

R *MB*



Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

RECEIVED-FPSC
MAR 18 PM 1:07
RECORDS AND REPORTING
MLC

DATE: MARCH 18, 1999

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYO)

FROM: DIVISION OF COMMUNICATIONS (HAWKINS, C. LEWIS) *CSA*
DIVISION OF LEGAL SERVICES (MILLER, B. KEATING) *CKL*

RE: DOCKET NO. 981571-T L - JOINT PETITION OF BELL SOUTH TELECOMMUNICATIONS, INC. AND SPRINT-FLORIDA, INCORPORATED TO MODIFY CERTAIN EXCHANGE BOUNDARIES. *Jan*

AGENDA: MARCH 30, 1999 - REGULAR AGENDA - ISSUE 1 - PROPOSED AGENCY ACTION - ISSUE 2 - SHOW CAUSE - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\LEG\WP\981571.RCM

CASE BACKGROUND

On November 6, 1998, BellSouth Telecommunications, Inc. (BellSouth) and Sprint-Florida, Inc. (Sprint) filed a joint petition (ATTACHMENT A) to modify four exchange boundaries located in Orange and Hernando counties. These boundary changes would place the areas in question wholly within one exchange, but would move certain areas from one LEC's territory to the other's territory. For the purpose of this recommendation, an exchange boundary change is the same as a transfer of territory.

On January 14 and 15, 1999, staff conducted on-site visits to the four areas listed in the joint petition. Sprint and BellSouth representatives were present at the visits.

This is staff's recommendation on the joint petition.

DOCUMENT NUMBER-DATE

03529 MAR 18 99

FPSC-RECORDS/REPORTING

DOCKET NO. 981571-TL
DATE: MARCH 18, 1999

ISSUE 1: Should the joint petition filed by BellSouth and Sprint to modify certain exchange boundaries in Orange and Hernando be approved?

RECOMMENDATION: No. The joint petition filed by BellSouth and Sprint should not be approved because it does not meet the requirements of Rules 25-4.005(1)(a)(b)(c) and 25-4.005(3), Florida Administrative Code, Transfer of Certificate of Public Convenience and Necessity as to All or a Portion of Service Areas. Staff recommends that BellSouth and Sprint be required to submit a complete and accurately documented petition. (HAWKINS, C. LEWIS)

STAFF ANALYSIS: On November 6, 1998, BellSouth and Sprint filed a joint petition for the transfer of certain areas in Orange and Hernando counties. The companies stated that the transfer of territory would prevent a split of service to four new subdivisions. The companies stated that no customers would be affected by the boundary change, because facilities had not been placed and homes had not been constructed.

Contrary to what is stated in the petition, however, staff found out at the on-site visits that there are customers being served and facilities in place. It appears that BellSouth's and Sprint's regulatory staff were unaware of this until the on-site visits. From all indications, the present subscribers are unaware of BellSouth's and Sprint's pending transfer of territory.

The first proposed boundary change was to move the Riverfront Apartment Complex and the proposed Econ River Estates Subdivision from the Sprint Winter Park exchange to the BellSouth Orlando exchange. The petition states that 36 of the 91 residential lots in the Econ River Estates Subdivision are located in the BellSouth Orlando exchange. This proposal would move the remaining lots into the BellSouth Orlando exchange. The petition states that no subscribers would be affected by modifying the Orlando/Winter Park exchange boundary to include the Riverfront Apartment Complex and the Econ River Estates Subdivision, because these homes have not yet been built. However, staff discovered that the Econ River Estates Subdivision and the Riverfront Apartment Complex are established communities with tenants and appear to have been in existence for quite some time. In addition, staff discovered that these locations are already being served by BellSouth.

DATE: MARCH 18, 1999

The second proposed boundary change was to move part of the Plateau Subdivision located in Trilacoochee from BellSouth's Brooksville exchange to Sprint's Trilacoochee exchange. Currently, 13 of the 52 residential lots are located in the Brooksville exchange with the remaining lots located in the Trilacoochee exchange. The petition represents that no subscribers would be affected by the boundary change since no houses have been constructed. On its visit, staff confirmed that no facilities have been placed in service in the Plateau Subdivision.

The third proposed boundary change was to move part of the proposed Windermere Chase Subdivision located in BellSouth's Orlando exchange to Sprint's Winter Garden exchange. As stated in the petition, this move would not affect subscribers because no homes have yet been built in the area to be transferred. On its visit, staff found that Windermere Chase is a subdivision under construction with over 20 lots in BellSouth territory. The developed part (Phase 1) of Windermere is located in Sprint's territory with two homes being served by Sprint. Phase II includes lots that are located in BellSouth's territory with no homes under construction at this time; therefore, staff can confirm that no homes have yet been built in the area to be transferred.

