

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

In re: Flow-through of LEC switched access reductions by IXCs, pursuant to Section 364.163(2), Florida Statutes.

DOCKET NO. 030961-TI
ORDER NO. PSC-03-1304-PCO-TL
ISSUED: November 14, 2003

ORDER ON CITIZENS' SECOND MOTION TO COMPEL
RESPONSES TO INTERROGATORIES 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-

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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 (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 23, 2003, the Office of Public Counsel on behalf of the Citizens of Florida (OPC) filed its Second Motion to Compel Answers to Interrogatories From Sprint-Florida, Inc. On September 30, 2003, Sprint filed its Responses to OPC's Second Motion to Compel. This Order addresses the Second Motion to Compel.

Motion to Compel Interrogatories

1. General Objections

OPC asserts that on September 12, 2003, Sprint served general and specific objections to OPC's second set of interrogatories, Nos. 27-42. 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 the requests 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.

As in my prior Order on the Citizen's First Motions to Compel, I 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 27

The request is phrased as follows:

Provide the company's (and /or the related long distance affiliate) intrastate pricing units/volumes separately for MTS, and all "other optional calling plans" (all "other optional calling plans" should be provided separately if available, or on a combined basis), and provide this information for both residential and business customers. The above information should be provided for day,

evening, and night/weekend categories. The information should be provided for both the test period, and the year prior to the test period.

OPC argues that Sprint should be compelled to respond because the subject matter of this Docket is the access prices Sprint charges its competitors for long distance traffic.

Sprint, however, contends that there is no connection between what Sprint charges its "alleged" long distance competitors for access to its network, and what Sprint charges its own end-user long distance customers. Sprint further contends that there is clearly no relevance in information about what it charges its long distance customers.

B. Interrogatory 28

The request is phrased as follows:

Provide the company's (and/or the related long distance affiliate) average revenues per minute separately for MTS, and all "other optional calling plans" (all "other optional calling plans" should be provided separately if available, or on a combined basis), and provide this information for both residential and business customers. The information should be provided for both the test period, and each of the two years prior to the test period.

Referencing its response to Sprint's objection to OPC's Interrogatory No. 27, OPC contends that Sprint should be compelled to respond because the subject matter of this Docket is the access prices Sprint charges its competitors for long distance traffic.

In response, Sprint refers to its objection to Interrogatory 27, 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.

C. Interrogatory 29

The request is phrased as follows:

Provide the average intrastate toll/long distance usage charges (billed/invoiced amount) separately for customers of residential MTS, all other combined residential "optional calling plans", business MTS, and all other combined business "optional calling plans". Provide this information for the test period and the prior twelve months. Explain if this includes any PICC charges.

OPC again refers to its arguments regarding Interrogatory No. 27. OPC further contends that this question pertains to the criterion in Section 364.163(2), Florida Statutes, wherein Sprint is required to reduce its long distance charges to pass on the benefits of the access rate reductions to end-users. OPC contends that the Citizens and the Commission need to know how the reductions will be passed on in order to determine whether there is a benefit for residential customers under Section 364.164(1)(a), Florida Statutes.

Sprint restates its response to Interrogatories Nos. 27 and 28, but further argues that for purposes of this proceeding, the Commission must assume that the IXCs will flow through the access reductions as contemplated by Section 364.163. Thus, information pertinent to that provision is not relevant in this proceeding.

D. Interrogatory 30

This request is phrased as follows:

Assume that the company's proposal is adopted. Provide all information to show that the decrease in residential long distance rates (from the flow-through impact) will equal or exceed the increase in residential local rates. Provide all supporting calculations, assumptions, and explanations, and provide information in electronic format. Explain how

this can be determined if the time period that long distance reductions will be in place is not known or determinable.

OPC argues that this request seeks information about end-user long distance rates, which is information necessary for the Commission to make a determination on how residential customers will benefit as contemplated by Section 364.164(1)(a), Florida Statutes.

Sprint restates its response to Interrogatories Nos. 27 and 28, but further argues that for purposes of this proceeding, the Commission must assume that the IXCs will flow through the access reductions as contemplated by Section 364.163. Thus, information pertinent to that provision is not relevant in this proceeding.

