

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Commission's )  
Investigation into Continuation ) Case No. 08-439-TP-COI  
of the Ohio Telecommunications )  
Relay Service. )

ENTRY

The attorney examiner finds:

- (1) By entry issued in this case on November 25, 2008, the Commission issued its request for proposal (RFP) in this docket and set February 2, 2009 as the deadline for the submission of bid proposals in response to the RFP. Formal bid proposals have been timely submitted in this case by two entities, namely, Hamilton Telephone Company d/b/a Hamilton Communications (Hamilton) and Sprint Communications Company L.P. (Sprint).<sup>1</sup>
- (2) A conference is hereby scheduled to occur on Thursday, February 26, 2009, at 10:00 a.m., in Hearing Room 11E of the Commission's offices, 180 East Broad Street, Columbus, Ohio 43215. The purpose of the conference will be to provide an opportunity for Hamilton and Sprint to make an oral presentation of their bid proposals to members of the Commission and/or its staff and the Commission's Consumer Advisory Group (CAG). At the conference each bidder will be allotted 45 minutes to make its presentation and answer questions of the Commission, its staff, and/or the CAG. The attorney examiner presiding at the conference shall have the authority to exercise his or her own discretion in determining how any procedural issues that arise regarding the conference shall be resolved, including whether any additional presentation time shall be allotted to a particular bidder, for the purpose of expediting a full and fair consideration by the Commission, the staff, and the CAG, of all submitted bid

<sup>1</sup> According to the cover letter to Sprint's bid proposal signed by William P. White, Sprint's bid proposal is submitted by the Federal Division within the Sales and Distribution Group of Sprint Communications Company, L.P. The letter further explains that William P. White, as the Vice President of the Federal Division, has the authority to contractually obligate and bind the company to the terms and conditions of Sprint's proposal. The letter also explains that Sprint Communications Company L.P. is a Delaware limited partnership and is a wholly owned subsidiary of Sprint Nextel Corporation, a Kansas corporation listed on the New York Stock Exchange.

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proposals. Information about the conference can be obtained by contacting the attorney examiner (Dan Fullin) at (614) 466-0457. Persons with communications disabilities can reach the Commission via TTY-TDD at 1-800-686-1570 or in Columbus at (614) 466-8180.

- (3) Through motions for protective order filed by Sprint on January 30, 2009, and by Hamilton on February 2, 2009, Hamilton and Sprint have each sought to protect certain portions of their respective formal bid proposals and, in doing so, have complied with the filing directives of the RFP. Hamilton and Sprint are both seeking to protect the confidentiality of that portion of their respective proposals that sets forth their proposed bid price(s). For Hamilton, this information is set forth in the portion of Hamilton's bid proposal labeled "Tab 7 (Pricing)", while for Sprint, it is set forth in the portion of Sprint's bid proposal labeled "Appendix B -- Cost Proposal". Both bidders maintain that the involved price information qualifies as a trade secret under Section 1333.61(D), Revised Code. Essentially, that statute defines a "trade secret" as information that both: (1) derives economic value from not being generally known to or readily available to outsiders who would obtain economic value from its disclosure or use; and (2) is the subject of reasonable efforts to maintain its secrecy.
- (4) Section II(C)(3) of the RFP establishes the procedure the Commission will follow in maintaining the confidentiality of bid price information. It says:

All filed complete responses will be reviewed by the Commission and the Commission's staff, as described in Section V of this RFP. All materials received in response to this RFP shall become the property of the Commission and may be returned only at the Commission's option. Unless otherwise directed by the Commission, the cost portions of the complete responses shall be treated in a proprietary manner until the Commission formally selects the successful bidder, at which time the bid prices will be publicly disclosed. Bidders seeking to protect the confidentiality of any information submitted with their bid that they consider to be proprietary should do so by filing their bids, along with a motion for protective order, in

accordance with Rule 4901-1-24(D), Ohio Administrative Code, O.A.C.

