

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for certi-) DOCKET NO. 900823-TI
ficate to provide interexchange) ORDER NO. PSC-92-0103-PCO-TI
telecommunications services by) ISSUED: 3/26/92
STOREFINDER, INC.)
_____)

ORDER GRANTING REQUEST FOR CONFIDENTIAL
TREATMENT OF DOCUMENT NO. 2073-92

By Order No. 24386, issued on April 18, 1991, Storefinder, Inc. (Storefinder), a subsidiary of Domino's Pizza, Inc. (Domino's or the Company), was granted authority for limited experimental usage of local exchange company access and automatic number identification (ANI) services by Southern Bell Telephone and Telegraph Company and United Telephone Company. Domino's and Storefinder are customers of local exchange and access telephone services and do not hold certificates of public convenience and necessity from the Commission. Domino's has submitted a report which was required by the aforementioned Order. The Company now asks that we hold portions of the report to be proprietary, confidential information, which is exempt from the requirements of Section 119(1), Florida Statutes, pursuant to Section 364.183, Florida Statutes, and Rule 25-22.006, Florida Administrative Code.

The material at issue has been assigned Document No. 2073-92 by the Commission and includes: the number of calls processed by Storefinder, the average per call cost, the number of calls on a weekly basis, the average duration of call, the minutes of use by week, the total number of calls, the average seconds of use for the entire study period, and the total minutes of use over the study period. Reference to the material within the report is set forth below:

- (1) Page 1, Line 18: The total calls to date.
- (2) Page 1, Line 24: The average per call cost.
- (3) Exhibit 1, Column 2, Lines 4 to 39: The number of calls per week.
- (4) Exhibit 1, Column 3, Lines 4 to 39: The average call duration in seconds on a per week basis.
- (5) Exhibit 1, Column 4, Lines 4 to 39: The average minutes of use on a per week basis.
- (6) Exhibit 1, Column 2, Line 41: The total number of calls.
- (7) Exhibit 1, Column 3, Line 41: The average call duration in seconds based upon the weekly call data.
- (8) Exhibit 1, Column 4, Line 41: The total minutes of use for all of the study weeks.

DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REPORTING

The Company makes two arguments for confidential treatment of the material. First, Domino's asserts that the material is a trade secret and entitled to confidential treatment pursuant to Section 364.183(3)(a), Florida Statutes. The Company notes that Chapter 364 does not define the term; however, it quotes Section 688.002(4), Florida Statutes, which defines a trade secret as:

[I]nformation, including a formula, pattern, compilation, program, device, method, technique, or process that:

- (a) Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and
- (b) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

Domino's asserts that the material meets the two part statutory test for a trade secret. To this end, it contends that both Domino's and Storefinder have taken reasonable steps regarding the security of the information and that the calling volumes, calling durations, network minutes of use, and network costs are not generally known or readily ascertainable in the marketplace. The Company asserts that the material has great independent economic value as it is market specific information by week indicating the use of the single seven digit telephone number. It is the Company's position that knowledge of this traffic and data correlated by week would enable its competitors to understand Domino's operations in the Jacksonville area and to make counter marketing plans.

The Company then argues that disclosure of the information would cause it competitive harm and thus, the information is entitled to confidential treatment pursuant to Section 364.183(3)(e), Florida Statutes. That Section provides for exemption from Section 119.07(1) of "[i]nformation relating to competitive interests, the disclosure of which would impair the competitive business of the provider of the information." Domino's asserts that making the material public would greatly impact its competitive posture vis-a-vis other pizza companies. This is because the Company's use of Storefinder is based on a business plan that includes its analysis of current and future market potential. The Company contends that disclosure of its traffic and

ORDER NO. PSC-92-0103-PCO-TI
DOCKET NO. 900823-TI
PAGE 3

costs during the Storefinder trial could enable a competitor to deduce Domino's business plan. Dominos contends that this would make its research and planning freely available to the Company's competitors which would give them an advantage that is not presently available. Dominos concludes that this would cause it competitive harm.

Upon review of the material and the arguments, we find that public disclosure of the information would impair the competitive business of Dominos, the provider of the information. Therefore, the information is exempt from disclosure under Section 119.07(1), Florida Statutes, pursuant to Section 364.183(3)(e), Florida Statutes. Accordingly, we grant the Company's Request for Confidential Classification. As this will afford the confidential treatment of the material at issue, it is unnecessary to reach the Company's trade secret argument.

Based upon the foregoing, it is

ORDERED by Commissioner Susan F. Clark, as Prehearing Officer, that the Request of Domino's Pizza, Inc. and Storefinder, Inc. for Confidential Classification is hereby granted as set forth above.

By ORDER of Commissioner Susan F. Clark, as Prehearing Officer, this 26th day of MARCH, 1992.



SUSAN F. CLARK, Commissioner
and Prehearing Officer

(S E A L)

CWM

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

ORDER NO. PSC-92-0103-PCO-TI
DOCKET NO. 900823-TI
PAGE 4

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.