BEFORE THE PUBLIC SERVICE COMMISSION

In re: **Petition of AT & T COMMUNICATIONS OF THE SOUTHERN STATES for Commission Forbearance from Rule 25-24.495(1) and 25-24.480(1)(b), F.A.C., For a Trial Period.**	)	DOCKET NO. 870347-TI ORDER NO. PSC-92-0468-PCO-TI ISSUED: 06/08/92

ORDER GRANTING IN PART AND DENYING IN PART SPECIFIED CONFIDENTIAL TREATMENT OF DOCUMENTS NO. 9405-91, 11802-91, 11800-91, 11843-91, 858-92 and 1059-92

I. Introduction

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.

Accordingly, pursuant to Section 364.183, Florida Statutes and Rule 25-22.006, Florida Administrative Code, it is the Company's burden to show that the material submitted is qualified 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 information, the disclosure of which will cause the Company or its ratepayers harm.

II. Document No. 9405-91

On July 23, 1991, the Commission Staff requested from US Sprint Communications Company Limited Partnership (Sprint) total revenues received by service and total expenses paid for LEC switched access for each service, for the years 1984 through 1990. On September 23, 1991, Sprint filed its response, "REQUEST FOR CONFIDENTIAL CLASSIFICATION AND MOTION FOR PERMANENT PROTECTIVE ORDER OF INFORMATION REQUESTED BY THE DIVISION OF COMMUNICATIONS ON JULY 23, 1991."

The information provided by Sprint in Attachment "A" accompanying its Response was the 1989 and 1990 Florida intrastate revenues on a product specific basis and average intrastate access costs per minute. Sprint asserts this information deserves

confidential treatment in accordance with Rule 25-22.006, Florida Administrative Code, and Section 364.183, Florida Statutes for the following reasons:

1. The information for which confidential treatment is sought is owned and has been prepared by Sprint, is intended to be and is treated by the company as private, and has not been disclosed on a non-confidential basis.

2. The information relates to competitive interests pursuant to Section 364.183, Florida Statutes, the disclosure of which would competitively disadvantage Sprint because competitors could use the information to target and tailor their marketing efforts in accordance with the product specific margin, product mix information and sales penetration information included in Attachment "A". Additionally, Sprint claims this information would permit Sprint's competitors to target specific service offerings toward Sprint's most vulnerable services and could provide Sprint's competitors with valuable market information with respect to marketing efforts that they have already directed, or may direct in the future, toward various Sprint services. Finally, if made public, this information could allow Sprint's competitors to identify the size of the market available from Sprint; identify expected Sprint actions within the Florida market; identify Sprint's revenues by service; and identify Sprint's average intrastate access cost per minute, thereby providing useful margin information and Sprint's costs in providing various services.

Upon review of this request, I find that Sprint has met its burden, and the information sought by Sprint to be protected should be provided confidential treatment. Should this information be made readily available, it would afford Sprint's competitors an unfair advantage over Sprint in the pricing of services in the IXC marketplace. Accordingly, I agree that this information should be exempt from the requirements of Section 119.07(1), and that Sprint's request for confidentiality should be granted.

III. **Document No. 11802-91**

On November 6, 1991, the Commission Staff conducted the depositions of John P. Spooner, Jr., and John W. Mayo, during which the Staff requested certain Late-Filed Deposition Exhibits. AT&T Communications of the Southern States, Inc. (ATT-C) asserted that

some other exhibits requested contained proprietary confidential business information, and in a letter dated November 26, 1991, requested that these exhibits be afforded Confidential Classification pursuant to Rule 25-22.006, Florida Administrative Code.

Each exhibit for which AT&T is requesting Confidential Classification is addressed below.

A. John P. Spooner Late-Filed Exhibit 6:

This exhibit concerns the growth rate and percentage change in growth rates for individual services as determined by intrastate revenues. ATT-C contends that the information on this exhibit would provide ATT-C's competitors with the amount of ATT-C's intrastate revenues on a service-by-service basis for each year from 1986 through 1990, with growth rates and changes in growth rates for such services. According to ATT-C, this information, if made public, would allow ATT-C's competitors to determine the size of ATT-C's revenue base for each service and to tailor their marketing efforts accordingly. The information, if made public, would further allow ATT-C's competitors to judge the success of their own marketing efforts opposing ATT-C on a yearly basis while maintaining the proprietary nature of their own service-specific revenues and growth rates.

Upon review of this request, I find that ATT-C has met its burden, and that the information sought by ATT-C to be protected should be provided confidential treatment. I agree that knowledge of the distribution of revenues across services would provide an advantage to competitors in that it reveals the segmentation of ATT-C's market. Accordingly, I agree that this information should be exempt from the requirements of Section 119.07(1), and ATT-C's request of confidentiality should be granted as to this exhibit.

