



Susan S. Masterton
Attorney

Law/External Affairs
Post Office Box 2214
1313 Blair Stone Road
Tallahassee, FL 32316-2214
Mailstop FTLHO0107
Voice 850 599 1560
Fax 850 878 0777
susan.masterton@mail.sprint.com

May 10, 2002

Ms. Blanca S. Bayó, Director
Division of the Commission Clerk and
Administrative Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Re: Docket No. 010963-TP Sprint's Post Workshop Comments

Dear Ms. Bayó:

Enclosed for filing on behalf of Sprint Communications Company Limited Partnership and Sprint-Florida, Incorporated ("Sprint") is the original and 15 copies of Sprint's Post Workshop Comments.

Copies are being served on the parties in this docket, pursuant to the attached Certificate of Service.

Please acknowledge receipt of this filing by stamping and initialing a copy of this letter and returning same to the courier. If you have any questions, please do not hesitate to call me at 850/599-1560.

Sincerely,

Susan S. Masterton

Enclosure

DOCUMENT NUMBER-DATE

05097 MAY 10 08

FPSC-COMMISSION CLERK

and other interested parties to file post workshop comments addressing several issues regarding which the Commissioners indicated they would like additional input.

INCENTIVE-BASED MECHANISMS AND INNOVATIVE COST RECOVERY MECHANISMS

The Commission asked participants and interested parties to address incentive-based mechanisms to encourage companies to adopt rate center consolidation and innovative mechanisms for recovering a company's costs and lost revenues as a result of the implementation of rate center consolidation. Sprint has set forth its proposal for the implementation of rate center consolidation in its March 15 presentation to the Commission. Key criteria include:

- single ILEC consolidation of rate centers
- contiguous rate centers
- same local and EAS calling scopes
- same ECS routes and rates
- same basic local rates in combining rate centers or PSC approves rate adjustments

However, before pursuing implementation of specific rate center consolidation proposals, the Commission must first consider whether rate center consolidation is a necessary number conservation mechanism. The North American Number Council's initial rate center consolidation analysis shows that rate center consolidation will extend the life of the NANP for a only few years once number pooling has been implemented.¹ It appears to Sprint that the FCC's rules for number conservation, NXX reclamation, sequential number assignment by thousands blocks, and the Number Resource

¹ See, *Impact of Rate Center Consolidation on NANP Exhaust*, presented by NANPA, February 28, 2002.

Utilization/Forecasting (NRUF) reporting have provided needed NPA relief without the need for rate center consolidation.

In addition, recent developments relating to the 407/321 area codes indicate that numbering relief may not be as critical as had been anticipated at one time. In Docket No. 010743-TL, established by the Commission to address a perceived urgent need for an additional overlay to relieve number exhaust in the 407/321 area codes, the staff has recently filed a recommendation for consideration by the Commission at the May 21, 2002 Agenda Conference, to delay the implementation of its area code relief order because the original exhaust date has been extended due to new information provided by NANPA and also because of the pending implementation of number pooling in the 407/321 area codes.

LEGAL ISSUES

Much of the discussion at the workshop focused on the Commission's legal authority under federal or state law to impose rate center consolidation as a number conservation measure. Specifically, participants and interested parties were asked to address the Commission's authority to require rate center consolidation in light of the statutory scheme for price regulation in Florida and also to address the Commission's authority to remove barriers to competition and how any such authority can be reconciled with the price cap statute.

Commission's Authority Under s. 364.051, F.S.

On April 2, 1999, the Commission requested that the FCC delegate to the state certain responsibilities, including the authority to order rate center consolidation, related to numbering administration.² The FCC granted the Commission's request, in part, via a letter order issued September 15, 1999.³ In responding to the Commission's request regarding rate center consolidation, the FCC stated that "rate center consolidation, as it involves matters relating to local calling scopes and local call rating, falls under state utility commissions' rate-making authority." (paragraph 40) The FCC went on to grant the Commission's request for any additional authority it might need to consolidate rate centers. (Id.) As Sprint understands it one of the questions to be addressed in these comments is the effect of the FCC's grant of authority in relation to the Commission's statutory jurisdiction over telecommunications companies, as set forth by the Florida Legislature under ch. 364, F.S.

Under general principles of administrative law, an administrative agency has only the power conferred upon it by statute and must exercise its authority in accordance with the controlling law. See, 2 Fla. Jur. 2d, Administrative Law, §§30, 31; 2 Am Jur. 2d Administrative Law, §§24, 55. The Commission recognized this fundamental limitation on its authority in a complaint filed by MCI seeking relief from the intrastate access charges

² Section 251 (e) of the Telecommunications Act of 1996 accords the FCC exclusive jurisdiction over the North American Numbering Plan for the United States but specifically does not preclude the FCC from delegating such jurisdiction to the states.

