

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

FILED²

MAR 04 2003

Missouri Public
Service Commission

In the Matter of the Investigation of the)
State of Competition in the Exchanges of) IO-2003-0281
Sprint Missouri Inc.)

SPRINT MISSOURI, INC.'S MOTION FOR A PRTOTECTIVE ORDER

Comes Now Sprint Missouri, Inc. ("Sprint") and hereby requests that the Commission issue a modified protective order in this case. In support of this request, Sprint states as follows:

1. Sprint requests that a protective order be issued in this case and that the protective order resemble the standard protective order with one modification – internal experts be allowed to review highly confidential information under the same restrictions as counsel. Sprint believes that limiting internal experts access to relevant information is unjustified and likely a violation of the due process right to examine information necessary to prosecute or defend claims, See *Brawley and Flowers, Inc. v. Dept. of Social Services*, 934 S.W. 2d 557, 560 (Mo. App. 1996); *Bever v. State Bd. Of Registration for Healing Arts*, 2001 Mo. App. LEXIS 148 (Mo. App. W.D. 2001).

2. In a case with a typical protective order issued by the Missouri Public Service Commission, a party may designate information provided as either "Proprietary" or "Highly Confidential". Information designated as "Proprietary" may be viewed by counsel of record and internal and external persons who have signed a non-disclosure agreement. Information that is designated as "Highly Confidential" may only be reviewed by counsel of record and outside consultants who have signed non-disclosure

agreements. Internal subject matter experts are prohibited from reviewing information provided by another party when that other party has designated the information as "Highly Confidential". This restricts companies from using internal subject matter experts, and forces a company to either needlessly contract an outside consultant or rely on the technical and analytical skills of its counsel. To Sprint's knowledge, no other state commission has such a restriction on the review of confidential information. Further, such a restriction is not justified. Sprint, as well as many other companies, employs people for their expertise in the costing field. By limiting these internal experts access to the type of information designated as highly confidential, the Commission requires that Sprint and the other parties to this case hire an outside expert even though they have the expertise to analyze the information in-house. Further, Sprint is required to hire the outside experts even though each one of its internal experts are willing to attest to the fact that he/she does not have any responsibility for establishing retail service pricing and will abide by the limitations typically put on use of highly confidential information

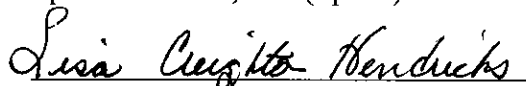
3. For the reasons stated herein, Sprint requests that the Commission issue the attached protective order. Sprint recognizes that companies provide certain information that must be protected from inappropriate use. The attached proposed alternative protective order provides adequate protection. Access to "Highly Confidential Information" is limited to counsel of record, internal subject matter experts acting at the direction of counsel, and outside consultants employed by the receiving company. Internal subject matter experts and outside consultants must sign a non-disclosure agreement prior to reviewing any "Highly Confidential Information". Persons afforded access to "Highly Confidential Information" under the proposed alternative protective

order are prohibited from using and/or disclosing such information for purposes of business or competition or any other purpose other than to prepare for and conduct this proceeding, and are required to keep that information secure. Clearly, the material designated as "Highly Confidential Information" is protected from misuse by internal subject matter experts using the same high standards that are applied to outside consultants under the Commission's standard protective order. Internal subject matter experts would be prohibited from divulging or misusing any confidential information. Access by internal experts is the norm in many standard protective orders used around the country.

Based on the above, Sprint requests that the Commission enter the attached Protective Order in this case.

Respectfully submitted,

Sprint Missouri, Inc. (Sprint)



Lisa Creighton Hendricks MO Bar #42194

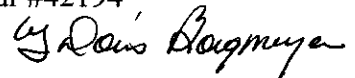
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Voice: 913-315-9363 Fax: 913-523-9769

Lisa.c.creightonhendricks@mail.sprint.com



CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the above and foregoing was served on each of the following parties by first-class/electronic/facsimile mail, this 4 day of March, 2003.

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Jefferson City, MO 65102
mdandino@ded.state.mo.us

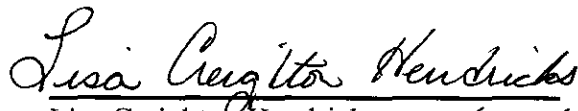

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PROTECTIVE ORDER

A. The following definitions shall apply to information which a party claims should not be made public.

a. HIGHLY CONFIDENTIAL: Information concerning (1) material or documents that contain information relating directly to specific customers; (2) employee-sensitive information; (3) marketing analyses or other market-specific information relating to services offered in competition with others; (4) reports, work papers or other documentation related to work produced by internal or external auditors or consultants; (5) strategies employed, to be employed, or under consideration in contract negotiations.

b. PROPRIETARY: Information concerning trade secrets, as well as confidential or private technical, financial and business information.