B. John W. Mayo Late-Filed Exhibit 2

This exhibit concerns segmentation of ATT-C's market as determined by revenues derived from the various services offered. AT&T contends the information contained in this exhibit would permit ATT-C's competitors to determine the percentage of Florida revenues generated by residential customers on a year-to-year basis for each year from 1986 through 1990. Moreover, by applying these percentages to information that is publicly available through reports and records which ATT-C is required to file with the

Commission, a competitor could determine the actual intrastate revenues, on a yearly basis, generated by ATT-C's residential customers. This information, if made public, would allow competitors to judge the success or failure of their own residential marketing campaigns against ATT-C's results, and to tailor their individual marketing activities accordingly, including making decisions as to the propriety of entering a particular market or tailoring specific rates or service offerings for residential users.

Upon review of this request, I find that ATT-C has met its burden, and that the information sought by ATT-C to be protected should be provided confidential treatment. I agree that knowledge of the distribution of revenues across services would provide an advantage to competitors in that it reveals the segmentation of ATT-C's market. Accordingly, I agree that this information should be exempt from the requirements of Section 119.07(1), and ATT-C's request of confidentiality should be granted as to this exhibit.

C. John W. Mayo Late-Filed Exhibit 4

This exhibit also concerns segmentation of ATT-C's market as determined by revenues derived from the various services offered. ATT-C asserts the information contained in this exhibit would permit ATT-C's competitors to determine the percentage of ATT-C's Florida intrastate revenues generated by MTS and Reachout services on a yearly basis from 1986 through 1991. By applying these percentages to information that is publicly available through reports and records which ATT-C is required to file with the Commission, a competitor could determine the actual intrastate revenue, on a yearly basis, generated by these services. This information, if made public, would allow competitors to judge the success or failure of their own MTS and optional calling plan marketing campaigns against ATT-C's results and to tailor their individual marketing activities accordingly, including making decisions as to the propriety of entering a particular market, tailoring specific rates or service offerings for MTS and Reachout users, or making strategic changes in their existing rates based on ATT-C's success (or lack thereof) with respect to these services.

Upon review of this request, I find that ATT-C has met its burden, and that the information sought by ATT-C to be protected should be provided confidential treatment. I agree that knowledge of the distribution of revenues across services would provide an advantage to competitors in that it reveals the segmentation of ATT-C's market. Accordingly, I agree that this information should

be exempt from the requirements of Section 119.07(1), and ATT-C's request of confidentiality should be granted as to this exhibit.

D. John W. Mayo Late-Filed Exhibit 1

This exhibit breaks out the percentage of ATT-C's customers that make no calls during a month, the percentage of residential customers making at least one call during the month and the percentage contribution to revenues that those callers making at least one call contribute to total revenues.

ATT-C contends the information contained in this exhibit would provide ATT-C's competitors with highly sensitive statistics on ATT-C's residential customers in a specific geographic area over a specified time period. ATT-C further claims the information, if made public, would afford competitors valuable marketing information on customer usage, customer calling patterns, and customer spending patterns in the State of Florida, thus permitting them to determine possible entry into the market, to target certain segments of the market for increased (or reduced) competitive activities, to tailor certain services to specific segments of the market, or to make possible changes in rates for existing services to capture particular market segments.

Upon review of this request, I find that ATT-C has met its burden, and that the information sought by ATT-C to be protected should be provided confidential treatment. I agree that this exhibit provides information to ATT-C's competitors concerning market segmentation and where to target marketing efforts. Accordingly, I agree that this information should be exempt from the requirements of Section 119.07(1), and ATT-C's request of confidentiality should be granted as to this exhibit.

E. John P. Spooner Late-Filed Exhibit 7

This exhibit deals with ATT-C's churn of customers, specifically, the number of customers that left ATT-C and then returned during 1991. ATT-C insists the information contained in this exhibit would provide ATT-C's competitors with the specific number of Florida customers who left ATT-C and then were "won back" by ATT-C through competitive activities during 1991. ATT-C further claims this information, if made public would allow ATT-C's competitors to determine the degree of success or failure of ATT-C's "win-back" campaigns, and would enable competitors to tailor their individual marketing activities accordingly, while

maintaining the proprietary nature of their own customer-churn data. Release of this information would severely hamper ATT-C's ability to compete in the Florida interexchange marketplace and would give ATT-C's competitors an unwarranted and unfair advantage in the "vigorous and rivalrous competition" for Florida presubscribed customers.

