State of Florida

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-

DATE: JUNE 13, 2001

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

FROM: DIVISION OF REGULATORY OVERSIGHT (DANIEL, GILCHRIST)
DIVISION OF COMPETITIVE SERVICES (SIMMONS)
DIVISION OF LEGAL SERVICES (B. KEATING, FORDHAM)

RE: DOCKET NO. 010831-TL - REVIEW OF THE SPRINT-FLORIDA, INCORPORATED TARIFF FILING TO INCREASE RATES FOR BASIC AND NONBASIC SERVICES PURSUANT TO SECTION 364.051, FLORIDA STATUTES. (T-010613 FILED 6/01/01)

AGENDA: 06/25/01 - REGULAR AGENDA - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: JULY 1, 2001

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\RGO\WP\010831.RCM

CASE BACKGROUND

Section 364.051(3), Florida Statutes, allows a price regulated local exchange telecommunications company (LEC), on 30 days' notice, to adjust its basic service prices once in any 12-month period in an amount not to exceed the change in inflation less 1 percent. The provision became operative on January 1, 2000, for local telecommuncations companies with less than 3 million basic local telecommunication service access lines in service. It became operative on January 1, 2001, for telecommunications companies with more than 3 million access lines in service.

On June 29, 2000, staff held a workshop regarding price increases under Section 364.051(3), Florida Statutes. Staff's workshop agenda included two major issues: (1) How is the amount of

the allowable price increase determined and (2) how should the allowable price increase be applied for basic local service? Staff received very little input from the representatives attending the workshop; therefore, it was suggested and staff agreed to hold another workshop at a later date to discuss the issues.

On August 23, 2000, staff held another workshop. The following issues were discussed:

- Can a telecommunications company choose to "bank" the inflation for one or more years prior to filing for an index increase,
- Can the telecommunications company file more than once in a 12-month period if they do not request all of the allowable increase in an earlier filing during the year, and
- Should the allowable increase be applied element-by-element or on a composite basis?

On December 15, 2000, and March 12, 2001, pursuant to Sections 364.051(3) and (5), Florida Statutes, BellSouth Telecommunications, Inc. (BellSouth) and Verizon Florida, Inc. (Verizon) filed tariffs requesting an increase in rates for its basic and nonbasic services. Effective January 19, 2001 and February 2, 2001, BellSouth implemented a 5.9835 and a 1.5665 percent increase for its nonbasic and basic service rates, respectively. On April 1, 2001, Verizon implemented a 1.6365 percent increase for its basic and nonbasic service rates. As requested, the rate increases for basic and nonbasic services went into effect at the same time. Since the filings were consistent with the criteria set forth in the Statute (including an element-by-element increase), and because the filings did not contain any controversial issues, the tariff filings for BellSouth and Verizon went into effect as filed.

On June 1, 2001, pursuant to Sections 364.051(3) and (5), Florida Statutes, Sprint-Florida, Incorporated (Sprint) filed a tariff requesting an increase in rates for its basic and nonbasic services. In this filing, Sprint is proposing to: (1) eliminate the separate charge for Touch-Tone service; (2) eliminate separate rates and rate groups for the former Centel and former United service areas by moving the former Centel exchanges to the existing United rate groups at the revised rates which include Touch-Tone in the basic rates; (3) eliminate the exception exchange/area rate additives for Fort Meade, Greenville, Groveland and North Golden Gate and include those areas in the appropriate rate groups;(4) move exchanges that would have regrouped, but which have not been regrouped since 1995, to the appropriate rate group based on the increased number of access lines in the local calling areas; and

(5) restructure and align service connection charges for the former United/Centel service areas so that the charges are uniform throughout Sprint's service territory. Due to the complexity of the issues involved with this filing, Sprint requested and staff agrees that this filing should be brought before the Commission.

DISCUSSION OF ISSUES

ISSUE 1: Should the Sprint-Florida, Incorporated tariff filing requesting to increase its rates for basic and nonbasic services, pursuant to Chapter 364.051 (3) and (5), Florida Statutes, be rejected?

