

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition by Verizon Florida Inc. to reform intrastate network access and basic local telecommunications rates in accordance with Section 364.164, Florida Statutes.

DOCKET NO. 030867-TL

In re: Petition by Sprint-Florida, Incorporated to reduce intrastate switched network access rates to interstate parity in revenue-neutral manner pursuant to Section 364.164(1), Florida Statutes.

DOCKET NO. 030868-TL

In re: Petition for implementation of Section 364.164, Florida Statutes, by rebalancing rates in a revenue-neutral manner through decreases in intrastate switched access charges with offsetting rate adjustments for basic services, by BellSouth Telecommunications, Inc.

DOCKET NO. 030869-TL  
ORDER NO. PSC-03-1125-PCO-TL  
ISSUED: October 8, 2003

The following Commissioners participated in the disposition of this matter:

LILA A. JABER, Chairman  
J. TERRY DEASON  
BRAULIO L. BAEZ  
RUDOLPH "RUDY" BRADLEY  
CHARLES M. DAVIDSON

ORDER GRANTING, IN PART, AND DENYING, IN PART,  
CITIZENS OF FLORIDA'S (OPC) MOTION TO HOLD  
EXPEDITED PUBLIC HEARINGS

DOCUMENT NUMBER DATE

09767 OCT-08

FPSC-COMMISSION CLERK

BY THE COMMISSION:

**CASE BACKGROUND**

During the 2003 Regular Session, the Florida Legislature enacted the Tele-Competition Innovation and Infrastructure Enhancement Act (Tele-Competition Act or Act). The Act became effective on May 23, 2003.

Part of the new Tele-Competition Act is the new Section 364.164, Florida Statutes, whereby the Legislature established a process by which each incumbent local exchange telecommunications carrier (ILEC) may petition us to reduce its intrastate switched network access rate in a revenue-neutral manner. We are required to issue its final order granting or denying any such petition within 90 days of the filing of a petition. In reaching our decision, Section 364.164 sets forth the criteria we shall consider in determining whether to grant the petition. We must consider whether the petitioners' proposals will:

- (a) Remove current support for basic local telecommunications services that prevents the creation of a more attractive competitive local exchange market for the benefit of residential consumers;
- (b) Induce enhanced market entry;
- (c) Require intrastate switched network access rate reductions to parity over a period of not less than 2 years or more than 4 years; and
- (d) Be revenue neutral.

Due to the expedited nature of the proceedings contemplated by the new legislation, Commission staff submitted a recommendation on August 21, 2003, in Docket No. 030846-TL, addressing a variety of procedural aspects of our proceedings to address the anticipated petitions. Staff's recommendation was considered at the September 2, 2003, Agenda Conference.

On August 27, 2003, Verizon Florida Inc. (Verizon), Sprint-Florida, Incorporated (Sprint), and BellSouth Telecommunications,

Inc. (BellSouth), each filed petitions pursuant to Section 364.164, Florida Statutes, and respective Dockets Nos. 030867-TL, 030868-TL, and 030869-TL have been opened to address these petitions in the time frame provided by Section 364.164, Florida Statutes. On September 4, 2003, the Prehearing Officer issued an Order Establishing Procedure and Consolidating Dockets for Hearing, Order No. PSC-03-0994-PCO-TL. Because of the expedited nature of these proceedings, the schedules and procedures set forth therein recognized and applied our decisions made at the September 2, 2003, Agenda Conference in Docket No. 030846-TL.<sup>1</sup>

This Order addresses the Office of Public Counsel's/Citizens' (hereafter OPC) Motion(s) to Hold, and to Expedite Scheduling of, Public Hearings filed in each of the identified Dockets on August 28, 2003. At the September 2, 2003, Agenda Conference, the issue of public hearings was discussed, and Commission staff was directed to bring a recommendation further addressing the issue. Staff was also directed to work with the parties regarding certain aspects of the public hearings, and to that end, staff conducted a conference call with the parties on Monday, September 8, 2003. We note that only Sprint filed a written response to the Motion as it applies in Docket No. 030868-TL. The response was filed September 5, 2003.

### **Arguments**

In its Motions, OPC states that as part of our consideration of the Petitions in these Dockets, we must address whether granting the petitions will benefit each petitioning company's residential customers. OPC notes that in considering the bill that resulted in the subject legislation, the Legislature contemplated that we would hold public hearings to receive customer input. As support, OPC references the House floor debate on Committee Substitute for Senate bill S654, during which Representative Clarke was informed by Representative Mayfield that the process contemplated and would allow time for public input. Thus, OPC contends that we should expeditiously begin scheduling public hearings to allow for sufficient customer input in the limited time remaining for the

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<sup>1</sup>Staff notes that on September 3, 2003, OPC filed Motions to Dismiss in each of the Dockets. These will be addressed in a subsequent recommendation.