Upon review of this request, I find that ATT-C has met its burden, and that the information sought by ATT-C to be protected should be provided confidential treatment. I agree with ATT-C's claim that the information contained in this exhibit, knowledge of ATT-C's marketing successes in winning back customers in 1991 who previously left ATT-C, will enable competitors to focus on these marketing programs and defeat ATT-C's efforts. Knowledge of customer turnover is not universally known. Thus, ATT-C cannot determine the customer turnover rate of its competitors. Accordingly, I believe this information should be exempt from the requirements of Section 119.07(1), and ATT-C's request of confidentiality should be granted as to this exhibit.

IV. **Document No. 11800-91**

On July 23, 1991, the Commission staff sought the following information from AT&T Communications of the Southern States, Inc. (ATT-C):

1. For each service, the total revenues received by service for each of the years 1984 through 1990.

2. For each service, the total expenses paid for LEC switched access for the years 1984 through 1990.

On August 19, 1991, ATT-C advised that it was unable to respond to Request No. 2 because switched access expense is not billed to ATT-C on a service-specific basis; therefore, the access expense by service was not available. ATT-C also informed the Commission that the information sought in Request No. 1 was proprietary confidential. The Commission subsequently requested ATT-C to file that information with the Commission.

ATT-C maintains that the information sought provides intrastate revenues on a service-specific basis for various ATT-C services, year-by-year, for the period 1984 through 1990. The specific services include MTS, Reach Out, ProWATS, Megacom WATS, SDN, 800, Megacom 800, 800 Readyline and One Line WATS. ATT-C further asserts that the information in this document would provide

ATT-C's competitors with the amount of ATT-C's intrastate revenues on a service-by-service basis for each year from 1984 through 1990. This information, if made public, would allow ATT-C's competitors to determine the size of ATT-C's revenue base for each service and to tailor their marketing efforts accordingly. This information would further allow ATT-C's competitors to judge the success of their own marketing efforts in opposition to ATT-C on a yearly basis, while maintaining the proprietary nature of their own service-specific revenues. ATT-C claims all the above mentioned information should be classified confidential pursuant to Sections 350.121 and 364.183, Florida Statutes, and Rule 25-22.006, Florida Administrative Code.

Upon review of this request, I find that ATT-C has met its burden, and the information sought by ATT-C to be protected should be provided confidential treatment. Should the knowledge of the distribution of revenues across services be made readily available, it would afford ATT-C's competitors an advantage in that it reveals the segmentation of ATT-C's market. Accordingly, I agree that this information should be exempt from the requirements of Section 119.07(1), and ATT-C's request of confidentiality should be granted as to this exhibit.

V. **Document No. 11843-91**

On November 7, 1991, during the deposition of Brooks Albery, US Sprint's (Sprint) witness, Staff requested several late-filed exhibits. One of the exhibits requested from Sprint (Request No. 4) contained the percentage change in growth for MTS for Sprint in 1988-1989, 1989-1990 and 1990-1991. Sprint maintains the data for 1988-1989 is unavailable, and the data for 1989-1990 and 1990-1991 proprietary and confidential. Sprint, thereafter, submitted the confidential information to the Commission pursuant to a Notice of Intent to Request Confidential Classification on November 27, 1991. Subsequently, on December 18, 1991, Sprint filed its "REQUEST OF US SPRINT COMMUNICATIONS COMPANY LIMITED PARTNERSHIP FOR CONFIDENTIAL CLASSIFICATION".

Sprint claims the confidential information in its response to Request No. 4 is contained on line 8 (the 1989-1990 data) and line 9 (the 1990-1991 data). Sprint asserts that:

> disclosure of information U.S. Sprint's intrastate MTS traffic could enable a competitor to deduce U.S. Sprint's business plan, network configuration and evaluation of actual and potential markets, thus making the results of

> U.S. Sprint's research and planning freely available to U.S. Sprint's competitors. U.S. Sprint's competitors could use this information to decide which markets to enter or avoid, what facilities to install in a given area, what customers to target, and which services to offer.

This claim is without merit. The data provided by Sprint does not explain whether the method of computation is minutes of use, gross revenues, net revenues or access charges. It merely defines Sprint's growth rate for a two year period. Since different measuring techniques will yield different results, knowledge of Sprint's MTS growth rate over the last two years, without an explanation how the rate was calculated, possesses little or no value to any of Sprint's competitors. It is highly unlikely, if not impossible, for Sprint's competitors to determine Sprint's business plan by obtaining Sprint's MTS growth rate, and nothing else. Participants in that market need only look around to determine there is competition.

Upon review of this request, I find that Sprint has failed to meet its burden, and the information sought by Sprint to be protected should not be provided confidential treatment. Accordingly, I believe this information should not be exempt from the requirements of Section 119.07(1). Therefore, Sprint's request of confidentiality should be denied as to this exhibit.