The fourth proposed boundary change was to move part of the Westminster Reserve Subdivision located in Sprint's Windermere exchange to BellSouth's Orlando exchange. The petition states that no subscribers would be affected by this move, because no houses have yet been built. However, staff discovered that this subdivision is an established subdivision with eight houses located in Sprint's territory already being served by BellSouth.

Staff believes that BellSouth and Sprint are in violation of Rule 25-4.005(1)(a)(b)(c), Florida Administrative Code, which states that:

(1) Request for approval by the Commission of the transfer of any certificate of public convenience and necessity (or portion thereof) shall be made by joint petition of the certificate holder and transferee after reasonable notice has been given to all subscribers affected by the proposed transfer. Requests for approval shall be accompanied by an affidavit that notice of intention to file the petition has been given: (a) By mail or personal delivery to the governing bodies of the counties and municipalities affected, to the Public Counsel, and to the Commission, (b) By a legal advertisement in a newspaper of general circulation in the area affected and published on two (2) separate

occasions at least two (2) weeks prior to the filing of the joint petition on the proposed transfer, and (c) By written notice subject to Commission approval, issued to each subscriber in the area to be transferred concurrent with the filing of the petition.

The companies not only failed to obtain prior approval to implement these boundary changes from the Commission, but they also did not notify all subscribers that would be affected by the proposed transfer, the governing bodies of the counties and municipalities and Public Counsel. There is no documentation to show the companies placed a legal advertisement in a newspaper of general circulation in the area affected by these boundary changes two weeks prior to filing the joint petition. Moreover, the companies failed to follow through with the following requirements as stated in Rule 25-4.005(3), Florida Administrative Code, which provide that:

(3) Such joint petitions shall include detailed descriptions of the affected boundaries; the number of subscribers, if any, in each petitioned area; changes in rates; service being provided by either petitioner in areas to be transferred; pending applications for service held by either petitioner; changes in calling scope; customers to be transferred; deposits and deposit interest; any financial exchange or consideration for the proposed change, and a list by name and telephone number of all customers who will be exempt from the proposed change.

Staff believes this petition should be denied because BellSouth is in violation of Rule 25-4.005(1)(a)(b)(c) and Rule 25-4.005(3), Florida Administrative Code, and also because BellSouth is operating in Sprint's territory. Staff notes that while the Trilacoochee boundary change and the Windermere Chase boundary change are in accord with the rules, the remaining two sites are not. BellSouth and Sprint should have researched these areas prior to filing the petition. Given the results of their research, they then should have contacted the Commission for approval to operate the telephone lines in the designated areas. The petition states, incorrectly, that these boundary changes would not affect subscribers because houses had not yet been built on the sites. It is apparent that the companies failed to meet the requirements of Rule 25-4.005(1)(a)(b)(c) and 25-4.005(3), Florida Administrative Code. Therefore, staff recommends that

DATE: MARCH 18, 1999

this petition be denied, and the parties ordered to submit a complete and accurately documented petition.

ISSUE 2: Should the Commission order BellSouth and Sprint to Show Cause why they each should not be fined \$25,000 per occurrence for non-compliance with Rule 25-4.004, Florida Administrative Code, Certificates of Public Convenience and Necessity, and Rule 25-4.005(1)(a)(b)(c) and 25-4.005(3), Florida Administrative Code, Transfer of Certificate of Public Convenience and Necessity as to All or a Portion of Service Areas?

RECOMMENDATION: Yes. The Commission should order BellSouth to Show Cause why they should not be fined \$25,000 per occurrence for non-compliance with Rule 25-4.004, Certificates of Public Convenience and Necessity, Florida Administrative Code, Rule 25-4.005(1)(a)(b)(c) and 25-4.005(3), Transfer of Certificate of Public Convenience and Necessity as to All or a Portion of Service Areas. The Commission should order Sprint to Show Cause why it should not be fined \$25,000 for violation of Rule 25-4.005(1)(a)(b)(c) and Rule 25-4.005(3), Florida Administrative Code, Certificates of Public Convenience and Necessity as to All or a Portion of Service Areas.

STAFF ANALYSIS: It appears that BellSouth and Sprint are in violation of Rule 25-4.005(1)(a)(b)(c) and 25-4.005(3), Florida Administrative Code. In addition, BellSouth appears to be in violation of Rule 25-4.004, Florida Administrative Code.

Concerning the first site, the joint petition states that no subscribers would be affected by modifying the Orlando exchange to include the Econ River Estates Subdivision and the Riverfront Apartment Complex, because both have not yet been built. The petition also states that 36 of the 91 residential lots in the Econ River Estates subdivision are located in the BellSouth Orlando exchange. A site visit by PSC staff revealed that subscribers would indeed be affected. Both locations are completely built and are already being served by BellSouth.