B. During the course of discovery a party may designate information as HIGHLY CONFIDENTIAL or PROPRIETARY (hereinafter, "designated information") and shall make such designated information available to the party seeking discovery, if such information is not objectionable on any other ground, under the restrictions set out in paragraphs C and D. The party designating the information as HIGHLY CONFIDENTIAL or PROPRIETARY shall provide to counsel for the requesting party, at the time the designation is made, the ground or grounds for the designation. The requesting party may then file a motion challenging the designation. The party designating the information confidential shall have five days after the filing of the challenge to file a response. No other filings are authorized

- C. Materials or information designated as HIGHLY CONFIDENTIAL may, at the option of the furnishing party, be made available only on the furnishing party's premises and may be reviewed only by attorneys, such employees who are working as consultants to such attorney or intend to file testimony in these proceedings, or outside experts who have been retained for the purpose of this case, unless good cause can be shown- for disclosure of the information off-premises and the designated information is delivered to the custody of the requesting party's attorney. No copies of such material or information shall be made and only limited notes may be taken, and such notes shall be treated as the HIGHLY CONFIDENTIAL information from which notes were taken.
- D. Disclosure of PROPRIETARY information shall be made only to attorneys, and to such employees who are working as consultants to such attorney or intend to file testimony in these proceedings, or to persons designated by a party as outside experts. Employees to whom such disclosure is to be made must be identified to the other party by name, title and job classification prior to disclosure. Information designated as PROPRIETARY shall be served on the attorney(s) for the requesting party. On-premises inspection shall not be required for PROPRIETARY information, except in the case of voluminous documents (see paragraph K). Any employees of the party who wish to review such PROPRIETARY materials shall first read this order and certify in writing that (s)he has reviewed same and consented to its terms. The acknowledgment so executed shall contain the signatory's full name, permanent address, title or position, date signed, and affirmation that the signer is *acting on behalf of his/her employer. Such acknowledgment shall be delivered to counsel

for the party furnishing the information or documents before disclosure is made.

- E. Attorneys, in-house experts or outside experts who have been provided access to material or information designated HIGHLY CONFIDENTIAL or PROPRIETARY shall be subject to the nondisclosure requirements set forth in paragraphs C or D, whichever is applicable, and S.
- F. If material or information to be disclosed in response to a data request contains material or information concerning another party which the other party has indicated is confidential, the furnishing party shall notify the other party of the intent to disclose the information. The other party may then choose to designate the material or information as HIGHLY CONFIDENTIAL or PROPRIETARY under the provisions of this Protective Order.
- G. Any party may use material or information designated as HIGHLY CONFIDENTIAL or PROPRIETARY in prefiled or oral testimony at hearing provided that the same level of confidentiality assigned by the furnishing party is maintained, unless otherwise classified by the Commission. In filing testimony all parties shall designate as HIGHLY CONFIDENTIAL or PROPRIETARY only those portions of their testimony which contain information so designated by the furnishing party. If **any party** plans to use information and testimony which has been obtained outside this proceeding, it must ascertain from the furnishing party if any of such information is claimed to be HIGHLY CONFIDENTIAL or PROPRIETARY prior to filing.
- H. A party may designate prefiled or live testimony, or portions thereof, submitted in this case as HIGHLY CONFIDENTIAL or PROPRIETARY (hereinafter,

"designated testimony") Prefiled testimony designated as HIGHLY CONFIDENTIAL or PROPRIETARY shall be filed under seal and served upon all attorneys of record. Only those portions of the prefiled testimony designated as HIGHLY CONFIDENTIAL or PROPRIETARY should be filed under seal, and should be marked in a manner which clearly indicates which materials are considered HIGHLY CONFIDENTIAL and which are considered PROPRIETARY.

- I. Within five days of the filing of designated testimony, the party asserting the claim shall file with the Commission the specific ground or grounds for each claim. Such filing shall show the nature of the information sought to be protected and specifically state the alleged harm of disclosure. Such filing shall be filed under seal only if it contains either PROPRIETARY or HIGHLY CONFIDENTIAL information and shall be served upon all attorneys of record.
- J. Attorneys upon whom prefiled testimony designated HIGHLY CONFIDENTIAL or PROPRIETARY has been served shall make such testimony available only to those persons authorized to review such testimony under the restrictions in Paragraphs C or D, whichever is applicable.
- K. If a response to a discover request requires the duplication of voluminous material or material not easily copied because of its binding or size, the furnishing party may require the voluminous material be reviewed on its own premises. Voluminous material shall mean a singled document, book or paper which consists of more than 150 pages.

