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June 10, 2004

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

Re: Docket No. 001503-TP

Dear Ms. Bayó:

Enclosed for filing on behalf of Sprint-Florida, Incorporated are the original and 15 copies of Sprint's Statement of Position on Issues and Brief (Word version on floppy included) and Sprint's Motion for Official Recognition.

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 my assistant. If you have any questions, please do not hesitate to call me at 850/599-1560.

Sincerely,

CMP _____ *Susan S Masterton*

COM _____
Susan S. Masterton

CTR _____

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Enclosure

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**CERTIFICATE OF SERVICE
DOCKET NO. 001503-TP**

I HEREBY CERTIFY that a true and correct copy of the foregoing was served by U.S. mail on this 10th day of June, 2003 to the following:

(*) sent electronically to parties with asterisks

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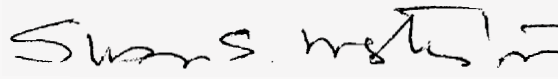
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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Cost Recovery and)
Allocation of Issues for Number)
Pooling Trials in Florida)

Docket No. 001503-TP
Filed: June 10, 2004

**STATEMENT OF POSITION ON ISSUES AND BRIEF OF
SPRINT-FLORIDA, INCORPORATED**

Pursuant to Order No. PSC-04-0056-FOF-TP and Order No. PSC-04-0395-PCO-TP, Sprint-Florida, Incorporated (hereinafter "Sprint") submits its Statement of Position on Issues and Brief in this docket.¹

Introduction and Background

On April 2, 1999, the Florida Public Service Commission (hereinafter "FPSC") requested delegated authority from the Federal Communications Commission (hereinafter "FCC") to implement thousands-block number pooling trials, among other number conservation measures. The FCC granted the FPSC's request to implement number pooling in FCC Order No. 99-249, released on September 15, 1999. (Attachment 1 to the Joint Stipulation, hereinafter "FCC Florida Delegation Order"²) In granting this authority, the FCC explicitly stated that the FPSC would be

¹ On February 4, 2004, the parties filed a Joint Stipulation of the Record of BellSouth Telecommunications, Inc., Sprint-Florida, Incorporated and Citizens of Florida (hereinafter, "Joint Stipulation"). The FPSC approved that Motion with the addition of certain documents in Order No. PSC-04-PCO-TP. Sprint will identify the stipulated documents by the number of the attachment to the Joint Stipulation.

² Order No. FCC 99-249, released September 15, 1999, *In the Matter of the Florida Public Service Commission Petition to the Federal Communications Commission for Expedited Decision for Grant of Authority to Implement Number Conservation*, CC Docket No. 96-98

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required to provide for cost recovery associated with the state-mandated number pooling trials.
(FCC Florida Delegation Order at ¶ 17)

On May 30, 2000 the FPSC issued Order No. PSC-00-1046-PAA-TP in Docket No. 981444, *In re: Number Utilization Study: Investigation into Number Conservation Measures*, (Attachment 4 to the Joint Stipulation, hereinafter “FPSC Order Approving Settlement”) in which the FPSC approved a stipulation of the parties to that proceeding that addressed various number conservation issues that were the subject of a protest of Order No. PSC-00-0543-TP (Attachment 3 to the Joint Stipulation), including issues associated with the implementation of thousands-block number pooling in certain MSAs. In approving the stipulation, the FPSC explicitly recognized its obligation to provide for cost recovery for the number pooling trials, stating “we acknowledge the FCC’s rules and orders requiring the Commission to resolve any matters related to cost recovery under the federal law and agree to open a docket to address this issue.” (FPSC Order Approving Settlement at page 15) Docket No. 001503 was opened specifically to address these cost recovery issues.