E. Interrogatory 31

This request is phrased as follows:

Assuming the company's proposal is adopted without changes (and that the company, and/or its affiliate would flow-through the rate reductions) provide the company's best estimate of the flow-through impact on reduced long distance rates for the company (and/or its long distance affiliate), and reduced long distance rates generally for all of the Florida long distance market for all other carriers. In addition, assuming that the proposals for the other two LECs are adopted without change, provide the company's best estimate of how the combined flow-through impact of all LECs affects the long distance rates generally for all of the Florida long distance market for all other carriers. This information can be expressed as the best estimate impact of the reduction in average long distance revenues per minute, or some other basis for long distance rates. Provide all supporting calculations and explanations.

OPC restates its arguments for Interrogatory No. 27. OPC further contends that Section 364.164(1)(a) and Section 364.163(2), Florida Statutes, are inextricably linked, thus requiring that this information be considered in this proceeding.

Sprint restates its response to Interrogatories Nos. 27 and 28, but further argues that for purposes of this proceeding, the Commission must assume that the IXCs will flow through the access reductions as contemplated by Section 364.163. Thus, information pertinent to that provision is not relevant in this proceeding. Sprint adds that the request requires Sprint to speculate as to what all other interexchange carriers might do in markets served by BellSouth and Verizon in Florida.

F. Interrogatory 32

This request is phrased as follows:

Address the following regarding potential long distance rate reductions for the company (and/or its long distance affiliate):

- a) Explain if the company (and/or its long distance affiliate) will flow-through access reductions to long distance rates, and provide its best estimates of rates it will offer for each long distance service assuming its rebalancing proposal is adopted. Explain why the company will not reduce rates if this is the case.
- b) Explain the time period the company will maintain its reduced long distance rates, before it subsequently increases long distance rates and explain the rationale for this approach.
- c) Explain if the company will lower its "intrastate" long distance rates to match (or go below) the rates of all similar lower priced "interstate" long distance rates. Provide a list of these long distance services, and explain why the company will or will not reduce its intrastate rates to match (or go below) interstate rates.

OPC and Sprint both reference their responses to Interrogatory 31 as set forth above.

G. Interrogatory 33

This request is phrased as follows:

Assume that the LEC (and/or its long distance affiliate) and other long distance carriers will flow-through long distance rate reductions to customers. Explain what actions the Florida Commission should take if the LEC and/or other long distance carriers subsequently increase their long distance rates (to negate all or some impact of the access flow-through) within a 6-month period, 1 year period, or some other period. Explain why local rates should be permanently increased if long distance rates will not be permanently decreased, or at least decreased for some substantial time period.

Again, both parties refer to their responses regarding Interrogatory 31.

H. Interrogatory 35

This request is phrased as follows:

Explain all proof that access reductions will be flowed through equitably to both residential and business customers of the LEC (and/or its long distance affiliate) and other carriers, or indicate if carriers could choose to flow-through the entire impact of the access reduction to business long distance customers (and not residential long distance customers). Provide all information to support the company's statements or opinion.

Again, the parties refer to their arguments regarding Interrogatory 31.

I. Interrogatory 36

This request is phrased as follows:

Provide all known, quantifiable and explicit "net" benefits ("net" benefits implies showing both "positive" and "negative" impacts and showing that the positive impacts exceed the negative impacts) that will accrue to the average residential customer as a result of the access reduction and rebalance to local rates, assuming that company's proposal is adopted. Also, provide the known duration (time period) of each benefit. Benefits may include (but not be limited to) net reductions in rates paid by customers, and any other benefits determined by the company.

OPC contends that this interrogatory seeks information directly relating to the benefits the Commission must consider as a part of its analysis under Section 364.164(1)(a), Florida Statutes. OPC adds that this information will also pertain to Sprint witness Felz's testimony at page 23, line 23 through page 27, line 1, as well as witness Gordon's testimony.

Sprint argues that this is a "roving inquiry" not contemplated by the statute, and thus, beyond the scope of this proceeding.

J. Interrogatory 39

This request is phrased as follows:

Provide an explanation of all increases in residential long distance rates for each service for the period January 2000 to the most recent date. For each service, provide the prior rate (and the date), the increased rate (and date of increase) and an explanation of the reason for the increase in long distance rates.

OPC references its arguments regarding Interrogatory 31, as does Sprint.

