

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition by Wireless One Network, L.P., d/b/a Cellular One of Southwest Florida for arbitration with Sprint-Florida, Incorporated pursuant to Section 252 of the Telecommunications Act of 1996.

DOCKET NO. 971194-TP
ORDER NO. PSC-97-1557-CFO-TP
ISSUED: December 11, 1997

ORDER ON REQUEST BY WIRELESS ONE NETWORK, L.P. FOR
CONFIDENTIAL CLASSIFICATION AND MOTION FOR PROTECTIVE
ORDER OF DOCUMENT NOS. 10243-97 AND 11112-97

On April 10, 1997, Wireless One Network, L.P. d/b/a Cellular One of Southwest Florida (Wireless One) and Sprint-Florida, Inc. (Sprint) entered into negotiations regarding Wireless One's request for interconnection arrangements with Sprint. The parties were able to reach final agreements on most issues. On September 12, 1997, Wireless One filed a petition for arbitration of the issues not resolved in the negotiations. A formal hearing was held on November 24, 1997.

On November 7, 1997, Wireless One filed a Request for Confidential Classification and Motion for Protective Order for the direct and rebuttal testimony filed in this docket by Francis J. Heaton on behalf of Wireless One, Document Nos. 10243-97 and 11112-97. Wireless One states that the testimony includes information regarding the nature of the facilities that Wireless One uses, the manner in which its calls are routed, and the specific points and types of interconnection that it maintains with other carriers. Wireless One asserts that this information is proprietary confidential business information which, if disclosed, would impair Wireless One's competitive interests. Wireless One further asserts that it treats this information as confidential and that the information has not been previously disclosed. As such, Wireless One asks that this information be granted confidential classification, and that the information be permanently protected from discovery.

DOCUMENT NUMBER-DATE

12682 DEC 11 97

FPSC-RECORDS/REPORTING

Florida law presumes that documents submitted to governmental agencies shall be public records. The only exceptions to this presumption are the specific statutory exemptions provided in the law and exemptions granted by governmental agencies pursuant to the specific terms of a statutory provision. This presumption is based on the concept that government should operate in the "sunshine." Rule 25-22.006(4)(c), Florida Administrative Code, provides that it is the Company's burden to demonstrate that the documents fall into one of the statutory examples set out in Section 364.183, Florida Statutes, or to demonstrate that the information is proprietary confidential information, the disclosure of which will cause the Company or its ratepayers harm.

Specifically, Wireless One seeks confidential classification and protection for the information in Frank Heaton's Direct Testimony, Document No. 10243-97, on page 15, lines 17-21, and page 16, lines 1-2. Wireless One states that this testimony gives an overview of Wireless one's operating network. Wireless One asserts that if a competitor were to have access to this information, the competitor would be able to develop business strategies that would unfairly target Wireless One's business. Wireless One also seeks confidential treatment for the information on page 16, lines 4-22, and page 17, lines 1-15. Wireless One asserts that this is detailed information regarding its facilities which, if disclosed, would allow competitors to devise unfair business strategies to compete with Wireless One. Wireless One also seeks confidential treatment for the information on page 17, lines 16-22, page 18, lines 1-7, page 18, lines 9-14, and 16-22, page 19, lines 1-22, and page 20, lines 1-15, page 20, lines 16-22, page 21, lines 1-22, and page 22, lines 2-8. Wireless One states that this information describes the types of interconnections maintained in Wireless One's network, as well as the benefits of its particular design. Again, Wireless One asserts that disclosure of this information would allow competitors to unfairly target Wireless One's business.

In addition, Wireless One seeks confidential treatment of the information in Mr. Heaton's exhibits FJH 1.2, FJH 1.3, and FJH 1.4. Wireless One states that FJH 1.2 is a detailed map of Wireless One's tandems and end office in its serving area. It states that FJH 1.3 is a detailed map of Wireless One's network in the Ft. Myers' LATA showing the cellular end offices that directly connect to Wireless One's proprietary microwave transmission facilities. As for FJH 1.4, Wireless One states that it is a detailed map of Wireless One's network in the Ft. Myers' tandem including everything in Exhibit FJH 1.3, plus all cellular end offices

connected by leased lines. Wireless One asserts that each of these maps contain detailed information about Wireless One's operating facilities that would allow competitors to devise unfair business strategies targeting Wireless One. Wireless One asserts that such an unfair advantage for competitors would skew the operation of the market to the detriment of both Wireless One and consumers.

Regarding Mr. Heaton's Rebuttal Testimony, Document No. 11112-97, Wireless One seeks confidential treatment and protection for the information on page 2, line 14, page 6, lines 8-12, and page 13, lines 7-15. Wireless One states that this testimony provides information pertaining to Wireless One's overall operating network, as well as detailed information regarding the interconnections maintained in Wireless One's operating network. Wireless One asserts that competitors could use this information to develop unfair business strategies targeting Wireless One, which would harm Wireless One's ability to compete. Wireless One asserts that such an unfair advantage for competitors would skew the operation of the market to the detriment of both Wireless One and consumers. In addition, Wireless One seeks confidential treatment of the information on page 5, lines 11-12. Wireless One asserts that this testimony reveals the percentage of monthly Reverse Option charges that Wireless One could save if traffic were delivered between the carriers' end offices. Wireless One asserts that if its competitors obtained these specific amounts of costs and savings, competitors would be better able to price their own offerings in direct competition with Wireless One. As such, Wireless One asserts that competitors would have an unfair advantage that would skew the operation of the market to the detriment of both Wireless One and consumers.

Upon review, the material is found to be proprietary business information in accordance with Section 364.183, Florida Statutes, and Rule 25-22.006, Florida Administrative Code. Disclosure of this information would impair Wireless One's ability to compete by giving competitors an unfair advantage. As such, it shall be granted confidential treatment. In addition, Wireless One's motion for a permanent protective order shall be granted, in part. The information shall be protected from discovery in accordance with Rule 25-22.006(6), Florida Administrative Code, and Rule 1.280, Florida Rules of Civil Procedure, for a period of 18 months from the issuance of this order, in accordance with Rule 25-22.006(9), Florida Administrative Code.

ORDER NO. P5C-97-1557-CFO-TP
DOCKET NO. 971194-TP
PAGE 4

Based on the foregoing, it is therefore

ORDERED by Commissioner Susan F. Clark, as Prehearing Officer, that the November 7, 1997, Request for Confidential Classification and Motion for Protective Order for Document Nos. 10243-97 and 11112-97 filed by Wireless One Network, L.P. d/b/a Cellular One of Southwest Florida is granted to the extent set forth in the body of this Order. It is further

ORDERED that pursuant to Section 364.183, Florida Statutes, and Rule 25-22.006, Florida Administrative Code, any confidentiality granted to the material specified herein shall expire eighteen (18) months from the date of the issuance of this Order in the absence of a renewed request for confidentiality pursuant to Section 364.183, Florida Statutes. 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 Susan F. Clark, as Prehearing Officer, this 11th day of December, 1997.



SUSAN F. CLARK, Commissioner and
Prehearing Officer

(S E A L)

BK

ORDER NO. PSC-97-1557-CFO-TP
DOCKET NO. 971194-TP
PAGE 5

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), 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 25-22.0376, 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.