The fourth boundary change was to move part of the Westminster Reserve Subdivision located in Orlando from the

Sprint Windermere exchange to the BellSouth Orlando exchange. The petition states that no subscribers would be affected. Staff found this information to be incorrect, because the Westminster neighborhood is already established with the majority of the homes being served by BellSouth. Lots 1 to 11 are in Sprint's serving area. Out of these 11 lots, eight are already being served by BellSouth.

The purpose of the joint petition was to transfer this area before the area was developed. Staff believes that by beginning construction and operating telephone lines in these areas without first obtaining Commission approval, BellSouth appears to be in direct violation of Rule 25-4.004, Florida Administrative Code, which states:

Except as provided in Chapter 364, Florida Statutes, no person shall begin the construction or operation of any telephone line, plant or system or an extension thereof or acquire ownership or control thereof, either directly or indirectly, without first obtaining from the Public Service Commission a certificate that the present or future convenience and necessity require or will require such construction, operation or acquisition.

BellSouth should have applied for a certificate from the Commission to operate lines and acquire ownership of the extensions requested. This was not done.

Rule 25-4.005(1), Florida Administrative Code, requires the companies to give reasonable notice to all affected subscribers. This was not done. Subsection (3) of the Rule requires the joint petition to include detailed descriptions of the affected boundaries; the number of subscribers, if any, in each petitioned area; changes in rates, service being provided by either petitioner in areas to be transferred; pending applications for service held by either petitioner; changes in calling scope; customers to be transferred; deposits and deposit interest; any financial exchange or consideration for the proposed change, and a list by name and telephone number of all customers who will be exempt from the proposed change. This also was not done. Therefore, the Commission should order BellSouth to Show Cause why it should not be fined \$25,000 per occurrence for non-compliance with Rule 25-4.004, Certificates of Public Convenience and Necessity, Florida Administrative Code, Rule 25-4.005(1)(a)(b)(c) and 25-4.005(3), Transfer of Certificate of Public Convenience and Necessity as to All or a Portion of

DOCKET NO. 981571-11
DATE: MARCH 18, 1999

Service Areas. The Commission should also order Sprint to Show Cause why it should not be fined \$25,000 for violation of Rule 25-4.005(1)(a)(b)(c) and Rule 25-4.005(3), Florida Administrative Code, Certificates of Public Convenience and Necessity, not Rule 25-4.004, Florida Administrative Code.

ISSUE 3: Should this docket be closed?

RECOMMENDATION: No. If staff's recommendation in Issue 2 is approved, then BellSouth and Sprint will have 21 days from the issuance of the Commission's show cause order to respond in writing why they should not be fined in the amount proposed. If BellSouth and Sprint timely respond to the show cause order, this docket should remain open pending resolution of the show cause proceeding. If BellSouth and Sprint do not respond to the Commission's order to show cause in Issue 2, and no person whose substantial interests are affected files a timely protest of Issue 1, the fine should be deemed assessed and this docket be closed. After reasonable collection efforts have been made, the fine should be forwarded to the Comptrollers Office for collection. If Issue 2 is denied, this docket should be closed within 21 days of the issuance of the Commission's Proposed Agency Action Order, if no one whose substantial interests are affected timely files a protest to Issue 1. **(MILLER, B. KEATING)**

STAFF ANALYSIS: This docket should remain open pending the resolution of the Show Cause proceeding, and any protest to Issue 1 that may be filed within 21 days of the issuance of the Order by a person whose substantial interests are affected by the Commission's proposed agency action. If BellSouth and Sprint do not respond to the show cause in Issue 2, and there is no protest of Issue 1, the fine should be assessed and this docket closed. After reasonable efforts have been made, the fine should be forwarded to the Comptrollers Office for collection. If Issue 2 is denied, this docket should be closed within 21 days of the issuance of the Commission's Proposed Agency Action Order, if no person whose substantial interests are affected files a timely protest.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Joint Petition of BellSouth)
Telecommunications Inc. and Sprint-)
Florida, Inc. to modify certain Exchange)
Boundaries)
_____)

Docket No.: _____

Filed: November 6, 1998

**JOINT PETITION OF BELLSOUTH TELECOMMUNICATIONS, INC.
AND SPRINT-FLORIDA, INC.
TO MODIFY CERTAIN EXCHANGE BOUNDARIES**

BellSouth Telecommunications, Inc. ("BellSouth") and Sprint-Florida, Inc. ("Sprint"), pursuant to Rule 25-22.036, Florida Administrative Code, petitions the Florida Public Service Commission (the "Commission") to modify certain exchange boundaries. As grounds in support of this joint petition, BellSouth and Sprint state as follows:

1. BellSouth is a telephone company lawfully doing business in the State of Florida, the regulated operations of which are subject to the Commission pursuant to Chapter 364, Fla. Stat.
2. Sprint is a telephone company lawfully doing business in the State of Florida, the regulated operations of which are subject to the Commission pursuant to Chapter 364, Fla. Stat.
3. BellSouth's principal place of business in Florida is 150 W. Flagler Street, Suite 1910, Miami, Florida 33130.
4. Sprint's principal place of business in Florida is 555 Lake Border Drive, Apopka, Florida 32713.