³ *In the Matter of Florida Public Service Commission Petition to Federal Communications Commission for Expedited Decision for Grant of Authority to Implement Number Conservation Measures*, Docket No. 96-68, Order No. 99-249.

imposed by GTE Florida.⁴ A state agency is a creature of the state legislature and all of its authority is that set forth in the state law that creates and confers specific jurisdiction on that agency. 2 Fla. Jur. 2d, Administrative Law, §30. In Florida, a state agency's jurisdiction is even further constrained by ch. 120, F.S., the Florida Administrative Procedures Act.

The Florida Public Service Commission is an arm of the Legislature, created for the purpose of exercising the Legislature's jurisdiction over utilities, including the telecommunications industry.⁵ In accordance with the general principles of administrative law, the Commission derives its power solely from the Legislature and must have a legislative grant of authority in order to act. *United Telephone Company of Florida v. Public Service Commission*, 496 So. 2d 116 (Fla. 1986). As recognized by the Florida Supreme Court in *United Telephone* and by the Commission itself in the MCI Access Charge complaint, if there is any doubt about existence of the Commission's power to act, it should be resolved against the exercise of the power. 496 So. 2d at 118; MCI Order at 16.

Sprint believes that ch. 364, F.S., as it currently exists, restricts the Commission's authority to order rate consolidation for ILECs that have elected price regulation in Florida. Section 364.051, F.S., establishes the parameters for the election of price regulation. Effective January 1, 1996, it caps the rates for basic local telecommunications service of a price-regulated ILEC at the rates in effect on July 1, 1995 or on the date of a company's election of price-regulation. Most, if not all, of the Florida ILECs have now elected price regulation, so that, pursuant to the statute, their rates for basic local telecommunications services are capped.

⁴ See, *Complaint of MCI Telecommunications Corporation against GTE Florida Incorporated regarding anticompetitive practices related to excessive intrastate switched access*, Docket No. 970841-TP, Order No. 97-1370-FOF-TP.

⁵ The Commission's jurisdiction generally is set forth in ch. 350, F.S.

Section 364.02 (2), F.S., defines basic local telecommunications service to mean certain voice-grade, flat-rate residential and single line business services, including any extended area service (EAS) and extended calling service (ECS) routes that were in effect on July 1, 1995. In addition, section 364.385, Florida Statutes, prohibits new proceedings to establish EAS or ECS routes after July 1, 1995. Pursuant to the law, EAS and ECS service established after that date are nonbasic services⁶, and, therefore, the Commission is prohibited from ordering an ILEC to implement such service, although an ILEC may voluntarily choose to establish such service pursuant to the price regulation of nonbasic services set forth in s. 364.051, F.S. The Commission has recognized this limitation on its authority to order new EAS or ECS service subsequent to the passage of the 1995 Act.⁷

As described by BellSouth at the workshop, rate center consolidation results essentially in the creation of EAS or ECS service, since its practical effect is to expand the local calling areas of the rate centers that are consolidated. (Tr. at pp. 14, 16) Sprint submits that the limitations on the Commission's authority to order new EAS or ECS service preclude the Commission from ordering rate center consolidation for price-regulated ILECs.

Section 364.051, F.S., also prohibits the Commission from requiring rate center consolidation, if the consolidation would result in an increase in basic local service rates. The section caps price-regulated ILECs' rates at the level in effect on July 1, 1995 or the date of election. This provision has been interpreted by the Commission to apply to the individual rates charged customers, not to the geographic rate groups based on population set forth in the ILECs' tariffs. See, *In re: Notice of Election of Price Regulation by*

⁶ "Nonbasic service" is defined in s. 364.02(8), F.S., to mean any telecommunications service provided by an ILEC other than a basic local telecommunications service, a local interconnection service or an access service.

BellSouth Telecommunications, Inc., Docket No. 951354-TL, Order No. PSC-97-0488-FOF-TL.⁸ In this order accepting BellSouth's election of price regulation, the Commission prohibited BellSouth from regrouping certain local calling areas pursuant to its tariffs, as the regrouping would have resulted in customer rate increases. The Commission found such regrouping to be prohibited by the price caps in s. 364.051, F.S. The Florida Supreme Court affirmed the Commission's position on the application of the rate caps in *BellSouth Telecommunications, Inc. v. Johnson*, 708 So.2d 594 (Fla. 1998)⁹.