PRIMARY STAFF RECOMMENDATION: Yes. The filing exceeds the allowed increase for basic service under Section 364.051(3), Florida Statutes. **(B. KEATING)**

ALTERNATIVE STAFF RECOMMENDATION: No. On a composite basis, the filing does not exceed the allowed increase for basic service under Section 364.051(3), Florida Statutes. **(SIMMONS, DANIEL)**

PRIMARY STAFF ANALYSIS: Sprint is proposing to increase its rates for basic and nonbasic services, pursuant to Section 364.051 (3) and (5), Florida Statutes, respectively. Pursuant to Section 364.051(5), Florida Statutes, rates for each nonbasic service category may be changed on 15 days' notice in an amount not to exceed "6 percent within a 12-month period until there is another provider providing local telecommunications service in an exchange area at which time the price for any nonbasic service category may be increased in an amount not to exceed 20 percent within a 12-month period, and the rate shall be presumptively valid." Sprint previously filed an increase for its nonbasic services, pursuant to Section 364.051(5), Florida Statutes, and Commission Order No. PSC-96-0012-FOF-TL (which approved an industry stipulation specifying the classification of nonbasic services) that became effective October 13, 2000. Those increases were 4.08% and 1.85% for its nonbasic residential and business exchange baskets, respectively; 5.29% and 1.14% for its nonbasic residential and business optional baskets, respectively; 5.89% for its nonbasic toll basket; and 5.99% for its directory assistance/operator services basket. In this filing, Sprint proposes additional increases for its nonbasic service categories that would result in overall increases for the 12 month period of 4.62% and 1.85% for its nonbasic residential and business exchange baskets, respectively; 5.30% and 1.22% for its nonbasic residential and business optional baskets, respectively; however, the nonbasic toll basket and directory assistance/operator services basket were not affected by the filing.

Proposed Increase in Nonbasic Service Rates

Staff has conducted a review of Sprint's filing and the rate increases for nonbasic services appear to be within the prescribed

limits allowed pursuant to Section 364.051(5), Florida Statutes, and Commission Order No. PSC-96-0012-FOF-TL. Staff has administratively processed tariff filings by price regulated LECs for nonbasic services since 1996. Because this is a combined tariff filing and the rate increase for basic services cannot be processed administratively in this instance, the nonbasic portion has not been processed separately. Staff notes, however, that the nonbasic portion of the filng is consistent with Section 364.051(5), Florida Statutes. Sprint's Attachments 6-9 show the current and proposed nonbasic rates.

Proposed Increase in Basic Service Rates

Sprint's filing also includes an overall composite increase of 1.50% for basic service rates, which it believes is pursuant to Section 364.051(3), Florida Statutes. That section of the statute provides that "inflation shall be measured by the changes in the Gross Domestic Product Fixed 1987 Weights Price Index (GDPPI), or successor fixed weight price index, published in the Survey of Current Business or a publication, by the United States Department of Commerce." The company may adjust its prices "in an amount not to exceed the change in inflation less 1 percent." Sprint used the 4th Quarter 2000 GDPPI-1% (1.64%) to determine the price increase for basic local service. However, the 1st Quarter 2001 GDPPI, which is more recent, has now also been published. The 1st Quarter 2001 GDPPI-1% is 1.80%.

Unlike the price index filings by BellSouth and Verizon, Sprint proposes to apply the rate increase for basic services on a composite basis. Under Sprint's composite method, individual rates for each service may be increased or decreased so long as in the aggregate, the average increase is no greater than the allowable percentage. Under the element-by-element interpretation supported by primary staff, each basic rate may be increased by the allowable percentage.

