BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Request of US Sprint Communications Company Limited Partnership for Specified Confidential Classification	)	DOCKET NO. 910100-TI
	)	ORDER NO. 24560
	)	ISSUED: 5/20/91

ORDER DENYING REQUEST FOR CONFIDENTIAL CLASSIFICATION

On January 31, 1991, US Sprint Communications Company Limited Partnership (US Sprint) requested confidential classification of portions of its 1990 Annual Report to the Commission. The information sought to be classified as confidential is US Sprint's Points of Presence (POPs) addresses, percent interstate usage (PIU) by POP, a map of Florida showing facilities owned by US Sprint, and the list of companies from whom US Sprint leases facilities.

Pursuant to section 364.183, Florida Statutes, and Rule 25-22.006, Florida Administrative Code, US Sprint has the burden to show that the material submitted is qualified for 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 of proprietary confidential business information set out in section 364.183, Florida Statutes, or by demonstrating that the information is proprietary confidential business information, the disclosure of which will cause the company or its ratepayers harm.

US Sprint first asserts that its POP addresses, PIU, facilities map, and list of companies from whom US Sprint leases facilities are trade secrets. It claims that the information has economic value because "disclosure would unduly hamper US Sprint's ability to bargain and contract with customers for equipment and services, thus constituting an 'economic value' sought to be protected by the statute." US Sprint also claims that "identification of POP addresses poses a valid security concern for the protection of valuable network equipment vital to US Sprint's provision of services, thus further constituting an 'economic value.'" US Sprint additionally claims that competitors could be able to deduce its business plan from the information.

It is notable first that 97 interexchange companies have submitted their 1990 annual reports to the Commission. Only US Sprint and US Telecom, Inc., d/b/a Sprint Gateways, however, have requested that any portion of their reports be classified confidential. This fact tends to place in doubt the company's assertion that any of the information derives economic value from

not being generally known to competitors, a necessary element of a trade secret, or is otherwise proprietary confidential business information under section 364.183(3).

It is also doubtful that public disclosure of the 1990 annual report's listing of POP locations would pose a security risk to the company's operations. Those locations have been disclosed in the company's annual reports in previous years. Moreover, section 364.183(3)(c), Florida Statutes, only includes "security measures, systems, or procedures" in the definition of proprietary confidential business information. Although secrecy of the list of locations of POPs might be one measure taken to protect security, when the POP locations can be otherwise easily discovered by an interested person, standing alone it is insufficient.

In Order No. 21102, cited by US Sprint as support for its argument that the information should not be disclosed, the Commission protected only the security measures taken by a company. Confidentiality of the locations of facilities the company was protecting with those security measures was not addressed.

As doubtful as the claims of economic value or risk to security may be, it is unnecessary to determine whether POPs or PIU is a trade secret or is otherwise qualified under any of the subsections of section 364.183(3), because they fail a threshold question in determining whether information is proprietary confidential business information. That threshold question, posed by section 364.183(3), is whether the information has previously been disclosed without restrictions on its release to the public. US Sprint's POPs locations and PIU by POP have been disclosed elsewhere. All IXCs are required to report their PIU to local exchange companies (LECs), and the LECs in turn report the information to the Commission. The LECS generally report the IXCs' PIU by POP location. The same information is already public record, and US Sprint's request for it to be classified confidential now, when it is reported in the form of its annual report, must be denied.

Contrary to US Sprint's assertion, PIU information has not been treated "at all times" as confidential in Docket No. 890815-TL. That docket involved reporting format, and the issue of confidentiality was not ruled on. The Commission has in the past classified as confidential network capacity and quantity of traffic, however, the PIU information here reveals only a ratio. It does not reveal capacity of the network or quantity of traffic.

US Sprint also requests that its facilities map be classified confidential. As to the location information the map provides, it

is notable that US Sprint's facilities (and its POP locations) can be readily learned by any competitor with an interest in knowing them, and even by those interested in, as the company states, "scientific blackmail, criminal mischief, national security sabotage, or other damage to US Sprint's network." In its request for confidentiality of portions of its 1988 annual report, US Sprint admitted that its "general network location is publicly advertised, and, where above ground, readily visible." The company itself advertises the location of underground facilities to prevent accidental damage to them.

In Docket No. 890323-TI, US Sprint's initial request for confidential classification of the network map was tentatively denied partly on the basis that the map was so general, and of such large scale, that the actual location of any facilities or routes used by the company could not be determined from it. The company amended its initial request for confidentiality, and did not include the network map within the scope of its amended request. The map thus became a public record.

US Sprint has failed to adequately demonstrate that the facility features shown on the map included in its 1990 annual report derive economic value from secrecy, or that the information is not known or readily ascertainable by competitors in a productive industry, or that disclosure would impair its competitive business, or that it is otherwise proprietary confidential business information. It is clear from the annual reports of 95 other IXCs that this information is not the kind considered by the industry to be of value to competitors or otherwise proprietary confidential business information. US Sprint has not met its burden of demonstrating that disclosure will cause it competitive harm.

Similarly, the names of companies leasing facilities to US Sprint is not proprietary confidential business information. US Sprint asserts this information is a trade secret, confidential under section 364.183(3)(a), Florida Statutes; is information concerning bids or other contractual data, disclosure of which would impair the efforts of the company to contract for goods or services on favorable terms, confidential under section 364.183(3)(d), Florida Statutes; and is information relating to competitive interests, confidential under section 364.183(3)(a), Florida Statutes. The mere names of the facility lessors does not qualify under any of these examples of proprietary confidential business information.

Almost all of the companies leasing facilities are themselves certificated by the Commission as IXCs and lease their facilities

to other IXCs. Their identities are known in the industry, and those vendors leasing facilities to US Sprint, if not specifically known, could be ascertained by proper means without great expense, time or effort. The information thus has no economic value and is not a trade secret.

Nor is the information the kind of contractual data the statute seeks to protect. Identification of US Sprint's facility vendors does not disclose specific contractual terms. Price, quantity, components, equipment or other contract detail is not being disclosed. US Sprint's ability to contract on favorable terms in the future will not be harmed by the disclosure of this information.

US Sprint cites Order No. 21362, issued June 9, 1989, in which the Commission granted the request of Telus for confidential classification of vendor information. There, however, the vendors' names were reported with capacity information, and it was the capacity information that was of primary concern. Capacity information is no longer required to be provided in the annual report, and the vendor names alone are effectively worthless.

For the reasons stated, I conclude that the request for confidential classification should be denied. Accordingly, US Sprint's 1990 Annual Report shall not be exempt from the requirements of section 119.07(1), Florida Statutes.

In consideration of the foregoing, it is

ORDERED by Commissioner Gerald L. Gunter, as Prehearing Officer, that the request for confidential classification filed by US Sprint on January 31, 1991, is hereby denied pursuant to Rule 25-22.006, Florida Administrative Code, and section 364.183, Florida Statutes.

By ORDER of Commissioner Gerald L. Gunter, as Prehearing Officer, this 20th day of MAY, 1991.

GERALD L. GUNTER, Commissioner

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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.