On April 5, 2002 the FPSC issued Order No. PSC-02-0466-PAA-TP in this docket (Attachment 10 to the Joint Stipulation, hereinafter “FPSC Order on Cost Recovery Petition Filing”) authorizing companies that had incurred extraordinary costs (based on criteria established by the FCC and adopted by the FPSC) in implementing state thousands-block number pooling to file petitions for recovery of these costs. The FPSC Order on Cost Recovery Petition Filing specified the criteria that a company seeking to recover its costs must meet, including that: 1) the company must demonstrate a net increase in costs as a result of the implementation of the state-ordered number pooling; 2) the company must demonstrate that the costs for state number pooling would not have been incurred “but for” the implementation of the

number pooling and that the costs were incurred “for the provision of” the state number pooling; 3) the company must demonstrate that the costs for which recovery was claimed were “new” costs; 4) the costs for which recovery was claimed were Florida-specific costs; and 5) the company must propose to recover the costs on a competitively neutral basis. No protests of the Order on Cost Recovery Petition Filing were filed and a consummating order was issued on April 30, 2002. (Order No. PSC-02-0590-CO-TP)

On September 30, 2002, pursuant to the FPSC Order on Cost Recovery Petition Filing, Sprint filed its Petition seeking recovery of its Florida-specific number pooling costs. (Attachment 14 to the Joint Stipulation, hereinafter “Sprint’s Petition”) On November 10, 2003, by Order No. PSC-03-1270-PAA-TP (Attachment 15 to the Joint Stipulation, hereinafter “FPSC Order Approving Sprint’s Petition”), the FPSC found that Sprint’s Petition demonstrated that Sprint met the requirements set forth in FPSC Order on Cost Recovery Petition Filing.³ On November 26, 2003, the Office of the Public Counsel (hereinafter “OPC”) filed a protest of the FPSC Order Approving Sprint’s Petition. The OPC also had previously filed a protest of FPSC Order No. PSC-03-1096-PAA-TP, approving BellSouth’s Petition for number pooling cost recovery (Attachment 16 to the Joint Stipulation, hereinafter “FPSC Order Approving BellSouth’s Petition). The OPC stated the following in its protest of the Order Approving Sprint’s Petition:

The Florida Public Service Commission has no authority under chapter 364, Florida Statutes, to authorize Sprint to surcharge its end-user customers for recovery of number pooling costs. Even if it had authority to impose such charges, the charges would violate the price-cap provisions set forth in s. 364.051, Fla. Stat. (2003). This statute limits the amount that may be charged users of basic local telecommunications services. And in any event, Sprint has already recovered its number pooling costs many times over through past increases to basic and nonbasic telecommunications service rates. (OPC Protest at ¶ 7)

³ In granting Sprint’s Petition, the FPSC excluded certain salaried labor costs proposed for recovery by Sprint on the basis that a portion of the costs were not “new costs” and that the remainder were not incremental costs, consistent with its ruling on BellSouth’s Petition in Order No. PSC-03-1096-PAA-TP.

Pursuant to s. 120.80(13) (b), F.S., this proceeding may address only the issues disputed in the OPC's protest. All other issues addressed in the Order are not in dispute and are deemed stipulated.⁴

Issues, Positions and Argument

Issue 1: May BellSouth and Sprint recover cost for state-mandated number pooling via a mechanism separate and apart from and in addition to the rate and revenue increases to basic and non-basic service implemented since January 1, 2000?

Position: **Yes. The basic and non-basic service increases authorized in s. 364.051, F.S., do not and were not intended to cover the extraordinary costs incurred by Sprint to implement thousands-block number pooling trials in Florida.**

Argument: OPC asserts that Sprint should not be allowed to recover its number pooling costs as approved by the FPSC because Sprint has already recovered these costs through rates and rate increases for basic and nonbasic services. Sprint disagrees.