As discussed at the workshop, rate center consolidation results in "effective" rate regrouping, since to avoid discriminatory treatment of similarly situated customers (prohibited by ss. 364.09 and 364.10, F.S.) all customers in the consolidated rate center would be charged the basic rate for the highest rate group, assuming that the local calling scopes for all customers would be increased to incorporate the entire rate center. (Tr. at pp. 52-56) Based on the Commission's previous interpretations of the price regulation statutes (affirmed by the Florida Supreme Court), controlling state law prohibits the Commission from ordering rate center consolidation when it will result in an increase in basic local telecommunications service rates.

A further consideration is that rate center consolidation may also be construed as resulting in a reduction in an ILEC's access charges, in that it makes calls that were previously toll calls into local calls. The Commission has ruled that it has no authority to reduce access charges other than that specifically set forth in the applicable statute. MCI

⁷ See, e.g., *In re: Resolution by Hamilton County Board of Commissioners requesting extended area service (EAS) from Hamilton County to all exchanges within Suwannee County, Columbia County and Madison County*, Docket No. 970825-TL; Order No. PSC-97-0971-FOF-TP, issued August 12, 1997.

⁸ See also a discussion of the Commission's interpretation of the price regulation statute in connection with Sprint's basic rate filing *In re: Request by Sprint-Florida, Incorporated for approval of tariff filing to increase rates for basic and nonbasic services pursuant to Section 364.051, F.S.*, Docket No. 010831-TL, Order No. PSC-01-1582-FOF-TL, issued July 31, 2001.

Access Charge Order at page 18. Rate center consolidation is contrary to the access charge reduction scheme set forth in the law. As an administrative agency, the Commission cannot circumvent its legislatively prescribed powers by exercising authority indirectly that it is prohibited from exercising directly. Therefore, Sprint believes that the price regulation scheme restrains the Commission's authority to require price regulated ILECs to implement rate center consolidation to the extent that it results in access charge reductions in violation of this section.

Elimination of Barriers to Competition

Participants and interested parties were also asked to address specifically how the Commission's authority "to remove barriers to competition" can be reconciled with the price cap scheme. Sprint does not believe that the Commission has any specific authority to eliminate barriers to competition. Section 364.01, F.S., sets forth the Commission's jurisdiction. Subsection (1) of s. 364.01 provides that the Commission "shall exercise over and in relation to telecommunications companies the power conferred by this chapter." Subsection (2) expresses legislative intent to give the Commission "exclusive jurisdiction in all matters set forth in this chapter...in regulating telecommunications companies." Subsection (4) directs the Commission to exercise this exclusive jurisdiction to: (b) encourage competition through flexible regulatory treatment; (d) promote competition by encouraging new entrants; (f) to eliminate rules or regulations that will delay or impair competition; and (h) to recognize the competitive telecommunications environment through flexible regulatory treatment where such flexibility will not reduce the availability of basic services at affordable rates . However,

⁹ Referred to in the workshop at the "West Palm Beach case."

nowhere in ch. 364, F.S., is the Commission accorded affirmative jurisdiction to “remove barriers to competition.”

The Federal Telecommunications Act, which substantively governs much of the Commission’s regulation of telecommunications companies for the purpose of implementing local competition, provides in Section 253 that neither the state nor local governments may impose laws that pose a barrier to competition.¹⁰

Subsection of (d) of the section authorizes the FCC to conduct proceedings to determine if a state law, in fact, violates that provision. While restraining the Commission in the exercise of its jurisdiction, the federal law conveys no affirmative authority to the Commission to eliminate barriers to competition.¹¹

¹⁰ Sec. 253. - Removal of barriers to entry

a) In general

No State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service.

(b) State regulatory authority

Nothing in this section shall affect the ability of a State to impose, on a competitively neutral basis and consistent with section 254 of this title, requirements necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers.

(c) State and local government authority

Nothing in this section affects the authority of a State or local government to manage the public rights-of-way or to require fair and reasonable compensation from telecommunications providers, on a competitively neutral and nondiscriminatory basis, for use of public rights-of-way on a nondiscriminatory basis, if the compensation required is publicly disclosed by such government.

(d) Preemption

If, after notice and an opportunity for public comment, the Commission determines that a State or local government has permitted or imposed any statute, regulation, or legal requirement that violates subsection (a) or (b) of this section, the Commission shall preempt the enforcement of such statute, regulation, or legal requirement to the extent necessary to correct such

¹¹ This should be contrasted with 47 U.S.C. §257, which specifically provides authority to the FCC to remove federal regulations that serve as barriers to competition.

