact that Sprint Gateways' competitors, through the expenditure of time and effort, could survey the marketplace and attempt to generate some equivalent to Sprint Gateways' own list through phone bills does not change the competition - sensitive nature of Sprint Gateways' document. It does not provide a reason for us to provide Sprint Gateways' competitors with this information without any expenditure of time and effort on their part or to provide cost-free certainty to them as to Sprint Gateways' strategic position in a competitive market. Subsection 364.183(3) requires only that the information

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 . . .

The showing made by Sprint Gateways in its request for confidentiality clearly meets the statutory language of subsection 364.183(3)(e), Florida Statutes (Supp. 1990). In this connection, it is noted that 900 services do in fact reside within competitive telecommunications markets. Accordingly, Sprint Gateways' request for confidential treatment of this material is consistent with the intent of the statute. See also, subsections 119.07(3)(a); 119.07(3)(x), Florida Statutes.

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Subsection 364.183(3)(e) is a new statutory provision which complements another new provision, section 364.338, in which the Legislature describes the new era of competitive telephone markets and the finding of the Legislature that

competitive offerings of certain types of telecommunications services may under certain circumstances be in the best interest of the people of the state.

Such competitive markets, of which 900 services are an example, differ drastically from the natural monopoly markets which are the traditional province of regulation by this Commission. Thus, we have noted that competition between two natural gas utilities was contrary to the public interest:

Duplication of public utility facilities is an economic waste and results in higher rates which the public must pay for essential services. Reasonable and realistic regulation, in such cases, is better than and takes the place of competition. FPSC Order No. 3051 (1960). [Emphasis supplied]

The assumptions as to non natural-monopoly markets, i.e. competitive, are completely reversed, as the United States Supreme Court noted in its description of the pro-competitive purposes of the Sherman Act:

The Sherman Act was designed to be a comprehensive charter of economic liberty aimed at preserving free and unfettered competition as the rule of trade. It rests on the premise that the unrestrained interaction of competitive forces will yield the best allocation of our economic resources, the lowest prices, the highest quality and the greatest material progress, while at the same time providing an environment conducive to the preservation of our democratic political and social institutions.

Northern Pacific R. R. Co. v. United States, 356 US 1, 4 (1958). [Emphasis supplied]

Thus, in the setting of competitive markets, we are not only concerned that the relevant statutes require us to grant Sprint Gateways' request for confidential treatment of its competitively sensitive material, but that our failure to do so in this context

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will interfere with the vigorous competition which is so beneficial to consumer welfare. See also, Reiter v. Sonatone, 442 US 330, 342 (1979).

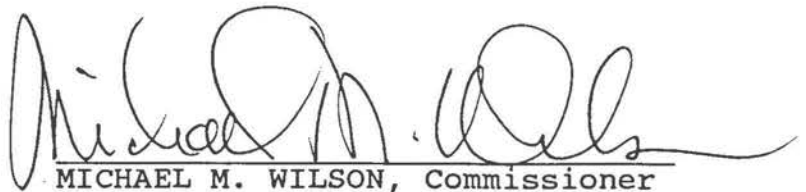
Finally, the Opposition's point regarding the availability of parts of this information on customer bills does not weaken our conclusion. The real interest of consumers is to have the identity and address of any 900 provider whose services they purchase so that complaints, should they arise, will be effective. Since consumers have this information under our rules, there is less need to disclose the entire list, a list in which Sprint Gateways' competitors, rather than consumers generally, are more likely to have a strong interest. However, we decline as premature Sprint Gateways' Motion for a Permanent Protective Order as no facts have been stated alleging that this rulemaking process will outlast the duration of confidential treatment normally provided by Rule 25-22.006.

In consideration of the above, it is

ORDERED by Commissioner Michael M. Wilson, as Prehearing Officer that the Request for Specific Confidential Treatment filed by Sprint Gateways is granted. It is further

ORDERED that the Motion for a Permanent Protective Order is denied.

By ORDER of Commissioner Michael M. Wilson, this 22nd day of April, 1991.



MICHAEL M. WILSON, Commissioner
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 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 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.