Section 364.051, F.S., sets forth the price regulation scheme applicable to price-regulated local exchange companies. The section addresses two categories of services provided by local exchange companies, basic and nonbasic services, by freezing the rates for these services that were in effect on July 1, 1995 and allowing only annual percentage increases to those rates as set forth in the statute. The allowable increases for basic rates (inflation minus 1% annually) are intended to reflect increases in costs attributable to inflation minus a productivity factor. Companies are allowed more flexibility for nonbasic service price increases (6% to 20% annually, depending on the level of competition), to allow flexibility to respond to competitive pressures. The extraordinary expenses that are associated with the mandatory implementation of

⁴ On January 14, 2004 the parties and FPSC staff held an Issue Identification Meeting to reach agreement on the specific issues to be addressed on the basis of the OPC's Protest. These issues are reflected in the attachment to the Order on Procedure, Order No. PSC-04-0056-PCO-TP and are the issues addressed in Sprint's Brief.

thousands-block number pooling are in no way contemplated or addressed by the pricing mechanisms for basic and nonbasic services delineated in the statute. Rather, these one-time charges are not “prices” for “services” but are a mechanism to recover extraordinary regulatory costs.

The FCC and the FPSC have correctly recognized that certain expenditures incurred to implement number pooling are outside the costs carriers incur in the ordinary course of business. In FCC Order No. 01-362 (Attachment 9 to the Joint Stipulation, hereinafter “FCC Number Resource Optimization Third Report and Order”⁵), the FCC acknowledged that many, if not most, of the costs associated with implementing number pooling could be considered ordinary business costs recovered through a carrier’s rates. (FCC Number Resource Optimization Third Report and Order at ¶ 37) However, the FCC also explicitly recognized that certain costs associated with number pooling are above and beyond ordinary business expenses and that companies are entitled to recover these costs. (FCC Number Resource Optimization Third Report and Order at ¶ 39) In the FPSC’s Order Approving Settlement to resolve disputed issues relating to implementation of state-mandated number pooling trials, the FPSC acknowledged its obligation to consider a mechanism that would allow companies an opportunity to seek to recovery of costs incurred as a result of their implementation of state-mandated number pooling. As part of the stipulation, the affected companies committed to expeditiously implement thousands-block number pooling despite the lack of an existing cost recovery mechanism in reliance on the FPSC’s commitment to open a docket to address this issue. (FPSC Order Approving Settlement at page 15)

⁵ Order No. FCC 01-362, released December 28, 2001, *In the Matter of Numbering Resource Optimization; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Telephone Number Portability*, CC Docket Nos. 96-98 and 99-200.

In FCC Order No. 00-104 (Attachment 2 to the Joint Stipulation, hereinafter “FCC Number Resource Optimization First Report and Order”⁶) and again in the FCC Number Resource Optimization Third Report and Order, the FCC set forth certain criteria that it would apply, and that the states also should apply, in determining which costs incurred in implementing number pooling are extraordinary costs that companies are entitled to recover. The five criteria adopted by the FPSC comport with the criteria set forth by the FCC. (Order on Cost Recovery Petition Filing at page 10) Sprint’s Petition details how its costs meet these criteria. (Sprint’s Petition at Exhibit A and attachment) The FPSC carefully evaluated Sprint’s Petition and approved those costs it determined were extraordinary costs that Sprint could recover.⁷ (FPSC Order Approving Sprint’s Petition at pages 15-18)

In fact, Sprint’s costs that have been approved by the FPSC for recovery meet each of the criteria identified by the FCC and established in FPSC Order on Cost Recovery Petition Filing, in that they are: 1) costs that result in a net increase to Sprint because of its implementation of state number pooling; 2) the costs would not have been incurred “but for” number pooling and were incurred “for the provision of” of number pooling; 3) they are “new” costs, in that they were incurred subsequent to the FPSC’s implementation of thousands-block number pooling; 4) they are Florida-specific costs; and 5) the costs are recovered through a competitively neutral cost recovery mechanism. In demonstrating that the costs for which recovery is sought meet these criteria, Sprint has demonstrated that, contrary to the OPC’s position, these costs were not, and could not, have been recovered through the basic and nonbasic price increases implemented pursuant to the price regulation scheme set forth in s. 364.051, F.S.

⁶ Order No. FCC 00-104, released March 31, 2000, *In the Matter of Number Resource Optimization*, CC Docket No. 99-200.

⁷ As previously noted in footnote 2, recovery for certain labor costs was denied.