The Commission will share copies of all nonproprietary materials with members of the CAG. Beyond this, although the Commission will not provide CAG members with the actual bid prices (to the extent that they are not otherwise publicly disclosed information), the Commission will share with CAG members information concerning how all of the submitted rate quotes from all bidders rank in comparison to each other, and concerning the range of variation that exists between the various submitted rate quotes (e.g. this bid is 4 cents higher than that bid). The CAG members will use this information in completing the analysis that will lead to their recommendation to the Commission. Prior to deliberating for purposes of reaching their recommendation, CAG members will be required by the Commission to sign a document by which they pledge not to publicly disclose this information or anything else, aside from the actual report of recommendation, concerning the substance of such deliberations. Beyond this, bidders who wish to do so are welcome to enter into confidentiality agreements of their own with members of the CAG.

- (5) The attorney examiner finds that the above-cited procedure should and does apply with respect to the "Tab 7 Pricing" section of Hamilton's bid proposal and to the "Appendix B - Cost Proposal" section of Sprint's bid proposal, both of which were filed, in unredacted form, under seal. Thus, the motions for protective order of Sprint and of Hamilton, as they pertain to these just-referenced portions of the two respective bid proposals are granted, on condition that the confidentiality of the unredacted portions of these two sections of the bid proposals will continue only until such time as the Commission formally selects the successful bidder in this case, at which time such unredacted information will become openly available as a matter of public record.
- (6) Aside from seeking confidential treatment of its bid price information as set out in Tab 7 (Pricing) of its bid proposal, Hamilton, through its February 2, 2009, motion for protective order, seeks also to prevent public disclosure of the following additional sections of its bid proposal: Attachment C (Quality

Assurance), Attachment D (Network Maps), Attachment E (Disaster Recovery Plan), Attachment I (Financial History), Attachment L (CA Training), and Attachment M (Policy and Procedure Manual). Hamilton, in its motion for protective order, maintains that the information set out in these sections, all of which were filed in unredacted form under seal, qualifies as a trade secret under Section 1333.61(D), Revised Code.

- (7) Rule 4901-24(D), O.A.C., provides in pertinent part that an attorney examiner may issue any order which is necessary to protect the confidentiality of information contained in a document filed under seal, to the extent that state or federal law prohibits the release of the information, including where the information is deemed by the attorney examiner to constitute a trade secret under Ohio law, and where nondisclosure of the information is not inconsistent with the purposes of Title 49 of the Revised Code. Further, Rule 4901-24(D), O.A.C., provides that, unless otherwise ordered, any order prohibiting public disclosure pursuant to Rule 4901-24(D), O.A.C., shall automatically expire eighteen months after the date of its issuance, and such information may then be included in the public record of the proceeding. A party wishing to extend a protective order beyond eighteen months shall file an appropriate motion at least forty-five days in advance of the expiration date of the existing order. The motion shall include a detailed discussion of the need for continued protection from disclosure.
- (8) Upon review of the record as a whole, the attorney examiner finds that Hamilton's motion for protective order, as related to protecting the confidentiality of Attachments C (Quality Assurance), D (Network Maps), E (Disaster Recovery Plan), I (Financial History), L (CA Training), and M (Policy and Procedure Manual) of Hamilton's submitted bid proposal, is well made and should be granted. The protective order being granted here to Hamilton with respect to these attachments will, unless renewed pursuant to the procedure described in Rule 4901-24(F), O.A.C., or unless the Commission otherwise specifically so orders, expire on a date 18 months from the date of this entry.

It is, therefore,

ORDERED, That a conference shall be held on Thursday, February 26, 2009, at 10:00 a.m., in Hearing Room 11E of the Commission's offices, 180 East Broad Street, Columbus, Ohio 43215, for purpose explained in, and pursuant to the directives set out in Finding (2), above. It is, further,

ORDERED, That Hamilton's and Sprints motions for protective order are each granted, subject to the conditions described in Findings (5) and (8), above. It is further,

ORDERED, That a copy of this entry be served upon Hamilton and Sprint, upon members of the Commission's Consumers' Advisory Group, and upon all interested persons of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO



By: Daniel E. Fullin  
Attorney Examiner

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Renee J. Jenkins  
Secretary