Sec. 257. - Market entry barriers proceeding

(a) Elimination of barriers

Within 15 months after February 8, 1996, the Commission shall complete a proceeding for the purpose of identifying and eliminating, by regulations pursuant to its authority under this chapter (other than this section), market entry barriers for entrepreneurs and other small businesses in the provision and ownership of telecommunications services and information services, or in the provision of parts or services to providers of telecommunications services and information services.

(b) National policy

As described in detail above, chapter 364, F.S., is the governing statute setting forth the Commission's jurisdiction over telecommunications companies, including the price regulation scheme for incumbent local exchange companies who elect price regulation. Under the basic principles of the administrative law, a state agency can exercise only those powers accorded it by the Legislature and may act only to implement the specific authority granted by the Legislature. (s. 120.536, F.S.). Therefore, the provisions of the price regulation statute govern and restrict the Commission in the exercise of its jurisdiction under ch. 364, F.S. The federal Telecommunications Act preempts state law in the area of implementing competition in the local exchange market, in that state laws enacted to effectuate competition must be consistent with the provisions of the federal act.¹² However, the law explicitly preserves state jurisdiction of intrastate rates and the provisioning of intrastate service by local exchange companies.¹³

In carrying out subsection (a) of this section, the Commission shall seek to promote the policies and purposes of this chapter favoring diversity of media voices, vigorous economic competition, technological advancement, and promotion of the public interest, convenience, and necessity.

(c) Periodic review

Every 3 years following the completion of the proceeding required by subsection (a) of this section, the Commission shall review and report to Congress on –

(1) any regulations prescribed to eliminate barriers within its jurisdiction that are identified under subsection (a) of this section and that can be prescribed consistent with the public interest, convenience, and necessity; and

(2) the statutory barriers identified under subsection (a) of this section that the Commission recommends be eliminated, consistent with the public interest, convenience, and necessity

¹²See, 47 U.S.C. §261, paragraphs (b) and (c) as follows:

Sec. 261. - Effect on other requirements

(b) Existing State regulations

Nothing in this part shall be construed to prohibit any State commission from enforcing regulations prescribed prior to February 8, 1996, or from prescribing regulations after February 8, 1996, in fulfilling the requirements of this part, if such regulations are not inconsistent with the provisions of this part.

(c) Additional State requirements

Nothing in this part precludes a State from imposing requirements on a telecommunications carrier for intrastate services that are necessary to further competition in the provision of telephone exchange service or exchange access, as long as the State's requirements are not inconsistent with this part or the Commission's regulations to implement this part

¹³ See, 47 U.S.C. §152, paragraph (b) as follows:

Sec. 152. - Application of chapter

The Florida statutory provisions governing the Commission's authority under price regulation set forth the Commission's primary jurisdiction and supersede the general statement of statutory authority and the directory provisions regarding the exercise of such jurisdiction set forth in s. 364.01, F.S. The Commission's jurisdiction is affected by the provisions of section 253 of the federal Telecommunications Act only to the extent the FCC would determine such regulations to be "barriers to competition" in the state. Sprint is not aware that such a determination has ever been requested or made.

Changed Circumstances

The Commission also asked the parties to address the potential applicability of the changed circumstances provisions in s. 364.051, F.S., as a mechanism for price regulated ILECs to recoup revenue losses and costs that would be engendered by the implementation of rate center consolidation.¹⁴ Section 364.051(4), F.S., allows a price regulated ILEC to petition the Commission for a rate increase only if the ILEC can make a compelling showing that the circumstances that existed at the time of the ILEC's election of price regulation and the concomitant capping of its rates have changed sufficiently to require an increase in its basic rates. To Sprint's knowledge, no price-regulated ILEC has petitioned the Commission for a price increase specifically under this provision to date.

While the language of the section could be interpreted broadly enough to enable the Commission to restructure a company's basic rates to recover lost revenues resulting from rate center consolidation, there are many potential pitfalls that cause concern for

(b) Except as provided in sections 223 through 227 of this title, inclusive, and section 332 of this title, and subject to the provisions of section 301 of this title and subchapter V-A of this chapter, nothing in this chapter shall be construed to apply or to give the Commission jurisdiction with respect to

Sprint about the adequacy of this remedy. First, the Commission may only apply the provisions of s. 364.051, F.S., after the opportunity for a hearing including all interested parties. Certainly, if an ILEC requested a rate increase via this process to recoup the costs and loss of revenues resulting from rate center consolidation, there are interested parties who would intervene to oppose such an increase. The Commission's ability to adopt an increase would be subject to the evidentiary record of such a proceeding and would not be final until any subsequent court challenges were resolved. This process makes the ultimate outcome of a company's request pursuant to this provision uncertain.¹⁵

While one of Sprint's key concerns with rate center consolidation would be addressed if the implementation of consolidation were "revenue neutral," such revenue neutrality would need to be assured prior to the imposition of rate center consolidation requirements. Sprint's interpretation of the change of circumstances provision is that the procedures it outlines may prevent the Commission from assuring the certainty of the outcome of the proceeding prior to its completion.