- L. Attorneys of record in this case shall require that the in-house or outside expert read this Protective order and certify in a written nondisclosure agreement that the person has reviewed the Protective Order and consented to be bound by its terms. The nondisclosure agreement shall contain the signatory's full name, permanent address, employer and the name of the party with whom the signatory is associated. Such agreement shall be filed with the Commission. Attached hereto as Appendix "A" and incorporated by reference herein is a form for use in complying with the terms of this paragraph.
- M. In the event a witness discloses the contents of designated prefiled testimony in his or her own prefiled testimony, such testimony shall also be designated in the same manner as the designated prefiled testimony and handled in accordance with this order.
- N. Unless good cause is shown, challenges to the confidential nature of prefiled designated testimony shall be filed with the Commission no later than ten days after the grounds supporting the designations are filed or at the hearing, whichever occurs first. The party making the designation shall have five days to respond to the challenge or may respond at the hearing, whichever occurs first.
- O. The Commission or Regulatory Law Judge may rule on the challenge to the designations prior to the hearing, or at the hearings.
- P. In the event no party challenges prefiled designated testimony, or in the event the Commission or its Regulatory Law Judge rules that testimony was properly designated, then such testimony shall be

received into evidence, subject to any other objections being made and ruled upon, and kept under seal.

- Q. In addition, all live testimony, including cross-examination and oral argument which reveals the content of prefiled designated testimony or which is otherwise held to be confidential, including any argument as to whether certain testimony is properly designated, shall be made only after the hearing room is cleared of all persons besides the Commission, its Regulatory Law Judges, court reporters, attorneys of record and witnesses to whom the designated information is available pursuant to the terms of this Protective Order. The transcript of such live testimony or oral argument shall be kept under seal and copies shall only be provided to the Commission, its Regulatory Law Judges, and attorneys of record. Such attorneys shall not disclose the contents of such transcripts to anyone other than those who may have access to the designated information under the terms of this Protective Order. Persons who have access to the designated information under the terms of this Protective Order shall treat the contents of such transcript as any other designated information under the terms of this Protective Order.
- R. References to designated testimony, whether prefiled or live and transcribed, in any pleadings before the Commission, shall be by citation only and not by quotation. Subject to the jurisdiction of any reviewing court, references to designated testimony in pleadings or oral arguments made to such reviewing court shall also be by citation only.
- S. All persons who are afforded access to information under the terms of this Protective Order shall neither use nor disclose such information

for purposes of business or competition or any other purpose other than the purpose of preparation for and conduct of this proceeding and then solely as contemplated herein, and shall keep the information secure and in accordance with the purposes and intent of this order.

- T. Subject to the jurisdiction of any reviewing court, designated testimony constituting part of the record before the Commission shall be delivered to any reviewing court under seal upon service of the appropriate writ of review;
- U. The Commission may modify this order on motion of a party or on its own motion upon reasonable notice to the parties and opportunity for hearing.
- V. Within 90 days after the completion of this proceeding, including judicial review thereof, all designated information, testimony, exhibits, transcripts or briefs in the possession of any party other than Staff or the Public Counsel shall be returned to the party claiming a confidential interest in such information and any notes pertaining to such information shall be destroyed.
- W. The provisions of paragraph C, D, J and L of this Protective order do not apply to Staff or Public Counsel. Staff and Public Counsel are subject to the nondisclosure provisions of RSMO 2000. Staff and Public Counsel shall provide a list of the names of their employees who will have access to the designated information.
- X. Outside experts of Staff or Public Counsel who have been contracted to be witnesses in this proceeding shall have access to designated information

and testimony on the same basis as Staff and Public Counsel except the outside expert shall read this order and sign the nondisclosure agreement attached as Appendix "A" hereto.

- Y. Outside experts of Staff and Public Counsel who have not been contracted to be witnesses in this proceeding are subject to the provisions of this Protective Order
- Z. Prefiled testimony and exhibits, whether filed or offered at the hearing, shall be prepared in the manner described in Appendix "B". .

STATE OF MISSOURI PUBLIC
SERVICE COMMISSION

NONDISCLOSURE AGREEMENT

I, _____ have been presented a copy of this
Protective Order issued in Case _____ on the day
of _____.

I have requested review of the confidential information produced in
Case No. _____ on behalf of

I hereby certify that I have read the above-mentioned Protective Order
and agree to abide by its terms and conditions.

Dated this ____ day of _____

Employer

Party

Address

Telephone

1. If prefiled testimony contains parts which are classified as Proprietary or Highly Confidential, it shall be filed with the Commission's Secretary/Chief Regulatory Law Judge's Office as follows:

- A. One public version of prefiled testimony with the Proprietary or Highly Confidential portions obliterated or removed shall be filed. The Proprietary pages shall be stamped "P" and the Proprietary information indicated by two asterisks before and after the information, ****proprietary information removed****. The Highly Confidential pages shall be stamped "HC" with the Highly Confidential information indicated by two asterisks and underlining before and after the Highly Confidential information, ****Highly Confidential information removed****. The designated information shall be removed with blank spaces remaining so that the lineation and pagination of the public version remains the same as the Highly Confidential and Proprietary versions.
- B. Eight copies of the complete prefiled testimony shall be filed under seal. The Proprietary pages shall be stamped "P" and the Proprietary information indicated by two asterisks before and after the information, ****proprietary****. The Highly Confidential pages shall be stamped "HC" with the Highly Confidential information indicated by two asterisks and underlining before and after the Highly Confidential information, ****Highly Confidential****

Any deviations from this format must be approved by the Regulatory Law Judge.