

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of the Attorney ) DOCKET NO. 910060-TP  
General and the Public Counsel ) ORDER NO. 24402  
to adopt rules governing 900 ) ISSUED: 4-22-91  
services. )  
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ORDER GRANTING CONFIDENTIALITY

By letter dated March 20, 1991, MCI Telecommunications Corporation (MCI) has requested that we treat its response to a request from the Division of Communications (CMU) for the names and addresses of MCI's 900 information providers as confidential. MCI cites, inter alia, section 364.183, Florida Statutes, as the basis for its request as well as the nature of the information sought.

The latter is described as "the names and addresses of MCI's customers for a competitive service offering." As stated by MCI:

The public disclosure of the names and addresses of MCI's 900/976 customers in this compiled form would provide MCI's competitors with valuable market data which could be used to MCI's competitive detriment. Customer lists are jealously guarded in competitive markets as trade secrets. If such a customer list became available to competitors of MCI, it could be used by such competitors for targeted sales and marketing efforts designed to lure those customers away from MCI. Moreover, to the extent that an analysis of the names and addresses of MCI's customers may reveal MCI's relative success in penetrating various portions of the 900/976 market, it could enable a competitor to derive valuable market information regarding the success of MCI's marketing and sales strategies.

CMU's request for this information was pursuant to our Order dated February 12, 1991, granting a Petition to Initiate Rulemaking on 900-976 services. Order No. 24098. Subsection 364.183(3)(e), Florida Statutes (Supp. 1990), defines "proprietary confidential business information" as:

(e) Information relating to competitive interests, the disclosure of which would impair the competitive business of the provider of information.

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On March 29, 1991, the Opposition of the Attorney General and Citizens to MCI's Request for Confidential Classification was filed. In that Opposition, arguments were made that 1) no trade secret is involved, 2) the FCC has recently proposed rules requiring the disclosure of 900 service provider names and addresses to customers requesting same and this Commission requires such information to appear on telephone bills, 3) that local exchange carriers have not requested confidential treatment of 976 provider names and addresses, though 976 services are similar to 900 services and 4) that all those calling 900 numbers will receive on their telephone bills the information for which confidentiality is requested.

We decline to adopt these rationales for disclosure of MCI's complete 900 customer list. As stated in subsection 364.183(3), the term "proprietary confidential business information" includes, but is not limited to, inter alia, trade secrets. Therefore, the trade secret status of the material in question, vel non, is non-dispositive of this matter.

MCI has stated that disclosure of its 900 customer list would impair its competitive business in 900 services because MCI's competitors could target their marketing efforts at those customers to MCI's competitive disadvantage. The arguments in opposition, based on the publication of individual 900 providers' names and addresses in telephone bills, do not address the legitimate competitive concern as to the complete list. The mere fact that MCI's competitors, through the expenditure of time and effort, could survey the marketplace and attempt to generate some equivalent to MCI's own list through phone bills does not change the competition - sensitive nature of MCI's document. It does not provide a reason for us to provide MCI's competitors with this information without any expenditure of time and effort on their part or to provide cost-free certainty to them as to MCI's strategic position in a competitive market. Subsection 364.183(3) requires only that the information

is intended to be and is treated by the person or company as private in that the disclosure of the information would cause harm to the ratepayers or the person's or company's business operations . . .

The showing made by MCI in its request for confidentiality clearly meets the statutory language of subsection 364.183(3)(e), Florida Statutes (Supp. 1990). In this connection, it is noted that 900 services do in fact reside within competitive telecommunications markets. Accordingly, MCI's request for confidential treatment of this material is consistent with the

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intent of the statute. See also, subsections 119.07(3)(a); 119.07(3)(x), Florida Statutes.

Subsection 364.183(3)(e) is a new statutory provision which complements another new provision, section 364.338, in which the Legislature describes the new era of competitive telephone markets and the finding of the Legislature that

competitive offerings of certain types of telecommunications services may under certain circumstances be in the best interest of the people of the state.

Such competitive markets, of which 900 services are an example, differ drastically from the natural monopoly markets which are the traditional province of regulation by this Commission. Thus, we have noted that competition between two natural gas utilities was contrary to the public interest:

Duplication of public utility facilities is an economic waste and results in higher rates which the public must pay for essential services. Reasonable and realistic regulation, in such cases, is better than and takes the place of competition. FPSC Order No. 3051 (1960). [Emphasis supplied]

The assumptions as to non natural-monopoly markets, i.e. competitive, are completely reversed, as the United States Supreme Court noted in its description of the pro-competitive purposes of the Sherman Act:

The Sherman Act was designed to be a comprehensive charter of economic liberty aimed at preserving free and unfettered competition as the rule of trade. It rests on the premise that the unrestrained interaction of competitive forces will yield the best allocation of our economic resources, the lowest prices, the highest quality and the greatest material progress, while at the same time providing an environment conducive to the preservation of our democratic political and social institutions.

Northern Pacific R. R. Co. v. United States, 356 US 1, 4 (1958). [Emphasis supplied]

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Thus, in the setting of competitive markets, we are not only concerned that the relevant statutes require us to grant MCI's request for confidential treatment of its competitively sensitive material, but that our failure to do so in this context will interfere with the vigorous competition which is so beneficial to consumer welfare. See also, Reiter v. Sonatone, 442 US 330, 342 (1979).

Finally, the Opposition's point regarding the availability of parts of this information on customer bills does not weaken our conclusion. The real interest of consumers is to have the identity and address of any 900 provider whose services they purchase so that complaints, should they arise, will be effective. Since consumers have this information under our rules, there is less need to disclose the entire list, a list in which MCI's competitors, rather than consumers generally, are more likely to have a strong interest.

In consideration of the above, it is

ORDERED by Commissioner Michael M. Wilson, as Prehearing Officer that the Request for Specific Confidential Treatment filed by MCI Telecommunications Corporation is granted.

By ORDER of Commissioner Michael M. Wilson, this 22nd day of April, 1991.

  
MICHAEL M. WILSON, Commissioner  
and Prehearing Officer

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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

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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.