Sprint's Attachment 1 shows that the proposed increase in annual revenue for basic services is 1.50% on a composite basis. Attachment 3 provides a detailed analysis of each component including: (1) eliminating the separate charge for Touch-Tone service; (2) eliminating separate rates and rate groups for the former Centel and former United service areas by moving the former Centel exchanges to the existing United rate groups at the revised rates which include Touch-Tone in the basic rates; (3) eliminating the exception exchange/area rate additives for Fort Meade, Greenville, Groveland and North Golden Gate and including those areas in the appropriate rate groups;(4) moving exchanges that

would have regrouped, but which have not been regrouped since 1995, to the appropriate rate group based on the increased number of access lines in the local calling areas; and (5) restructuring and aligning service connection charges for the former United/Centel service areas so that the charges are uniform throughout Sprint's service territory.

Sprint's Attachments 3, 4, and 5 show the current and proposed basic residential and business retail by exchange. All of the proposed United basic residential service rates reflect a decrease if Touch-Tone is included in the current rate, with the exception of those exchanges that move to a higher rate group. All of the proposed United basic business service rates will increase, with the exception of two exception areas that will be eliminated and moved into rate groups. With the elimination of separate rates and rate groups for Centel customers and moving those customers to the existing United rate groups at the revised rates which include Touch-Tone in the basic rates, all Centel basic service residential customers will experience a rate decrease. All Centel basic service business customers will experience a rate decrease with three exceptions. Business customers in Centel's rate group 5 who move to United's rate group 4 and business customers in Centel's rate group 6 who move to United's rate group 5 will experience a rate increase and customers in rate group 2 who remain in rate group 2 will experience no change in their basic service rate.

Classification of Rate Changes as Basic or Nonbasic

Inasmuch as Sprint's filing includes basic and nonbasic rate changes, staff reviewed the filing to ensure that the various rates were properly classified as "basic" or "nonbasic." While staff believes that Sprint has classified the various rates appropriately, we will describe those aspects which may not seem completely straightforward.

First, Sprint has treated Touch-Tone as part of basic service, even though there is a separate charge for this service presently. Staff believes that this treatment is appropriate since "basic local telecommunications service" is defined in Section 364.02(2), Florida Statutes, as including "dual tone multifrequency dialing."

Second, Sprint has separated the rate for Sprint Solutions®, a bundled access line and features package, into basic and nonbasic components. In particular, Sprint has treated the access line demand and associated rates and revenues portion of the Sprint Solutions® package as basic service. The basic rate component of the Sprint Solutions® package was derived by calculating an average

of the applicable rates for basic service. While the average was not calculated on a strict weighted basis, staff believes that the estimate is reasonable. According to Sprint, customers that "subscribe to optional features on a packaged basis . . . should not lose the statutory protections provided by retaining status as basic service customers." Staff believes that this approach is conservative and reasonable. Sprint's Attachment 3, page 2 of 9, reflects the proposed increases to all retail Sprint Solutions® packages of $1.00 for residential packages and $1.80 for business packages.

Third, there is an issue as to which non-recurring charges should be classified as basic service. This issue first arose in Docket No. 951159-TL, wherein the Commission established nonbasic service categories for purposes of implementing the provision in Section 364.051, Florida Statutes, regarding limitations on price increases for nonbasic services. At that time, non-recurring charges were somewhat of an enigma to staff and the parties since these rates are not strictly basic or nonbasic in nature. The docket was resolved by stipulation and memorialized in Order No. PSC-96-0012-FOF-TL. The order stated "(t)he non-recurring charges associated with the initiation of basic local service should not be included in a nonbasic service category." Instead, these charges were treated as basic rates, which were capped at that time for price regulated companies.

In the instant case, we are faced with the issue of determining which non-recurring charges are associated with the "initiation of basic local service." Sprint has taken the position that all of the non-recurring charges, which are applicable to basic and nonbasic customers, should be treated as basic service for purposes of its filing. While logical for the most part, staff believes that Sprint has simplified the situation for practical ease. As will be explained below, staff does not believe, however, that this simplification has any material effect on the allowable price increase for basic or nonbasic services.