5. Pleadings and process in this matter may be served upon

Nancy B. White
c/o Nancy Sims
BellSouth Telecommunications, Inc.
Inc.
150 W. Monroe Street, Suite 400
Tallahassee, FL 32301

William J. Ellenberg II
Mary K. Keyer
BellSouth Telecommunications,
Inc.
Room 4300
675 W. Peachtree Street
Atlanta, GA 30375

and

Charles J. Rehwinkel
Sprint-Florida, Inc.
P. O. Box 2214
Mail Stop FLTLH00107
Tallahassee, FL 32316

6. BellSouth and Sprint seek four exchange boundary changes in this petition. The first boundary change is to move the proposed Riverfront Apartment Complex to be located in Orlando, Florida, and the proposed Econ River Estates Subdivision to be located in Orlando, Florida, from the Sprint-Florida Goldenrod Exchange to the BellSouth Orlando-Azalea Park Exchange. Copies of the current exchange service area maps for these two exchanges are attached as Exhibit A. Copies of the proposed service area maps are attached as Exhibit B.

7. Approximately 90 percent of the Riverfront Apartment Complex is currently within the BellSouth Orlando-Azalea Park Exchange. No subscribers would be affected by modifying the Orlando-Azalea Park Exchange to include the Riverfront Apartment Complex because the complex has not yet been built.

8. Thirty-six of the 91 residential lots in the Econ River Estates Subdivision are located in the BellSouth Orlando-Azalea Park Exchange. The remainder of the subdivision is in the Sprint-Florida Goldenrod Exchange. No subscribers would be

affected by modifying the Orlando-Azalea Park Exchange to include the entire Econ River Estates subdivision because no houses have yet been built. L

9. The second boundary change is to move part of the proposed Plateau subdivision to be located in Trilacoochee, Florida, from the BellSouth Brooksville Exchange to the Sprint Trilacoochee Exchange. Thirteen of the 52 residential lots are located in the Brooksville Exchange; the remainder are in the Trilacoochee Exchange. No subscribers would be affected by modifying the Trilacoochee Exchange to include the entire Plateau Subdivision because no houses have been built yet. Copies of the current exchange service area maps for these two exchanges are attached as Exhibit C. Copies of the proposed service area maps are attached as Exhibit D.

10. The third boundary change is to move part of the proposed Windermere Chase Subdivision to be located in Winter Garden, Florida, from the BellSouth Orlando-Pine Hills Exchange to the Sprint Winter Garden Exchange. The majority of the residential lots are located in the Winter Garden Exchange. No subscribers would be affected by modifying the Winter Garden Exchange to include the entire Windermere Chase Subdivision because no houses have yet been built. Copies of the current exchange service area maps for these two exchanges are attached as Exhibit E. Copies of the proposed service area maps are attached as Exhibit F.

11. The fourth boundary change is to move part of the proposed Westminster Reserve Subdivision to be located in Orlando, Florida, from the Sprint Windermere exchange to the BellSouth Orlando - Pine Hills exchange. The majority of the residential lots are located in the Orlando - Pine Hills exchange. No subscribers would be affected by modifying the Orlando - Pine Hills exchange to include the entire

Westminster Reserve Subdivision because no houses have yet been built. Copies of the current exchange service area maps for these two exchanges are attached as Exhibit G. Copies of the proposed service area maps are attached as Exhibit H.

12. Upon the Commission's approval of the modifications proposed herein, the parties will file the final tariff sheets for administrative approval.

WHEREFORE, BellSouth and Sprint respectfully request the Commission to modify the exchange boundaries listed herein as proposed.

Respectfully submitted this 6th day of November, 1998.

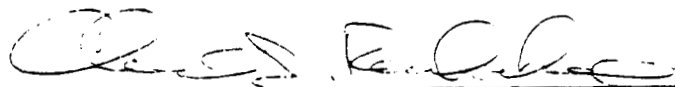
BELLSOUTH TELECOMMUNICATIONS, INC.



Nancy B. White (21)
c/o Nancy H. Sims
150 South Monroe St., Suite 400
Tallahassee, Florida 32301
(305) 347-5558

William J. Ellenberg II
Mary K. Keyer
Room 4300
675 W. Peachtree Street
Atlanta, Georgia 30375
(404) 335-0711

SPRINT-FLORIDA, INC.



Charles J. Rehwinkel
P. O. Box 2214
Tallahassee, FL 32316
(850) 847-0244