Commission's consideration of the Petitions. OPC proposes that the following cities serve as locations for the public hearings:

Sprint	Fort Walton Beach, Tallahassee, Ocala, and Fort Myers
Verizon	Tampa, St. Petersburg, and Sarasota
BellSouth	Pensacola, Jacksonville, Daytona Beach, Orlando, Miami, Fort Lauderdale, and West Palm Beach <sup>2</sup>

At the September 2, 2003, Agenda Conference, Verizon and BellSouth indicated generally that they did not oppose OPC's Motion. Only Sprint filed a written response to OPC's Motion. Therein, Sprint states that it supports the concept of public hearings, but emphasizes that there are a number of issues that need to be resolved before such hearings are scheduled.

First, Sprint contends that conducting 13 hearings, as proposed by OPC, is an overly-aggressive schedule in view of the limited time frame established for these proceedings. Thus, Sprint proposes that we instead hold service hearings in the five geographic areas of the state: northwest, northeast, central, southwest, and southeast. Sprint suggests that the representative hearings be held in Panama City, Jacksonville, Orlando, Tampa, and Miami. During the September 8, 2003, conference call with staff, Sprint agreed with OPC that perhaps Fort Walton Beach may be a better selection than Panama City due to its more central location along the Panhandle coast.

Sprint further contends that the focus of the public hearings should not be limited solely to whether granting the petitions will result in basic local service rate increases. Rather, Sprint maintains that the other aspects of the Petitions must be given equal weight in any notice and handouts used for these hearings.

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<sup>2</sup>Added during September 8, 2003, conference call.

Sprint also emphasizes that customers should be allowed to offer only sworn testimony and should be counseled to address those issues that the Legislature has directed us to address in our consideration of the Petitions.

Sprint also suggests that at least one Commissioner should attend each hearing. Sprint expresses concern that without a Commissioner present, the public hearings would, ". . . devolve into nothing more than a media event." Response, p. 3. Sprint believes that having a Commissioner present will maintain the decorum of the proceeding, ensure that the testimony offered is truthful, and prevent attendance by "sham" customers.

In addition, Sprint asserts that the hearings should put the rate increases in the proper perspective, addressing each of the factors to be considered by us. As such, Sprint emphasizes that notices for the hearings should explain that rate increases are necessary to remove inter-service cross-subsidies, which should create a more competitive marketplace to the benefit of residential customers. Sprint adds that direct mailings to customers are not possible due to the time frame; thus, noticing should be accomplished through newspapers of general circulation in each of the locales identified in OPC's Motion. During the September 8, 2003, conference call, Sprint, however, clarified that it believes that newspaper notices should only be required in the locales where hearings are actually scheduled.

Finally, Sprint adds that it cannot stipulate to the admission of customer comments into the record. Sprint maintains that it is within our discretion as to whether it should consider customer comments. Sprint emphasizes that Section 364.164(1), Florida Statutes, does not require that we consider such comments in addressing the Petitions.

During Commission staff's September 8, 2003, conference call, BellSouth and Verizon also indicated that they could not agree to stipulation of the public hearing transcripts at this time. All of the ILECs, however, indicated that it was very likely that at the conclusion of the hearings, they would be willing to do so. The companies expressed concern primarily about "sham" customers presenting testimony, although they also indicated concern about testimony that far exceeds the scope of the matter before the

Commission. OPC and the American Association of Retired Persons (AARP) indicated that they could agree to stipulate the public hearing transcripts.

Most participants on the call also indicated a preference that: (1) at least one Commissioner attend each hearing; and (2) testimony received be sworn. Suggested alternatives of video teleconferencing and sworn affidavits in lieu of hearings were universally panned.

As for locations, Verizon and BellSouth stated their support for Sprint's suggestion, while AARP indicated its support for OPC's proposal. Each of the ILECs indicated that they would be willing to do a one-fourth (1/4) page ad in the principal newspapers serving the locations identified one week prior to hearing. OPC suggested a second newspaper notice on the day of the hearing, but this suggestion was met with hesitation from the companies due to stated cost concerns. A suggestion of a press release was also met with general agreement, but OPC indicated that such release should not replace the second newspaper notice.