Sprint's current structure of non-recurring charges includes discrete rates for the following: primary service order, secondary service order, access line charge, premises visit, record change, number change, and restore service. Under Sprint's proposed structure, the record change and number change charges are being eliminated and subsumed under the secondary service order charge. According to Sprint, the "secondary service ordering charge is applicable for basic residential service additional lines and should also be classified as basic." Staff agrees with the first portion of the statement, but is somewhat troubled by the second

portion. Secondary service order charges may be assessed for many other reasons besides customers ordering additional lines. The difficulty is that Sprint most likely has no means of separating the pricing units for secondary service order charges into those associated with ordering additional lines versus those associated with ordering optional services. Staff believes that Sprint has erred on the side of being conservative and treated all secondary service order charges as basic. This approach is conservative since the pricing flexibility under Section 364.051, Florida Statutes, is less for basic services than for nonbasic services. Finally, staff agrees with Sprint that the restore service charge is a form of initiating basic local service. In other words, reinitiating service should be treated the same as initiating service. Sprint's Attachment 3, pages 3-5 of 9, reflects the current and proposed retail service charges.

Lastly, Sprint also contends that resold services should be included in the basic service price cap filing, because the ALEC customer is the customer of record for the basic service access lines. Sprint contends that Section 364.02(2), Florida Statutes, does not separately address resale. Therefore, Sprint believes it is only logical to include resold services because, otherwise, resold services would be subject to the statutory limitation on price increases for nonbasic services.

Section 364.02(2), Florida Statutes, states:

> "Basic local telecommunications service" means voice-grade, flat-rate residential, and flat-rate single-line business local exchange services which provide dial tone, local usage necessary to place unlimited calls within a local exchange area, dual tone multifrequency dialing, and access to the following: emergency services such as "911," all locally available interexchange companies, directory assistance, operator services, relay services, and an alphabetical directory listing. For a local exchange telecommunications company, such terms shall include any extended area service routes, and extended calling service in existence or ordered by the commission on or before July 1, 1995.

Section 364.02(8), Florida Statutes, states:

> "Nonbasic service" means any telecommunications service provided by a local exchange telecommunications company other than a basic local telecommunications service, a local interconnection arrangement described in s. 364.16, or a network access service described in s. 364.163.

The definition of nonbasic service in Section 364.02(8), Florida Statutes, could be read to include resold services. That definition says that nonbasic service is any service provided by a telecommunications company except for basic service, interconnection under Section 364.16, Florida Statutes, or access services under Section 364.163, Florida Statutes. Arguably, since the definition specifically excludes basic service, interconnection, and access service from the definition of nonbasic service, but does not exclude resale under Section 364.161, Florida Statutes, then the definition could be read to include resale--if one believes that resale is not included in basic service, which is specifically excluded. As Sprint has argued, however, Section 364.02(2), Florida Statutes, does not differentiate between basic service sold directly to end use customers and that which is sold to ALECs for resale. Thus, if resold services are interpreted to be "basic services," then they are specifically excluded from the definition of nonbasic service.

Another possible interpretation of these definitions in Section 364.02, Florida Statutes, is that neither definition contemplates any service provided to another carrier, be it interconnection, resale, or access, as falling within its parameters, which could mean that the provisions of Section 364.051(3) and (5), Florida Statutes, simply do not apply to them at all. This interpretation would also mean that resold services should not be included in this filing by Sprint.

Staff, however, agrees with Sprint that the most reasonable interpretation is that resold services should be included under basic service, because the definition of basic service does not differentiate between basic service sold to end-use customers and that sold to ALECs. Staff recommends, therefore, that Sprint's inclusion of resold services in its basic service price cap filing is consistent with the statute. Staff notes that other recent tariff filings by other companies implementing Section 364.051(3), Florida Statutes, have also interpreted basic service as including

resold services. Sprint's Attachment 3, pages 5-8 of 9, reflect the current and proposed CLEC rates and charges.