Issue 2: What is the basis of authority under which the Florida Public Service Commission allowed BellSouth and Sprint to recover the costs of number pooling and to do so through a separate end-user charge?

Position: **The FPSC has jurisdiction to address number administration and conservation issues, including ordering thousands-block number pooling and related cost recovery, under ss. 364.01 and 364.16, Florida Statutes, and pursuant to delegated authority from the Federal Communication Commission.**

Argument: In its protest of the FPSC's Order Approving Sprint's Petition, the OPC argues that the FPSC lacks authority to grant Sprint's petition and that the Order violates the price regulation provisions of ch. 364, Florida Statutes. (OPC Protest at ¶ 7) The OPC's assertions are wrong. As set forth in the FPSC Order Approving Sprint's Petition, the FPSC has both federal and state authority to approve Sprint's recovery of the costs it incurred to implement Florida number pooling trials. (FPSC Order Approving Sprint's Petition at pages 9-12)

Pursuant to Section 251 (e) of the Telecommunications Act of 1996, the FCC delegated to the FPSC the authority to implement state number pooling trials and the obligation to allow carriers to recover the costs associated with such trials in its order granting the FPSC's request for authority to implement state number pooling trials and in its subsequent orders addressing issues of federal number pooling and cost recovery. Because the FCC has plenary jurisdiction over numbering administration, the FPSC's exercise of its state-accorded jurisdiction is subordinate to the FCC's jurisdiction and must be exercised in consistent with FCC policy and direction.⁸ In granting the delegation to implement thousands-block number pooling to the FPSC, the FCC expressly required the FPSC to ensure cost recovery for any state-mandated number pooling trials. (FCC Florida Delegation Order ¶ 17)

The FPSC exercised this delegated authority pursuant to its authority over numbering resources set forth in s. 364.16 (4), Florida Statutes, and in accordance with section 364.01,

Florida Statutes, which provides direction to the FPSC in the exercise of its statutory jurisdiction.

Specifically, s. 364.16(4) states (in relevant part):

In order to ensure that consumers have access to different local exchange service providers without being disadvantaged, deterred, or inconvenienced by having to give up the customer's existing local telephone number, all providers of local exchange services must have access to local telephone numbering resources and assignments on equitable terms that include a recognition of the scarcity of such resources and are in accordance with national assignment guidelines.

Section 364.01(4) (a), F.S., directs the FPSC to exercise its exclusive statutory jurisdiction, in this case its specific authority over numbering resources, to:

Protect the public health, safety and welfare by ensuring that basic local telecommunications services are available to all consumers in the state at reasonable and affordable prices.

Number optimization and number conservation measures, including the implementation of thousands-block number pooling, are designed to achieve just that goal. The FPSC has previously asserted its jurisdiction over numbering issues pursuant to ss. 364.01 and 364.16, F.S. in numerous orders unchallenged on jurisdictional grounds.⁹ In addition, case law supports the FPSC's interpretation of its jurisdiction under s. 364.01, F.S. See, e.g., *Level 3 v. Jacobs*, 841 So. 2d 447 (Fla. 2003) (addressing the application of 364.01, F.S., to the FPSC's interpretation of its jurisdiction under s. 364.336, F.S.)

One of the criteria the FCC established for number pooling cost recovery is that the recovery mechanism must be competitively neutral. FCC Number Resource Optimization First Report and Order at ¶ 198) For the federal number pooling recovery mechanism, the FCC authorized that the charge be recovered through an access charge adjustment. (FCC Number

⁸ See, *FERC v. Mississippi*, 456 U.S. 742 (1982)

⁹ See, e.g., Order No. PSC-03-1133-PAA-TX, in Docket No. 030937-TX, *In re: Petition for expedited review of central office growth code denial in North Naples by Number Pooling Administrator by US LEC of Florida, Inc.* at page 2; Order No. PSC-03-0248-PAA-TL in Docket No. 030118-TL, *In re: Petition for expedited review of growth code denials by Number Pooling Administrator for Palm Coast Exchange for BellSouth Telecommunications, Inc* at

