

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Proposed rule 25-24.845, F.A.C., Customer Relations; Rules Incorporated, and proposed amendments to Rules 25-4.003, F.A.C., Definitions; 25-4.110, F.A.C., Customer Billing; 25-4.118, F.A.C., Interexchange Carrier Selection; 25-24.490, F.A.C., Customer Relations; Rules Incorporated.

DOCKET NO. 970882-T1

ORIGINAL

ATTORNEY GENERAL ROBERT A. BUTTERWORTH'S
PETITION TO INSPECT AND EXAMINE RECORDS
OF SPRINT COMMUNICATIONS COMPANY
LIMITED PARTNERSHIP

The Robert A. Butterworth, Attorney General (Attorney General) petitions the Prehearing Officer to permit inspection and examination of records of Sprint Communications Company Limited Partnership (Sprint) and states:

1. A joint petition was filed by the Office of Public Counsel (Public Counsel) and the

Attorney General to investigate the practice of slamming and to determine appropriate remedial measures. Subsequently, the petition was granted and the investigation was consolidated with

the pending rulemaking docket referenced above.

2. Sprint has produced certain documents to Public Counsel pursuant to subpoena and

subject to Sprint's request for temporary protective order.

3. Accordingly, the pendency of the motion for protective order renders the documents

exempt from the public records provisions of Section 119.07(1), Florida Statutes, and the

exemption applies to the subject records in the possession of any state agency, including the

Attorney General.

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4. Therefore, the Attorney General would be bound to honor the confidentiality of the records at least during the pendency of the motion for protective order.

5. The Attorney General requested permission from several telecommunications companies including Sprint, to inspect their documents now in the possession of Public Counsel. Of those companies which have responded, one granted permission with no further conditions; one granted permission upon its filing of notice of intent to request confidential classification; and four have granted permission subject to written protective agreements.

6. After several arduous rounds of proposed drafts, Sprint and the Attorney General are unable to agree on the terms of a protective agreement. Consequently, the Attorney General is presently denied access to the subject documents.

7. Significantly, the Attorney General entered into substantially identical protective agreements with four other companies on terms rejected by Sprint. Sprint and the Attorney General did in good faith significantly narrow their differences, but Sprint is insisting on conditions which the Attorney General considers unreasonable and unacceptable. As stated above, two companies did not even require written agreements.

8. The Attorney General agrees as a practical matter that the inspection shall be limited to the undersigned Assistant Attorney General, acting on behalf of the Attorney General, and those to whom disclosure is in the furtherance of the rendition of legal services to the Attorney General, e.g., other attorneys working on the case, experts, law clerks, paralegals and support staff. Undisputably, the aforementioned employees and agents of the Attorney General will be bound by any protective agreement executed by the undersigned on behalf of the Attorney General. Every other company has agreed to permit inspection on these or less stringent terms.

9. Sprint is demanding that every agent or employee of the Attorney General in the class defined above execute and return to Sprint's counsel a separate agreement prior to even disclosure necessary in the rendition of legal services on behalf of the Attorney General. Such a requirement is unnecessary, unduly burdensome, and would present an onerous obstruction to the effective functioning of the Attorney General in its participation in this case.

10. The Attorney General also agrees that protected confidential information shall include additional copies of, and notes and confidential information derived from, confidential information furnished, and that any such copies and notes shall be held in trust and returned to Sprint at the conclusion of the case.

11. Sprint is demanding that any notes shall not be reproduced in any form. Such a requirement would impose a severe functional impediment to the Attorney General's ability to conduct itself in this proceeding. Adequate protection is provided by the requirement that any copies of notes shall be in all respects be confidential in the same manner as the originals.

12. The final hearing in this docket is set for February 6, 1998 and expeditious resolution of the issues herein is essential. Accordingly, the Attorney General requests that this petition be taken up at the prehearing conference on January 23, 1998.

13. Attached is a copy of the Protective Agreement proposed by the Attorney General.

WHEREFORE, the Attorney General respectfully requests that the prehearing officer enter an order permitting the Attorney General to inspect the subject documents on terms and conditions provided for in the attached protective agreement.

DATED this 12th day of January, 1998.

Respectfully submitted,

ROBERT A. BUTTERWORTH
Attorney General

A handwritten signature in black ink, appearing to read "Michael A. Gross", written over a horizontal line.