Application of Allowable Increase for Basic Service Prices

Section 364.051(3), Florida Statutes, states:

> In the event that it is determined that the level of competition justifies the elimination of price caps in an exchange served by a local exchange telecommunications company with less than 3 million basic local telecommunications service access lines in service, or at the end of 5 years for any local exchange telecommunications company, the local exchange telecommunications company may thereafter on 30 days' notice adjust its basic service prices once in any 12-month period in an amount not to exceed the change in inflation less 1 percent. Inflation shall be measured by the changes in the Gross Domestic Product Fixed 1987 Weights Price Index, or successor fixed weight price index, published in the Survey of Current Business or a publication, by the United States Department of Commerce. In the event any local exchange telecommunications company, after January 1, 2001, believes that the level of competition justifies the elimination of any form of price regulation, the company may petition the Legislature.

Sprint argues that this provision does not require that the increases be addressed on an element-by-element basis; instead, Sprint contends that the statute allows the percentage increase to be implemented on an aggregate basis. Sprint contends that an aggregate approach should also be approved because the Commission has applied a similar interpretation to the nearly identical wording used in Section 364.163, Florida Statutes, regarding reductions to access charges.

Sprint contends that the plain language of Section 364.051(3), Florida Statutes, should not be read to require an element-by-element approach, even though at the Staff Workshop regarding the implementation of this provision, some commenters noted that an element-by-element approach was the proper interpretation. Sprint notes that some commenters believe that the use of the word

"categories" in the following subsection of the statute, 364.051(5), indicates that the Legislature intended the use of a "basket" approach with regard to nonbasic services, while the absence of that same word from subsection (3) indicates the need for an element-by-element approach. Sprint emphasizes that the absence of the word "category" from subsection (3) is, however, logical because there is no need to divide services into "baskets" when one is talking about basic service. It is a "discrete service category" unto itself. Sprint further contends that even the headings for each of the subsections of the statute support this interpretation. Sprint notes that the heading for subsection (2) refers only to BASIC LOCAL TELECOMMUNICATIONS SERVICE (emphasis added), while the heading for subsection (5) refers to NONBASIC SERVICES (emphasis added). Sprint believes that this difference clearly indicates that the Legislature recognized that there was only one category of basic service, but several for nonbasic.

Sprint further contends that the Commission has used similar rationale in determining the appropriate access charge reductions under Section 364.163, Florida Statutes. Sprint explains that in Order No. PSC-97-1028-FOF-TP, issued in Docket No. 970274-TP, the Commission allowed Sprint to use a basket approach to bring Centel and United's rates into parity. Sprint also notes that in an earlier decision in Docket No. 960910-TP, in which the Commission implemented Section 364.163(6) for the first time, the Commission stated that, "Percentage reductions may vary by switched access element, but must yield the overall reduction required by Subsection 364.163(6), Florida Statutes." Order No. PSC-96-1265-FOF-TP at p. 3. Sprint notes that the only difference between the language in 364.051(3) and 364.163(6), Florida Statutes, is the use of the word "rates" instead of the word "prices." Sprint also contends that it is significant that 364.163(6) states that each "specific network access service rate" is capped, while the absence of the word "specific" from 364.051(3), Florida Statutes, means that the percentage increases for basic service need not be limited to an element-by-element approach.

Staff begins by emphasizing that this appears to be a close question of interpretation. However, there are several reasons staff believes that the statute should be interpreted to preclude the basket approach proposed by Sprint.

First, the statute states that the company's basic service "prices," rather than "price," may be adjusted. This seems to be contrary to Sprint's argument that basic service should be treated as its own "category" of service, as that term is used in Section 364.051(5), Florida Statutes. In Section 364.051(5), Florida

Statutes, when the term "category" is used, the singular form, "rate," is used. Even if the Legislature truly viewed basic service as an entire category unto itself, it appears that the adjustments allowed under Section 364.051(3), Florida Statutes, were envisioned to apply to individual "prices" within that category, as opposed to the overall "price" for the category. This interpretation would also be consistent with the Commission's prior interpretation of Section 364.051(2), Florida Statutes, in Order No. PSC-97-0488-FOF-TL, in which the Commission stated that, "'Rates' means all rates to customers for basic local and protected non-basic telecommunications services." Order at p. 8 (emphasis added). Further discussion of this decision is contained in the section of Staff's analysis on regrouping.

