

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

DOCKET NO. 030867-TL

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

DOCKET NO. 030868-TL

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

DOCKET NO. 030869-TL
ORDER NO. PSC-03-1173-PCO-TL
ISSUED: October 20, 2003

ORDER ON CITIZENS' FIRST MOTIONS TO COMPEL DISCOVERY FROM SPRINT

On August 27, 2003, Verizon Florida Inc. (Verizon), Sprint-Florida, Incorporated (Sprint), and BellSouth Telecommunications, Inc. (BellSouth), each filed petitions pursuant to Section 364.164, Florida Statutes, and respective Dockets Nos. 030867-TL, 030868-TL, and 030869-TL have been opened to address these petitions in the time frame provided by Section 364.164, Florida Statutes. During the 2003 Regular Session, the Florida Legislature enacted the Tele-Competition Innovation and Infrastructure Enhancement Act (Tele-Competition Act or Act). The Act became effective on May 23, 2003. Part of the new Tele-Competition Act is the new Section 364.164, Florida Statutes, whereby the Legislature established a process by which each incumbent local exchange telecommunications carrier

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(ILEC) may petition the Commission to reduce its intrastate switched network access rate in a revenue-neutral manner. This matter has been set for hearing on December 10-12, 2003.

On September 17, 2003, the Office of Public Counsel on behalf of the Citizens of Florida (OPC) filed its First Motion to Compel Answers to Interrogatories From Sprint-Florida, Inc. and its First Motion to Compel Production of Documents From Sprint-Florida, Inc. (Motions to Compel). On September 24, 2003, Sprint filed its Responses to OPC's First Motions to Compel. This Order addresses the Motions. I note that counsel for OPC has indicated to staff counsel that OPC has resolved much of the dispute regarding discovery addressed in the Motions as filed, and that at this time, the only discovery addressed in the motions that is still in dispute are Interrogatories 20 and 21, and Request for Production of Documents (POD) No. 6. As such, my rulings herein focus upon the items that remain in dispute.

Motion to Compel Interrogatories

1. General Objections

OPC asserts that on September 10, 2003, Sprint served general and specific objections to OPC's first set of interrogatories, Nos. 1-26. Therein, Sprint listed eleven general objections to OPC's discovery, those being that: (1) the discovery is outside the scope of Section 364.164, Florida Statutes; (2) the discovery asks Sprint to respond on behalf of affiliates and subsidiaries that are not parties to the case; (3) that are unduly broad and overly burdensome to the extent they seek information beyond that regarding Sprint's intrastate operations; (4) that the discovery calls for information protected by attorney-client privilege; (5) that the requests are vague, overly broad, and subject to varying interpretations; (6) that the requests are not likely to lead to the discovery of admissible evidence; (7) that some of the information requested is already a matter of public record; (8) that the discovery seeks to impose obligations on Sprint beyond those contemplated by the Florida Rules of Civil Procedure; (9) that responding to some of the requests will be unduly time consuming and oppressive; (10) that the requests seek "trade secrets," which are privileged under Section 90.506, Florida Statutes; and (11) due to Sprint's size and its various offices

around the country, some responsive documents may be difficult to locate and nothing more than a duly diligent search should be required of Sprint in providing its responses. OPC contends that the above recited general objections are wholly inapplicable to OPC's requests of Sprint and should not be considered.

Sprint, however, argues that its general objections are relevant, particularly in view of the tight timeframes under which this case is proceeding. Sprint contends that in view of the difficulty of defining within 5 business days why it objects to particular discovery requests, it has offered the general objections to protect its rights. Not only does Sprint offer these general objections as a "safety net," but also to identify generally improper discovery requests. Sprint notes that parties over the years have used this process in Commission proceedings. Sprint further offers that it did respond to much of OPC's discovery after OPC had filed its Motions to Compel, and emphasizes that it still responded to OPC's requests even though it believes its general objections have merit.

I note that the parties have apparently resolved a number of their disputes relating to this particular set of discovery requests, and I commend them on their efforts to do so. I also acknowledge that the general objections offered by Sprint are not uncommon in Commission practice, but such objections are generally insufficient to withstand a motion to compel without further specificity and should not be used as merely a delay tactic. Nevertheless, I do not find that Sprint has improperly interjected these general objections, and did timely provide responses to those requests to which it has not since identified more specific objections.

