

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Generic investigation into the) DOCKET NO. 890183-TL
operations of Alternate Access Vendors.) ORDER NO. 24442
_____) ISSUED: 4/26/91

ORDER DENYING SPRINT COMMUNICATIONS COMPANY'S
MOTION FOR PROTECTIVE ORDER

In February of 1989, this Commission opened Docket No. 890183-TL to investigate the operations of Alternate Access Vendors (AAVs). The purpose of this investigation is to determine whether AAV operations are in the public interest. As part of the ongoing investigation, on May 2, 1990, staff propounded its First Set of Interrogatories to Sprint Communications Company (Sprint). Sprint has requested that its response to Interrogatory No. 64, administratively identified as Document No. 4974-90, be granted specified confidential classification pursuant to Rule 25-22.006, Florida Administrative Code.

Florida law provides, in Section 119.01, Florida Statutes, that documents submitted to governmental agencies shall be public records. 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. This law derives from the concept that government should operate in the "sunshine." It is our view that parties must meet a very high burden when requesting a protective order or specified confidential classification of documents that are submitted during a proceeding before this Commission. In the instant matter, the value that all parties would receive by examining and utilizing the information contained in this document must be weighed against the legitimate concerns of Sprint regarding disclosure of business information which it considers proprietary.

Pursuant to Section 364.183, Florida Statutes, and Rule 25-22.006, Florida Administrative Code, Sprint has the burden to show that the material submitted is qualified for specified confidential classification. Rule 25-22.006, Florida Administrative Code, provides that the Company may fulfill its burden by demonstrating that the information falls under one of the statutory examples set out in Section 364.183, Florida Statutes, or by demonstrating that the information is proprietary confidential information, the disclosure of which will cause the company or its ratepayers harm.

Interrogatory No. 64 asks whether Sprint is "currently using an AAV in Florida." And, if so, it asks the Company to "list the AAV, the type of service and how your [C]ompany uses the AAV's service." Sprint maintains that its response to Interrogatory No.

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64 contains proprietary information which falls under the "trade secret" exemption found in Section 364.183(3)(a), Florida Statutes. The Company states that "no compelling need or legitimate interest" would be served by public disclosure of this information. Sprint maintains that disclosure of this information would substantially harm its interests.

It is Sprint's argument that a competitor, by learning that Sprint uses particular services of a particular AAV, can extrapolate all of Sprint's business plans regarding where that portion of its network would be and what customers to target and what services to compete with. It is clearly evident that anywhere there is an AAV network, any interexchange carrier (IXC) might be able to utilize that AAV's services in whatever way is mutually and legally acceptable. We are not persuaded that this constitutes a trade secret belonging to any individual company.

Sprint's pleading cites also Order No. 23000, issued May 29, 1990, in which we found certain information relating to Intermedia Communications, Inc. (Intermedia) to be confidential. In that Order, we stated that "information relating to the . . . identification of the customers of Intermedia will, to the extent possible, not be required in this proceeding." Throughout Order No. 23000, we found that it was not necessary for Intermedia to name customers or specific locations of customers. However, we did find it necessary for Intermedia to "provide a description of its customers showing general categories with the services offered and the terms and conditions under which [the services are] offered." Order No. 23000 does not address the treatment of any information held by certificated IXCs.

The fundamental difference between Intermedia's and Sprint's requests lies in the complete vulnerability of Intermedia to the competitive capacity of Southern Bell in the provision of private line services. Southern Bell had the capability to use information regarding the specific customers of Intermedia to specifically target those customers and to compete to provide the same services. This is not true for Sprint's request. In fact, Interrogatory No. 64 simply asks the name of any AAV utilized by Sprint and the services it utilizes and how they are utilized, it does not request the names of ultimate customers. For all of these reasons, our decision here is entirely consistent with our decision in Order No. 23000.

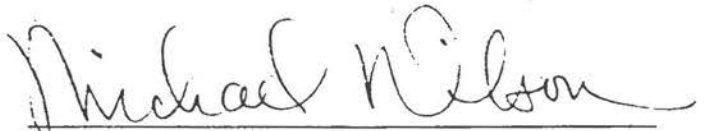
Upon review of Sprint's request and its response to Interrogatory No. 64, we find that the Company has not demonstrated that this information meets the definition of a "trade secret." In addition, we do not find that disclosure of Sprint's response to Interrogatory No. 64 would provide its competitors with an advantage not presently available, nor do we find that disclosure would impede Sprint's ability to compete in the marketplace. No showing has been made that disclosure of the subject information would substantially harm Sprint's interests. Therefore, we find that the information contained in Document No. 4974-90 is not qualified for specified confidential classification pursuant to Section 364.183, Florida Statutes, and Rule 25-22.006, Florida Administrative Code. Accordingly, this document shall not be exempt from the requirements of Section 119.07(1), Florida Statutes.

Based on the foregoing, it is, therefore,

ORDERED by Commissioner Michael McK. Wilson, as Prehearing Officer, that Sprint Communications Company's request for specified confidential classification for Document No. 4974-90 is hereby denied. It is further

ORDERED that if no timely protest is filed, this ruling shall become final pursuant to Rule 25-22.006(2)(f) and (3)(d), Florida Administrative Code.

By ORDER of Commissioner Michael McK. Wilson, as Prehearing Officer, this 26th day of APRIL, 1991.



MICHAEL MCK. 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.