As for the Commission's interpretation of the language in Section 364.163, Florida Statutes, staff agrees that the language is quite similar; however, the service addressed, as well as the customers of that service, are distinctly different. In Order No. PSC-96-1265-FOF-TP, the Commission determined that:

> Since switched access rates are composed of multiple elements, we believe that a meaningful comparison can only be made by calculating the current intrastate composite rate per minute and the December 31, 1994, interstate composite rate per minute. While comparisons could be made on an element-by-element basis, the current intrastate rates for certain elements may be lower than the December 31, 1994, interstate levels, and the current intrastate rates for other elements may be higher than the December 31, 1994, interstate levels. Through the composite approach, intrastate rate elements that are currently priced lower than December 31, 1994, interstate levels will help offset the need to reduce intrastate rate elements that are currently priced higher than December 31, 1994, interstate levels. . . .We believe this approach is appropriate because customers (IXCs) are concerned with the bottom line per minute charge.

Order at pgs. 2-3. While intrastate switched access is composed of multiple components, IXCs that purchase access get similar service. Therefore, a composite approach was still effective in yielding a net reduction to the customers of access service, the IXCs.

Purchasers of basic service do not, however, get the same product. In fact, "basic service" covers a myriad of products obtained by end-users, including basic service purchased by residential customers and that which is purchased by business customers. Because basic service customers can purchase such different services, using Sprint's aggregate approach would result in a number of customers seeing increases that exceed the Gross Domestic Product Fixed 1987 Weights Price Index minus 1 percent. Staff does not believe that this is what was intended by Section 364.051(3), Florida Statutes.

Furthermore, unlike an IXC, an end-user is located in a specific location. As such, end-users will only see the single rate that they pay for their location. The aggregate approach was less problematic for IXCs, however, because an IXC operates over a wide area. As such, even if the IXC was paying a higher rate in certain respects, its access payments would likely be much lower in other respects depending upon the type of transport used, still resulting in a net reduction in the access charges it paid. This "net benefit" analysis cannot be applied to typical end-users of basic service. Thus, if the Commission considers the interests of the customers for the service, as it apparently did in interpreting the access charge reduction provisions, then the proposal by Sprint should be rejected.

Regrouping

Sprint argues that if it is not allowed to regroup, customers under the Centel and United tariffs will be charged different rates, which would result in discriminatory treatment between similarly situated customers, as prohibited by Section 364.10, Florida Statutes. Sprint adds that regrouping will eliminate locality-based disparity consistent with prior Commission decisions. In the past, however, the Commission has determined that regrouping constitutes a rate increase. In Order No. PSC-97-0488-FOF-TL, the Commission stated that:

> The parties in this proceeding have misinterpreted the clear language of section 364.051, Florida Statutes. Section 364.051 prohibits rate increases by price regulated LECs in basic and protected non-basic telecommunications services for the time set out in the statute, period. It does not make any exceptions to that prohibition, for rate regrouping, extended area service after July 1, 1995, or any other price "adjustment". We

> believe that the parties have misinterpreted section 364.051 to permit the price increases at issue here, because they have applied traditional regulatory pricing principles of rate setting and rate structure to a statutory scheme that rejects those principles, and instead embraces a deliberate move to the pricing mechanisms of a competitive market for telecommunications services in Florida.

Order at p. 7. The Commission added that:

> . . . We still agree with our analysis in Order No. PSC-96-0036-FOF-TL where we said:
>
> > [T]he rate grouping plans are something that have [sic] originated from rate of return regulation. With the revisions of Chapter 364 and the encouragement of competition, current rate structures of the local exchange companies ultimately may vary greatly to respond to competitive pressures. As competition develops, particularly price competition, pricing plans such as regrouping will become an historic anachronism.
>
> Order No. PSC-96-0036-FOF-TL, p. 4.
>
> We do not believe that the statute contemplates a rate increase for price-regulated LECs under the rationale that it is appropriate to raise basic telecommunications service rates for certain customers by moving them into a different group as long as the rates of any group are not raised. The statute does not say that <u>rate group</u> rates will be capped. It says that <u>rates</u> will be capped. "Rates" means all rates to customers for basic local and protected non-basic telecommunications services.