2. Specific Objections

A. Interrogatory 20

The request is phrased as follows:

Please state the company names and states where Sprint has affiliates that provide competitive local exchange services.

OPC argues that Sprint should be compelled to respond because Sprint's witness Staihr testifies regarding CLEC lines in Florida, as well as competitive entry. OPC also contends that witness Staihr discusses the FCC's competitive activity report and enhanced market entry. Thus, OPC contends that this request asks Sprint to identify any of its affiliated CLECs that will benefit from Sprint's proposal.

In response, Sprint argues that it seeks information outside the jurisdiction of the Commission and beyond the scope of the Commission's consideration in this proceeding. Sprint emphasizes that OPC's assertion that it wants to know which of Sprint's affiliates will benefit does not explain how such information is pertinent to this proceeding. Sprint contends that such information is, in fact, not pertinent at all.

B. Interrogatory 21

The request is phrased as follows:

Please state the originating and terminating switched access rates that are charged by each of Sprint's affiliated CLECs.

Referencing its response to Sprint's objection to OPC's POD No. 8, OPC contends that Sprint has filed tariffs purporting to reduce access charges and increase local service revenues by \$142,085. As support for these changes, OPC notes that Sprint asserts that customers will now have choices for their service and that the changes in the prices for services will ultimately effect demand for other services. OPC asserts that it is seeking information regarding the rates that Sprint's subsidiary charges for access to Sprint's wireless network, because this information will be of comparative value in determining if granting Sprint's proposal in this Docket will be of benefit to residential customers. OPC adds that it agrees to limit its request to current access charges for origination, termination, and transport minutes between Sprint's wireless subsidiary and Cingular, Nextel, and U.S. Cellular for connecting traffic in Florida.

In response, Sprint refers to its objection to Interrogatory 21, wherein it argues that the request is beyond the scope of the

Commission's jurisdiction, as well as seeking information beyond the scope of this proceeding. Sprint also refers to paragraphs 11 and 12 of its response in opposition to OPC's Motion to Compel a response to POD No. 8, wherein Sprint argues that even with the proposed limitation offered by OPC, the scope of the request is too broad. Sprint contends that information regarding what its wireless carrier charges to other wireless carriers is not at all relevant to this proceeding and certainly not competitive information likely to lead to the discovery of admissible evidence in this proceeding, because it is not pertinent to the issue of whether and to what extent Sprint's residential basic local telecommunications service is supported by intrastate switched network access rates.

Decision

Rule 1.280(b)(1), Florida Rules of Civil Procedure, states that:

. . . Parties may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter of the pending action, whether it relates to the claim or defense of the party seeking discovery or the claim or defense of any other party. . . . It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

This standard is not, however, without limit. What is relevant for purposes of discovery is a broader matter than what is relevant and admissible at hearing. Discovery may be permitted on information that would be inadmissible at trial, if it would likely lead to the discovery of relevant, admissible evidence. Also see Allstate Insurance Co. v. Langston, 655 So.2d 91 (Fla. 1995). Furthermore, objections to discovery that is "burdensome" or "overly broad" must be quantified. First City Developments of Florida, Inc. v. Hallmark of Hollywood Condominium Ass'n, Inc., 545 So. 2d 502, 503 (Fla. 4th DCA 1989) Finally, assertions that information sought is subject to privilege as a "trade secret" must be set forth in such a way that parties can assess the applicability of the alleged

privilege. See TIG Ins. Corp. of America v. Johnson, 799 So. 2d 339 (Fla. 4th DCA 2001).

Upon consideration and with the above principles in mind, I find that Sprint shall respond to Interrogatory No. 20 with the limitation that Sprint need only identify those affiliates in Florida. Such information may have bearing or lead to admissible evidence regarding the impact of Sprint's proposal on competition. I do not find Sprint's mere assertions that the information is beyond the scope of this Commission's jurisdiction compelling for the same reasons more fully set forth in my decision regarding OPC's First Motions to Compel discovery responses from Verizon. In rendering this decision, I make no determination on the admissibility of such information at hearing, but merely acknowledge the broad standard applicable to discovery.