### **Analysis**

We see merit in conducting some customer hearings to receive public input on the factors that we are required to address in considering the Petitions. Thus, OPC's Motions shall be granted to the following extent: (1) Seven customer hearings to be held<sup>3</sup>; (2) Commissioner participation at the hearings as available with at least one Commissioner present at each; (3) Newspaper notices published one week prior to the hearings to be provided by the ILECs in the cities identified below; (4) Customer report prepared by Commission staff to be provided at hearing outlining the purpose of the proceeding and the information the Commission is seeking; (5) Opening statement by the presiding officer, summary presentation by Staff, and statements from the parties limited to three minutes, with a change in time limit allowed at the presiding officer's discretion; (6) Witness testimony to be under oath; and

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<sup>3</sup>Since the Agenda Conference at which we decided this issue, we have added an additional seven customer hearings to our schedule in view of the extended time frame.

(7) A Commission press release to be issued on the day before each public hearing. Our decision is more specifically outlined below.

### **1. Public Hearings**

While we see merit in conducting public hearings, we do not believe that the time constraints allow us to conduct the 13 public hearings that OPC has proposed. Thus, we agree to some extent with Sprint's Response. We, however, believe that other venues than those suggested by Sprint may be more appropriate. Thus, the public hearings shall be conducted in the following areas: Fort Lauderdale, Jacksonville, Tallahassee, Pensacola, Orlando, Tampa, and Port Charlotte.<sup>4</sup> We believe that these locations give fair coverage to each company's territory, as well as each geographic region of the state. We have considered, to the extent possible, locations in close proximity to more than one company's territory. Further, Commission Staff shall be allowed to use its discretion in the actual location scheduling in order to take advantage of least cost alternatives.

### **2. Commissioner Participation**

We agree that if these public hearings are conducted, it would be beneficial to have at least one Commissioner participate at each, for the reasons outlined by Sprint.<sup>5</sup>

### **3. Newspaper Notice**

We find that the ILECs shall be required to place a one-fourth (1/4) page notice in the newspaper of general circulation in each city listed below one week prior to hearing:

BellSouth	Miami, Fort Lauderdale, West Palm Beach, Jacksonville, Panama City, Pensacola
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<sup>4</sup>Our Port Charlotte hearing has since been cancelled.

<sup>5</sup>We note since Commissioners will participate in the public hearings, the issue of stipulation of the transcripts is moot.

Sprint	Orlando, Tallahassee, Ocala, Fort Myers
Verizon	Tampa, St. Petersburg, Sarasota, Port Charlotte

The notices shall be submitted to Commission staff for review prior to being placed. They shall include not only the date, time and location of the hearings, but shall also include a brief summary of the issue before us and a description of the information being sought through the public hearings. We do not believe a second publication on the day of a hearing is necessary.

#### **4. Commission Staff Customer Report**

Commission Staff shall provide a customer report, which shall include pertinent background information, as well as clear guidance regarding the information we are seeking from customers through these hearings.

#### **5. Opening statement by Presiding Officer, Summary presentation by Staff, and Statements from Parties**

The Presiding Officer shall make an introductory statement orienting the customers about the process at each hearing. Thereafter, the Commission staff shall make a brief presentation summarizing the history and purpose of the proceedings. Parties will then be allowed to make brief opening statements, which shall be limited to three (3) minutes per party, with a change in time limit allowed at the presiding officer's discretion.

#### **6. Testimony Under Oath**

To help facilitate the receipt of truthful, helpful information in this matter, customers shall testify under oath. We note that all parties agree that this is appropriate.

#### **7. Press Release**

To help inform the public of these proceedings, we shall issue a press release the day before a scheduled public hearing providing



the location and time of the public hearing, as well as a brief explanation of the type of information the we hope to elicit from the proceeding.

**Conclusion**

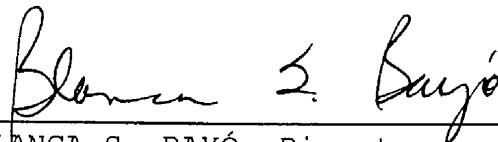
For the foregoing reasons, OPC's Motions to Hold, and to Expedite Scheduling of, Public Hearings, is denied, in part and granted, in part.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the Citizens of Florida's Motion to Hold, and Expedite, Scheduling, of Public Hearings, is denied, in part, and granted in part, as set forth in the specific findings herein, which are hereby approved. It is further

ORDERED that this dockets shall remain open pending for further proceedings.

By ORDER of the Florida Public Service Commission this 8th Day of October, 2003.



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BLANCA S. BAYÓ, Director  
Division of the Commission Clerk  
and Administrative Services

( S E A L )

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), 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.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

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 25-22.0376, Florida Administrative Code; or (2) 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 the Commission Clerk and Administrative Services, 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.