

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Establishment of intrastate implementation requirements governing federally mandated deregulation of local exchange company payphones.

DOCKET NO. 970281-TL
ORDER NO. PSC-97-0860-PCO-TL
ISSUED: July 16, 1997

ORDER DENYING MOTION FOR EXPEDITED RULING ON
SPRINT-FLORIDA'S STATUS IN DOCKET NO. 970281-TL, AND/OR
CLARIFICATION/RECONSIDERATION OF ORDER NO. PSC-97-0721-PCO-TP

On March 31, 1997, the Florida Public Service Commission issued Notice of Proposed Agency Action Order No. PSC-97-0358-PCO-TP addressing issues associated with the deregulation of the local exchange company (LEC) payphone operations. Specifically, the Order addressed the removal of LEC subsidies of their payphone operations (Docket No. 970281-TL). The Order also denied MCI Communications Corporation's (MCI) petitions regarding removal of the alleged subsidies of BellSouth Telecommunications, Inc. (BellSouth) and GTE Florida, Incorporated (GTE Florida) (Docket Nos. 970172-TP and 970173-TP). The Order required all incumbent LECs to file revised tariffs effective April 15, 1997, in accordance with FCC Orders.¹

On April 21, 1997, MCI filed a protest of Order No. PSC-97-0358-FOF-TP, and the matter has been set for hearing on August 7, 1997. MCI's protest addresses certain issues in Docket Nos. 970172-TP, 970173-TP, and 970281-TL. Specifically, MCI protested the Commission's decision to permit the LECs the discretion to determine which rate elements they would reduce in order to eliminate any subsidy in their payphone operations. MCI had argued in its petitions that BellSouth and GTE Florida must reduce their Common Carrier Line (CCL) charges. In addition to the issues raised by MCI's protest, the Commission is planning to address other generic implementation issues associated with the LEC payphone subsidy removal in the August 7, 1997, hearing. These issues concern the amount of the subsidy, its calculation, and the timing of any necessary tariff revisions.

¹ FCC Orders 96-388 and 96-439, CC Docket Nos. 96-128 and 91-35, implementing the Telecommunications Act of 1996, 47 U.S.C. § 276(b)(1).

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On April 22, 1997, Sprint-Florida, Incorporated (Sprint-Florida) filed a Petition for Leave to Intervene in the proceeding. The Commission granted Sprint-Florida's petition to intervene on May 23, 1997.

On June 19, 1997, the Commission issued Order No. PSC-97-0721-PCO-TP in Docket Nos. 970172-TP, 970173-TP, and 970281-TL establishing the procedural schedule for this proceeding. The Order included the following proposed issues to be addressed: 1) what is the amount of intrastate payphone subsidy, if any, that needs to be eliminated by each local exchange company pursuant to Section 276(B)(1)(b) of the Telecommunications Act of 1996; 2) if an intrastate payphone subsidy is identified in Issue 1, do the FCC's Payphone Reclassification Orders require the Florida Public Service Commission to specify which rate element(s) should be reduced to eliminate such subsidy; 3) if an intrastate payphone subsidy is identified in Issue 1, what is the appropriate rate element(s) to be reduced to eliminate such subsidy; 4) If necessary, by what date should revised intrastate tariffs that eliminate any intrastate payphone subsidy be filed; 5) is April 15, 1997, the appropriate effective date for revised intrastate tariffs that eliminate any identified intrastate payphone subsidy; and 6) should these dockets be closed.

Subsequently, on June 30, 1997, Sprint-Florida filed its Motion for Expedited Ruling on Sprint-Florida's Status in Docket No. 970281-TL, and/or Clarification/Reconsideration of Order No. PSC-97-0721-PCO-TP. Sprint-Florida's Motion requests relief from the obligations of the Procedural Order insofar as the Order requires Sprint-Florida's participation in the August 7, 1997, hearing. Sprint-Florida also requests permission to withdraw from Docket 970281-TL. Sprint-Florida believes that the scope of this hearing should be limited to the issues raised by MCI in its protest in accordance with the requirements of Section 120.80(13)(b), Florida Statutes. Sprint-Florida argues that MCI's protest is filed solely with regard to BellSouth and GTE Florida; therefore, Sprint contends that it should be permitted to withdraw from the docket and the hearing process. Sprint-Florida argues that since MCI did not specifically protest Sprint-Florida's tariff or its implementation of Order No. PSC-97-0358-PCO-TP, it should not be affected by any further action in these dockets. No party has filed a response to Sprint's motion.

Sprint's argument is not persuasive. Foremost, MCI's protest addresses generic legal and policy issues that apply to all LECs, including Sprint-Florida. Those issues are as follows: 1) whether the Commission abdicated its responsibilities under the FCC Orders by not specifying rate elements for reductions to eliminate the

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intrastate LEC payphone subsidy, and 2) which rate elements should be reduced to remove the subsidy. The Commission's determination on these issues will directly affect Sprint-Florida, as it will all other LECs with payphone operations.

Also, Section 120.80(13)(b), Florida Statutes, does not limit the Commission's discretion to address all issues that it determines to be relevant to a full resolution of a case when an initial PAA order is protested. Section 120.80(13)(b), Florida Statutes, is designed to limit the parties to the issues presented by the protest in order to prevent them from relitigating issues that the Commission already decided and that were not protested. It is not designed to prevent the Commission from addressing matters it deems necessary to a full resolution of the case in the manner it deems appropriate. The issues the Commission plans to address in this hearing are relevant and necessary to full implementation of payphone deregulation pursuant to the Act and the FCC's implementing orders. Notably, the Commission intends to address each LEC's calculation of the subsidy amount, if any. The Commission has full discretion to address this and other matters in the manner it deems most effective and administratively efficient. Order No. PSC-97-0358-PCO-TP expressly stated that Docket No. 970281-TL would remain open to address exactly these sorts of implementation matters. Sprint-Florida's restrictive interpretation of Section 120.80(13)(b), Florida Statutes, would unnecessarily hamstring the Commission in its proper exercise of regulatory authority. Accordingly, Sprint-Florida's Motion is hereby denied.

It is therefore,

ORDERED by Commissioner Susan F. Clark, as Prehearing Officer, that Sprint-Florida, Incorporated's Motion for Expedited Ruling on Sprint-Florida's Status in Docket No. 970281-TL, and/or Clarification/Reconsideration of Order No. PSC-97-0721-PCO-TP is denied. It is further

ORDERED that Order No. PSC-97-0721-PCO-TP is reaffirmed in all respects.

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By ORDER of Commissioner Susan F. Clark, as Prehearing Officer, this 16th day of July, 1997.



SUSAN F. CLARK, Commissioner and
Prehearing Officer

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

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

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, 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.