Order at p. 7-8. Similarly, Section 364.051(3), Florida Statutes, says that the company may adjust its prices in accordance with the statute, which under a consistent interpretation would mean all prices paid by customers. While staff does not believe that Order No. PSC-97-0488-FOF-TL prohibits rate regrouping as a concept, it does clearly indicate that rate regrouping constitutes a rate increase for some customers. Thus, if regrouping would cause the rates to exceed the cap--or in this case the allowable increase--then the regrouping should not be allowed. According to Sprint's

filing, regrouping would result in increases for certain customers, particularly business customers, that exceed the allowable increase under Section 364.051(3), Florida Statutes.

In Order No. PSC-97-0488-FOF-TL, the Commission also explained that price differences that result from implementation of rate caps under Section 364.051, Florida Statutes, do not constitute undue discrimination, particularly when customers within the same exchange will continue to pay the same rate. See Order No. PSC-97-0488-FOF-TL, issued April 28, 1997, in Docket No. 951354-TL. The Commission's decision on this point was upheld by the Florida Supreme Court in BellSouth Telecommunications, Inc. v. Johnson, 708 So. 2d 594 (Fla. 1998). It seems logical that the same rationale employed by the Commission in that case to address potential rate disparities would be equally applicable to rate disparities that may result when other portions of Section 364.051, Florida Statutes, are implemented, including the provisions regarding rate increases. Such disparities should not be considered "undue or unreasonable prejudice or disadvantage," as set forth in the statute, such that the statute would be viewed as requiring the Commission to approve Sprint's regrouping proposal.

Conclusion

For the foregoing reasons, staff recommends that Sprint's tariff filing be rejected because it is not in compliance with Section 364.051(3), Florida Statutes.

ALTERNATIVE STAFF ANALYSIS: In the alternative, staff agrees with Sprint's interpretation of Section 364.051(3), Florida Statutes, and believes that certain policy considerations weigh in favor of that interpretation.

As discussed in Order No. PSC-97-0488-TL, rate groups were developed in a monopoly environment and are clearly much less relevant in a competitive environment where market conditions should drive pricing decisions. Further, as a result of the rate group system, basic rates tend to be the highest in the urban areas, where local calling scopes are more expansive. From the standpoint of the company's cost of providing basic service, however, urban areas are the least expensive to serve. Thus, this system of rate groups, which was predicated on the value of service concept and reasonable in a monopoly environment, may be illogical in a competitive environment. Whether rate groups are logical or illogical is not a decision before this Commission in this tariff

filing, but alternative staff does firmly believe that the LECs should have some flexibility to price more in accordance with cost, rather than local calling scope. In order to afford some flexibility, alternative staff believes that the statutory limitation on price increases for basic services should be interpreted to apply on an aggregate basis. In this way, the LECs would be able to realign rates to some extent. For example, if a LEC eliminated rate groups, certain rates would presumably be decreased, while others would be increased. On average, basic rate increases would be limited to GDPPI-1%.

In the instant filing, Sprint is proposing one set of rate groups to cover the former Centel and United exchanges, in lieu of the present two sets of rate groups (one for the former Centel exchanges and another for the former United exchanges). While alternative staff does not necessarily support the rate group concept in today's environment, the question at hand is simply whether or not Sprint's filing is permissible under Section 364.051, Florida Statutes. The permissibility of Sprint's filing is directly related to whether the statutory limitation on basic rate increases applies to individual rates or the composite of all basic service rates. Under the former interpretation, Sprint's proposed basic rate increases would not be permissible since certain rates are being increased by more than GDPPI-1%. Under the latter interpretation, Sprint's proposed basic rate increases would be permissible since the average increase is less than GDPPI-1%.