As for Interrogatory No. 21, this request does appear to be well beyond the scope of this proceeding. At issue in this Docket are Sprint's access charges, not those of affiliated CLECs, including wireless carriers. While the scope of discovery is broad, it does not contemplate a "fishing expedition." OPC's assertion that this information will have comparative value and allow us to assess the benefits to residential consumers is vague at best. As such, Sprint shall not be required to respond to this request.

Motion to Compel Responses to Requests
for Production of Documents

1. General Objections

As with the Interrogatories, OPC objects to Sprint's general objections to OPC's Requests for Production of Documents, which are identical to those identified for the Interrogatories. Likewise, Sprint argues that such objections are proper, particularly in view of the time frames of this proceeding. As set forth above regarding the general objections to OPC's Interrogatories, I do not find that Sprint has offered these general objections for any improper purpose, although standing alone they do not appear sufficient, in general, to withstand a Motion to Compel.

2. Specific Objections - POD No. 6

The request is phrased as follows:

Please provide all documents in your possession, custody or control discussing or evaluating criteria or business cases for entering new markets in Florida for local telecommunications services.

OPC begins by noting Sprint's objection that this request is too broad, and accordingly, agreeing to limit the request to documents produced since January 1, 2000, relating to new market entry in Florida. OPC then asserts that the testimony of witness Gordon in this proceeding, who is sponsored by all three ILECs, is that increased residential phone rates will increase competition in the residential market. OPC argues that it seeks this information as to what will make other markets attractive to Sprint, particularly since witness Gordon states that there is empirical evidence that rate rebalancing will make the residential market more attractive. OPC states that it seeks verification of this assertion through Sprint's own market plans.

Sprint objects to the extent that it believes the request, even as limited by OPC, is too broad. Sprint notes that the request does not identify which entities or markets OPC references, and it erroneously assumes that Sprint has not already entered other markets in Florida.

Decision

As it relates to POD 6, this request seems likely to lead to the discovery of admissible evidence, particularly in view of the testimony of the ILECs' own witness, witness Gordon. Whether or not Sprint has actually entered competitive markets in Florida seems irrelevant to whether the information should be provided under the discovery standard. However, I agree that some limitation is appropriate in view of the scope of the request and this proceeding. As such, Sprint shall only be required to respond to the extent the request seeks documents developed, obtained, or produced by or for Sprint since January 1, 2000, discussing or evaluating criteria or business cases for entrance by Sprint or its

affiliate CLEC into new business or residential local exchange markets in Florida. Sprint need not respond regarding entrance into long distance or wireless markets.

Timeframes

In view of the short time frame for this proceeding, Sprint is directed to respond to the interrogatories and PODs for which the Motions to Compel have been granted within 7 days of the date of this Order. The responses shall be provided to OPC with a copies to the parties, including staff, by hand delivery or facsimile, to be received by no later than 5:00 p.m. on that date.

Based on the foregoing, it is

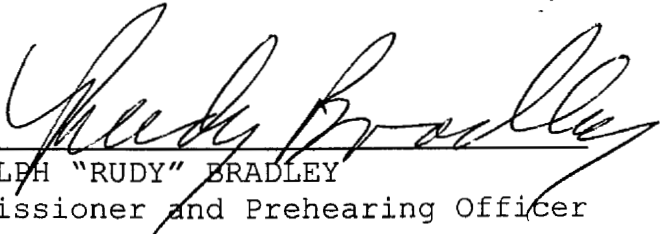
ORDERED by Commissioner Rudolph "Rudy" Bradley, as Prehearing Officer, that the Citizens' First Motions to Compel discovery responses from Sprint-Florida, Inc. are hereby granted in part and denied in part as set forth in the body of this Order. It is further

ORDERED that Sprint-Florida, Inc. shall respond to the discovery requests set forth in the body of this Order within the time limits and in the manner described in the body of this Order. It is further

ORDERED that this Docket shall remain open pending resolution of the matters to be addressed at hearing.

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By ORDER of Commissioner Rudolph "Rudy" Bradley, as Prehearing Officer, this 20th Day of October, 2003.



RUDOLPH "RUDY" BRADLEY
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.

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

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code; or (2) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of the Commission Clerk and Administrative Services, in the form prescribed by Rule 25-22.060,

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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.