Resource Optimization Third Report and Order at ¶ 25) While recovery through access charges is one alternative for a competitively neutral recovery mechanism, the FCC did not mandate that the states adopt this identical mechanism. Since the Florida Statutes constrain the FPSC's ability to alter the access charge regime established in the statute, the specific cost recovery mechanism adopted by the FCC is not available to the FPSC for state number pooling cost recovery.¹⁰

As discussed above, the price regulation statutes do not have any bearing on the FPSC's approval of cost recovery through an end user surcharge. In its Order Approving Sprint's Petition, the FPSC recognized that an end user surcharge is also a competitively neutral cost recovery mechanism that meets the requirements established by the FCC. (FPSC Order Approving Sprint's Petition at page 18) In its Order Approving BellSouth's Petition, the FPSC recognized that, given the level of cost recovery approved by the FPSC, a one-time end user surcharge would not impose an undue financial burden on BellSouth's customers and would be the least administratively burdensome alternative. (FPSC Order Approving BellSouth's Petition at page 21) Consistent with its action on BellSouth's Petition, the FPSC approved a one-time end user surcharge to recover Sprint's approved costs. (FPSC Order Approving Sprint's Petition at page 18; See also, Sprint's Responses to Staff's First Set of Interrogatories, Interrogatory No. 1)

Issue 3: Is the manner by which the Florida Public Service Commission allowed BellSouth and Sprint to recover the costs of number pooling consistent with FCC policy and decisions?

Position: **Yes. The manner by which the FPSC allowed BellSouth and Sprint to recover their number pooling costs is consistent with FCC policy and decisions delegating authority to Florida to implement thousands-block number pooling trials and providing for number pooling cost recovery. **

page 2; Order No. PSC-02-0406-PCO-TL in Docket No. 990457-TL, *In re: Request for review of proposed numbering plan relief for the 954 area code* at page 2.

¹⁰ See, s. 364.163, F.S. and *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.

Argument: The FCC has addressed the issue of number pooling cost recovery in several orders. First, in the FCC Florida Delegation Order, the FCC granted the FPSC's request for delegated authority to implement thousand block number pooling as a mechanism for addressing critical situations involving area code exhaust. In granting the request, the FCC stated that:

The Commission has tentatively concluded that thousands-block number pooling is a numbering administration function, and that section 251(e) (2) authorizes the Commission to provide the distribution and recovery mechanism for interstate and intrastate costs of number pooling. We conclude that inasmuch as we are hereby delegating numbering administration authority to the Florida Commission, the Florida Commission must abide by the same statutes applicable to this Commission, and therefore, ensure that the costs of number pooling are recovered in a competitively neutral manner. FCC Florida Delegation Order at ¶ 17

The FCC again addressed cost recovery for state mandated number pooling trials in the FCC Number Resource Optimization First Report and Order. In that Order the FCC affirmatively adopted thousands-block number pooling as a mandatory nationwide number resource optimization strategy. (FCC Number Resource Optimization First Report and Order at ¶ 122) In addition, the FCC continued its grant of authority to states, including Florida, to implement thousands-block number pooling pending the implementation of the federal number pooling scheme. (FCC Number Resource Optimization First Report and Order at ¶ 169) In connection with continued state delegation, the FCC reiterated the need for states to “develop their own cost recovery schemes for the joint and carrier-specific costs of implementing and administering pooling.” (FCC Number Resource Optimization First Report and Order at ¶¶ 171 & 197)

Subsequently, the FCC addressed the parameters of recovery for both federal and state number pooling trials in the FCC Number Resource Optimization Third Report and Order. In that Order the FCC ruled that the costs associated with state-mandated number pooling must be recovered through a state, not federal, mechanism and directed states to commence cost recovery procedures. (FCC Number Resource Optimization Third Report and Order at ¶ 28) In the Third