K. Interrogatory 40

This request is phrased as follows:

Address the following regarding long distance rates:

- a) For the company (and/or its long distance affiliate) operations in Florida, provide a comparison and brief description of all current residential long distance calling plans and a comparison of the rates available on an "intrastate" basis and an "interstate" basis. Identify those similar "intrastate" and "interstate" long distance plans, and explain the reason for any difference in rates.
- b) Explain if this situation of having different intrastate and interstate rates for similar calling plans is unique to the company's Florida operations, or if it is unique to states which have not rebalanced local rates and provide documentation to support this (such as comparing rates in other states of the company operations, including states which have and have not rebalanced local rates).
- c) For the company (and/or its long distance affiliate) operations in Florida, provide the name and a brief description of all current residential long distance calling plans that are available on an "interstate" basis, but not an "intrastate" basis. Explain why this situation exists and provide documentation to support this.
- d) Explain if this situation of having certain "interstate" long distance calling plans (but not similar "intrastate" plans) is unique to the company's Florida operations, or if it is unique to

states which have not rebalanced local rates and provide documentation to support this (such as comparing rates in other states of the company operations, including states which have and have not rebalanced local rates.)

- e) For items (a) through (d) above, address these issues as it relates to those states which have rebalanced local rates in the past few years per the testimony of Dr. Gordon (i.e., California, Illinois, Ohio, Massachusetts, Maine, and others).

OPC references its arguments regarding Interrogatory 29, as does Sprint.

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 be required to respond to Interrogatory 27. This request appears likely to lead to the discovery of admissible evidence, particularly in view of the consolidation of Docket No. 030961-TI into this proceeding. 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 set forth in my previous Orders on Motions to Compel in these Dockets, nor am I persuaded by Sprint's assertions that there is no connection between what Sprint charges its long distance competitors and what it charges its long distance customers. Whether or not such a connection exist does not determine whether or not the information is subject to discovery.

As for Interrogatory 28, to the extent this interrogatory appears to seek the average price for the plans identified, rather than the revenues upon which the company's Petition was based, this request also appears likely to lead to the discovery of admissible evidence. Thus, Sprint shall be required to respond.

Sprint shall also be required to respond to Interrogatories 29 and 30. Again, as noted above, with the consolidation of Docket No. 030961-TI into this proceeding, Sprint's objections are rendered moot. With regard to Interrogatory 30, however, Sprint need only respond to the extent the information sought is in Sprint's possession or control.

Regarding Interrogatory 31, Sprint shall be required to respond, in part. While the request for information regarding the company's best estimate of the flow-through impact on reduced long distance rates for the company and/or its long distance affiliate appears to be within the scope of discovery, the remainder of the request appears unduly broad and overly burdensome in that it seeks information pertaining to other carriers and as such, would require Sprint to speculate. Thus, Sprint need not respond to the request to the extent it seeks information regarding reduced long distance rates for all carriers in the Florida long distance market and information on the combined flow-through impact on long distance rates of all carriers in Florida.

Sprint shall also be required to respond to Interrogatory 32 for the same reasons identified above regarding Interrogatories 27, 29 and 30. Sprint may, however, limit its response to information pertinent to Florida.

Sprint shall also be required to Interrogatories 33, 35, and 36 for the same reasons stated above. Furthermore, I emphasize the scope of discovery is broad.

As for Interrogatory 39, this request appears to be overly broad as worded, requiring speculation on Sprint's part. As such, Sprint shall not be required to respond.

Finally, Interrogatory 40 also appears to seek information likely to lead to the discovery of admissible evidence, and Sprint shall be required to respond for the same reasons set forth above for Interrogatories 27, 29, and 30. I do, however, note that the scope of subparts (a) and (c) of this request appears to be rather broad as worded, although Sprint did not identify any specific reason or objection based on the breadth of this request. Sprint shall, therefore, be required to respond.

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.

Timeframes

In view of the short time frame for this proceeding, Sprint is directed to respond to the interrogatories for which the Motion to Compel has 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

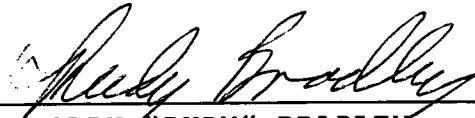
ORDERED by Commissioner Rudolph "Rudy" Bradley, as Prehearing Officer, that the Citizens' Second Motion to Compel Answers to Interrogatories from Sprint-Florida, Inc. is hereby granted in part and denied in part as set forth in the body of this Order. It is further

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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.

By ORDER of Commissioner Rudolph "Rudy" Bradley, as Prehearing Officer, this 14th Day of November, 2003.



RUDOLPH "RUDY" BRADLEY
Commissioner and Prehearing Officer

(S E A L)

BK

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

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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, 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.