Given our belief that LECs, in today's environment, should have some flexibility to price more in accordance with cost, rather than local calling scope, alternative staff supports the interpretation that the statutory limitation on basic rate increases should apply in the aggregate (i.e., the composite of all basic service rates). Under this interpretation, Sprint's filing to increase basic service rates represents a percentage increase which is less than GDPPI-1%. On this basis, alternative staff recommends that Sprint's filing to increase basic and nonbasic service rates should be acknowledged.

Finally, staff notes that this filing is unique in that Sprint is proposing to use this filing to accomplish several things including eliminating Touch-Tone and the separate rates, rate groups, and service charges for the United and Centel customers. Since Sprint's filing is designed to place former United and Centel customers on the same system of rates, the Commission need not necessarily consider its decision in this proceeding to be precedential for other price regulated LECs.

ISSUE 2: Should Sprint's proposed effective date for basic and nonbasic tariffs of July 1, 2001, with customer bills reflecting the changes effective with the individual customer's applicable July billing date be accepted?

RECOMMENDATION: No. If the Commission approves the primary recommendation in Issue 1, this issue is moot. However, if the Commission approves the alternative recommendation in Issue 1, the rate increase proposed by Sprint for its basic and nonbasic services be acknowledged, effective July 1, 2001, and customer bills should be prorated as necessary to implement all rate increases and decreases effective July 1, 2001. **(SIMMONS, DANIEL, B. KEATING)**

STAFF ANALYSIS: Sprint proposes that the rate increase for basic and nonbasic services go into effect July 1, 2001, with customer bills reflecting the changes effective with the individual customer's applicable July billing date. Pursuant to Sections 364.051(3) and (5), Florida Statutes, rates for basic and nonbasic services may go into effect on 30 and 15 days' notice, respectively. However, Sprint proposes extending the 15 day notice period for nonbasic service rates so that the increase goes into effect on July 1, 2001, instead of June 16, 2001.

Since the statute provides that rate changes go into effect upon 30 or 15 days' notice pursuant to the criteria set forth in those statutes, the tariffs are not really "approved." If they meet the terms of the statute, they go into effect by operation of law. Thus, they are presumptively valid. As the Commission set forth in the footnote to Section 2.07C.13.0 in the Administrative Procedures Manual,

> In the event that staff's review of the tariff filing uncovers a potential substantive conflict with Florida Statutes, Commission rules or orders, staff will process the tariff administratively and concurrently open an investigation docket.

In this case, Sprint has offered to delay implementation of its tariff until the Commission renders its decision on this complex matter.

Sprint has indicated it would like to implement this tariff at the start of each billing cycle for affected customers. By using this approach, Sprint believes it will eliminate the administrative

difficulties with the true-up that would be necessary if Sprint implements this tariff on a date specific. Staff is, however, concerned that this could be construed as "undue or unreasonable prejudice or disadvantage" under Section 364.10, Florida Statutes, because customers within the same exchange, even neighbors, could be charged different rates at different times, depending upon their billing cycle.

Staff recommends that if the Commission approves the primary recommendation in Issue 1, this issue is moot. However, if the Commission approves the alternative recommendation in Issue 1, staff recommends that the rate increase proposed by Sprint for its basic and nonbasic services be acknowledged, effective July 1, 2001. However, customer bills should be prorated as necessary to implement all rate increases and decreases effective July 1, 2001.

ISSUE 3: Should this docket be closed?

RECOMMENDATION: Yes. If the Commission accepts staff's primary recommendation in Issue 1, the docket should be closed upon the expiration of the period for reconsideration and appeal. If the Commission accepts staff's alternative recommendation in Issue 1, the docket should be closed upon issuance of the order since the Commission would have found the tariffs consistent with the statute, and thus the filing would be going into effect by operation of law. **(B. KEATING, FORDHAM)**

STAFF ANALYSIS: If the Commission accepts staff's primary recommendation in Issue 1, the docket should be closed upon the expiration of the period for reconsideration and appeal. If the Commission accepts staff's alternative recommendation in Issue 1, the docket should be closed upon issuance of the order since the Commission would have found the tariffs consistent with the statute, and thus the filing would be going into effect by operation of law.