Report and Order the FCC reiterated and expanded on the federal mechanism for cost recovery that the states should model for state cost recovery. Specifically, the FCC recognized that many costs associated with number pooling are ordinary costs of doing business and, for these costs, no extraordinary cost recovery measures are warranted. (FCC Number Resource Optimization Third Report and Order, ¶¶ 25 & 37) The FCC established a presumption that such costs are ordinary costs of business, not entitled to extraordinary recovery measures, but then set forth specific criteria to identify those implementation costs that are extraordinary and, therefore may be recovered through a separate cost recovery mechanism.¹¹ (FCC Number Resource Optimization Third Report and Order ¶¶ 38 & 39) The criteria set forth by the FCC include:

Carriers must demonstrate that thousands-block number pooling results in a net cost increase rather than a cost reduction ¶ 40

The three criteria applicable to cost recovery for local number portability should also apply to cost recovery for number pooling, that is, cost recovery is available for costs that would not have been incurred “but for” thousands block number pooling; for costs incurred only “for the provision of “ thousands block number pooling; and for “new” costs only. ¶ 43

In the FPSC Order on Cost Recovery Petition Filing setting forth the criteria that companies must meet in their petitions for cost recovery, the FPSC mirrored the FCC criteria detailed above and incorporated additional cost recovery principles consistent with FCC policy and orders. Specifically the FPSC adopted five specific criteria a company must demonstrate in its petition (set forth previously and reiterated here) as follows:

1. pooling results in a net cost increase rather than a cost reduction;

¹¹ Based on the records before them, the Arizona and Michigan commissions found that the costs presented to them for recovery were not extraordinary costs for which carriers were entitled to recovery. (See Attachments 11 & 12 to the Joint Stipulation.) In contrast, this Commission and the North Carolina Commission found, based on the applicable record, that carriers (i.e., BellSouth and Sprint) were entitled to cost recovery. See, Order in Docket No. P-100, Sub 137, In the Matter of Area Code Relief for North Carolina 704/910/919 Numbering Plan Areas, issued on Feb. 26, 2004 (BellSouth) and Order in Docket No. P-7, Sub 825 and Docket No. P-10, Sub 479, In the Matter of Petition by Carolina Telephone and Telegraph Company and Central Telephone Company for Approval of Price Regulation Plans Pursuant to G.S. 652-133.5, issued June 10, 2004 (Sprint).

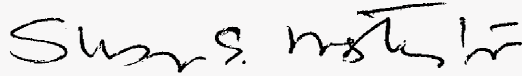
2. the costs would not have been incurred “but for” and “for the provision of” thousands-block number pooling;
3. the costs are “new” costs;
4. the costs for which recovery is requested are Florida-specific costs not related to national number pooling; and
5. the costs will be recovered on a competitively neutral basis in accordance with Section 251(e) (2) of the Telecommunications Act of 1996.

The FPSC then carefully evaluated Sprint’s Petition to ensure that these criteria were met in rendering its decision to grant (in part) Sprint’s Petition. Through its adoption of these principles, the FPSC ensured that its decision and its exacting review of the petition were well-grounded on the principles set forth by the FCC for number pooling cost recovery and are fully consistent with FCC policy and orders.

Conclusion

Contrary to the OPC’s positions set forth in its protest of the FPSC’s order, the FPSC has sufficient state authority to establish a cost recovery mechanism, consistent with FCC policy and orders, for carriers to recover state-specific extraordinary costs associated with the implementation of FPSC mandated thousands-block number pooling. The criteria established by the FPSC are consistent with FCC regulations and ensure that the costs recovered are extraordinary costs, beyond the costs incurred in the ordinary course of business and, therefore, are not recovered through Sprint’s basic or nonbasic service rates or the increases to those rates implemented in accordance with the Florida price regulation statutes. Consequently, the FPSC’s action in approving Sprint’s recovery of its costs through a one-time charge to Sprint’s end users customers was lawful and appropriate. The FPSC should deny the OPC’s protest and reaffirm its ruling in its Order Approving Sprint’s Petition.

RESPECTFULLY SUBMITTED this 10th day of June 2004.



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