VI. **Documents No. 858-92 and 1059-92**

Previously in this docket, Sprint served interrogatories on ATT-C. Interrogatory Number 3 in Sprint's Fourth Set of Interrogatories to ATT-C requested information concerning the number of resellers certificated by the Florida Public Service Commission which resell services of ATT-C. ATT-C provided Sprint this information pursuant to the terms of a Protective Agreement which required Sprint to maintain the confidentiality of such information.

During the course of hearings conducted on December 4-5, 1991, Sprint introduced Exhibit 7, a document indicating the information provided to Sprint by ATT-C pursuant to the Protective Agreement. When introduced at the hearing, the information was treated as a proprietary exhibit and the contents were not disclosed. The only information in the Exhibit for which ATT-C is seeking confidentiality is the section of one line of one page which reveals the actual number of Florida resellers which purchase ATT-C

services for resale purposes. ATT-C continues to claim this information to be proprietary confidential business information, and pursuant to Rule 25-22.006, Florida Administrative Code, requests Confidential Classification of such material.

ATT-C maintains that:

> disclosure of the subject information would provide AT&T's competitors with the number of resellers which purchase services for resale purposes from AT&T in Florida. The information would allow AT&T's competitors to evaluate the success or failure of their own efforts to compete with AT&T for reseller customers in Florida. The information would allow competitors to tailor new service offerings or pricing plans to attract AT&T's reseller customers, thereby gaining an unfair competitive advantage inasmuch as AT&T is unable to obtain similar information with respect to reseller customers of any other interexchange carriers (hereafter "IXCs") operating in Florida.

ATT-C further claims that:

> this information is particularly sensitive inasmuch as AT&T has introduced, within the past year, specific services designed to meet the needs of resellers. By comparing the needs of resellers utilizing AT&T services to the number of their own reseller customers (including any increase or decrease in such customers), a competing IXC could reasonably evaluate the success or failure of AT&T's new service offerings and the success or failure of AT&T's efforts to market such services to reseller customers. This would allow competing IXC's to tailor their service offerings and marketing strategies accordingly. For the above reasons, AT&T claims this information is entitled to confidential treatment as "proprietary confidential business information" under Section 364.183, Florida Statutes and as "trade secrets" under Section 90.506, Florida Statutes.

Upon review of this request, I find that ATT-C has failed to meet its burden and the information sought by ATT-C to be protected should <u>not</u> be provided confidential treatment. Specifically, the information for which ATT-C seeks confidentiality is the number of those reselling ATT-C service. The information does not divulge who is reselling ATT-C services, but only how many. Without knowing who is reselling the services, the number possesses little or no value. ATT-C itself acknowledged that the number's

meaningless in its response to Interrogatory Number 3, which stated:

> it is AT&T's experience that resellers typically purchase services from a number of interexchange carriers; and AT&T has no reason to believe that AT&T is the primary resale carrier for each of these companies.

Accordingly, I believe this information should not be exempt from the requirements of Section 119.07(1). Accordingly, ATT-C's request of confidentiality should be denied as to this exhibit.

Therefore, based on the foregoing, it is

ORDERED by Commissioner J. Terry Deason, as Prehearing Officer, that the "Request for Confidential Classification and Motion for Permanent Protective Order of Information Requested by the Division of Communications on July 23, 1991", regarding DOCUMENT NO. 9405-91, filed on September 23, 1991 by US Sprint Communications Company Limited Partnership, is hereby Granted for the reasons set forth herein. It is further

ORDERED that the Request for Confidential Classification filed by AT&T Communications of the Southern States, regarding late filed deposition exhibits 1, 2, 4, 6, & 7 is hereby Granted for the reasons set forth herein. It is further

ORDERED that the request for confidentiality (DOCUMENT NO. 11800-91), filed on November 26, 1991 by ATT-C, is hereby Granted for the reasons set forth herein. It is further

ORDERED that the "Request of US Sprint Communications Company Limited Partnership for Confidential Classification", filed on December 18, 1991, by U.S. Sprint Communications Company Limited Partnership, regarding DOCUMENT NO. 11843-91, is hereby Denied for the reasons set forth herein. It is further

ORDERED that the request for confidentiality (DOCUMENT NO. 858-92), filed on January 23, 1992 by AT&T Communications of the Southern States, Inc., regarding information contained in Hearing Exhibit 7 of the December 4-5, 1991 hearings (DOCUMENT NO. 1059-92), is hereby Denied for the reasons set forth herein.

ORDERED that pursuant to Section 364.183, Florida Statutes, and Rule 25-22.006, the confidentiality granted to the documents specified herein shall expire eighteen (18) months from the date of issuance of this Order in the absence of a renewed request for confidentiality pursuant to Section 364.183. 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 J. Terry Deason, as Prehearing Officer, this 8th day of June, 1992.

J. TERRY DEASON, Commissioner
and PREHEARING OFFICER

(S E A L)

PLT

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 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.