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Certificate of Service

I HEREBY CERTIFY that a true copy of the foregoing has been furnished by U.S. Mail
this 12 day of January, 1998, to the following parties:

*and by FAX**


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FAUSER/SPECIAL/MICHAEL/SLAMMING/PETATD.WPD

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Joint Petition of Robert A. Butterworth, Attorney General, and the Citizens of the State of Florida, by and through the Office of Public Counsel, for initiation of formal proceedings pursuant to Section 120.57(1), Florida Statutes, to investigate the practice of "spamming," i.e., the unauthorized change of a customer's pre-subscribed carrier, and to determine the appropriate remedial measures.

Docket No. 970882-TI

PROTECTIVE AGREEMENT

This agreement is entered into by and between Sprint Communications Company Limited Partnership (Sprint) and Robert A. Butterworth, Attorney General (Attorney General), as represented by their respective counsel.

WHEREAS, as part of the discovery in this docket, Sprint has produced certain documents to the Office of Public Counsel, subject to Sprint's request for temporary protective order and pursuant to Public Service Commission (Commission) Rule 25-22.006, Florida Administrative Code; and

WHEREAS, the Attorney General, as part of its discovery efforts in this docket, wishes to review and inspect the documents produced by Sprint as described above; and

WHEREAS, the Attorney General acknowledges that the documents produced by Sprint are confidential as provided in Commission Rule 25-22.006 and contain confidential information, and agrees to maintain such confidentiality; and

WHEREAS, in order to provide the Attorney General reasonable access to the documents produced by Sprint without unduly risking public disclosure of the confidential information

contained in said documents, (a) Sprint has agreed to permit the Attorney General to review and inspect the confidential documents in preparation for hearing in this docket, and (b) the Attorney General has agreed to accept the confidential information contained in the subject documents for the purposes set forth herein and subject to the conditions of this agreement, the undersigned hereby agree as follows:

1. The Attorney General may review and inspect the confidential documents at the Office of Public Counsel.

2. The inspection shall be permitted only for purposes in connection with this docket and for no other purpose, and shall be limited to the undersigned Assistant Attorney General who has also executed the non-disclosure agreement attached as Exhibit A hereto, acting on behalf of the Attorney General, and those to whom disclosure is in the furtherance of the rendition of legal services to the Attorney General (e.g., other attorneys working on the case, experts, law clerks, paralegals, and support staff).

3. The confidential information contained in the documents shall not be disclosed to any person, except as provided in paragraph 3. above; (2) will not be used for any purpose not directly related to this docket; (3) will be treated as confidential; and (4) will not be disclosed publicly. Protected confidential information shall deemed to include additional copies of, and notes and confidential information derived from, confidential information furnished subject to the terms of this agreement.

4. If the Attorney General desires to use, in the course of this proceeding, any of the confidential information described above, in testimony filed by the Attorney General, or in direct or cross-examination of any witness, in rebuttal or a proffer of evidence, the Attorney General

shall notify Sprint at least seven (7) days business days in advance of the proposed use and will meet with representatives of Sprint for the purpose of attempting in good faith to establish a procedure that will accommodate the needs of the Attorney General for obtaining evidence without risking public disclosure of the confidential information. If the Attorney General and Sprint are unable to reach agreement on a means of preventing public disclosure of the confidential information, the Attorney General and Sprint will submit the issues to the Commission for resolution before the Attorney General attempts to make public use of the information.

5. Each of the parties to this agreement shall act in good faith; neither will do anything to deprive the other party of the benefit of this agreement. In case of any disagreement between the parties to this agreement as to the meaning or application of this agreement or whether either party has complied with it, the parties shall submit the matter, initially to the Commission for resolution. Nothing in this agreement shall constitute a waiver by either party of any right it may have regarding any controversy over the confidentiality of the subject information to appeal any decision of the Commission or institute an original proceeding in any court of competent jurisdiction. Nothing in this agreement shall constitute a waiver of any claim Sprint may have as to the confidentiality of any information provided to the Attorney General, nor shall the Attorney General's execution of this agreement be construed as an admission that the requested information in fact contains confidential information. In the event the Commission shall rule that any of the confidential information should be removed from the restrictions imposed by this agreement, the confidential information shall nonetheless be subject to the protection afforded by this agreement for ten (10) business days from the date of issuance of such decision by the

Commission. The provisions of this paragraph are entered to enable Sprint to seek a stay or other relief from an order removing the restriction of this agreement from material claimed by Sprint to be confidential.

6. This agreement shall be binding upon the parties to this agreement from the date of its execution. Each executed copy of this agreement shall be deemed an original.

EXECUTED this _____ day of _____, 1997.

**SPRINT COMMUNICATIONS
COMPANY LIMITED PARTNERSHIP.**

**ROBERT A. BUTTERWORTH
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