Sprint is not convinced that there is an immediate need for the Commission to consider the implementation of rate center consolidation, because other already implemented number conservation mechanism may be sufficient to alleviate number exhaustion concerns. However, though not advocating this approach at this time, Sprint offers a suggestion for a way the Commission might implement the "change in

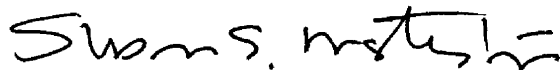
(1) charges, classifications, practices, services, facilities, or regulations for or in connection with intrastate communication service by wire or radio of any carrier, or

¹⁴ 364.051(4), F.S.

¹⁵ Although no ILEC has requested relief pursuant to s. 364.051, F.S., the Commission's decision in the docket *In re: Petition of BellSouth Telecommunications, Inc. to remove interLATA access subsidy received by St. Joseph Telephone & Telegraph Company*, Docket No. 970808 TL, Order No. PSC-98-1169-FOF-TP, issued August 28, 1998, contains an instructive discussion of that section.

circumstances” provision simultaneously with a reasonable decision to require rate center consolidation that would address Sprint’s revenue neutrality concerns. Sprint suggests that the Commission could first make a determination outlining a rate center consolidation proposal where the benefits clearly and demonstrably outweigh the company and customer impacts. The Commission could then make a specific finding that this determination constitutes a “change in circumstances” under the law. Then, the Commission could hold the final decision on implementation of the rate center consolidation proposal in abeyance, pending the completion of a proceeding to consider an ILEC’s petition for a basic rate increase under s. 364.051(4), F.S., to recoup revenue losses and costs associated with implementing the rate center consolidation proposal. The final decision to implement the rate center consolidation proposal and the decision regarding whether to grant the basic rate increase could then be issued simultaneously. This “straw man” procedure would be one way of assuring the certainty of revenue neutrality prior to the final adoption and implementation of a particular rate center consolidation plan.

Respectfully submitted on May 10, 2002.



Susan S. Masterton
P.O. Box 2214
Tallahassee, FL 32316-2214
850-599-1560 (phone)
850-878-0777 (fax)
susan.masterton@mail.sprint.com

ATTORNEY FOR SPRINT

**CERTIFICATE OF SERVICE
DOCKET NO. 010963-TP**

I HEREBY CERTIFY that a true and correct copy of the foregoing was served by hand delivery* or U.S. Mail this 10th day of May, 2002 to the following:

ALLTEL Corporate Services, Inc.
Bettye Willis
One Allied Drive
Little Rock, AR 72203-2177

VoiceStream Wireless
Michele Thomas
16 Wing Drive
Cedar Knolls, NJ 07927

ALLTEL Florida, Inc.
Harriet Eudy
Post Office Box 550
Live Oak, Florida 32060

BellSouth Telecommunications, Inc.
Nancy B. White/James Meza III
c/o Nancy H. Sims
150 South Monroe Street, Suite 400
Tallahassee, Florida 32301-1556

Ausley Law Firm
Jeff Wahlen
P.O. Box 391
Tallahassee, Florida 32302

Florida Cable Telecommunications
Association, Inc.
Michael A. Gross
246 E. 6th Avenue, Suite 100
Tallahassee, Florida 32303

Ms. Patricia Christensen, Esq. *
Division of Legal Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

NANPA
Tom Foley, Relief Planner
Eastern Region
820 Riverbend Blvd.
Longwood, Florida 32779

Northeast Florida Telephone Company,
Inc.
Ms. Deborah L. Nobles
P.O. Box 485
Macclenny, Florida 32063-0485

State Technology Office
Carolyn Mason/Winston Pierce
Bureau of Policy & Regulation Services
4030 Esplanade Way, Suite 235
Tallahassee, Florida 32399-0950

Rutledge Law Firm
Ken Hoffman/Martin McDonnell
P.O. Box 551
Tallahassee, FL 32302-0551

Felicia Banks *
Division of Legal Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Smart City Telecom
Lynn Hall
P.O. Box 22555
Lake Buena Vista, Florida 32830-2555



Susan S. Masterton