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September 11, 1996

BY HAND DELIVERY

Ms. Blanca S. Bayo, Director
Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Re: Notice of Election of Price Regulation by BellSouth Telecommunications, Inc. Docket No. 951354-TL

Dear Ms. Bayo:

Enclosed for filing in the above-styled docket are the original and fifteen (15) copies of Joint Brief of Sprint United/Centel.

We are also submitting the Joint Brief on a 3.5" high-density diskette generated on a DOS computer in WordPerfect 5.1 format.

Please acknowledge receipt and filing of the above by stamping the duplicate copy of this letter and returning the same to this writer.

Thank you for your assistance in this matter.

Sincerely,

John P. Fons

cc: All Parties of Record
Enclosure

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Notice of election of price regulation by BellSouth Telecommunications, Inc.	DOCKET NO. 951354-TL FILED: September 11, 1996

JOINT BRIEF OF SPRINT UNITED/CENTEL

United Telephone Company of Florida and Central Telephone Company of Florida (collectively "Sprint United/Centel") jointly submit this Brief in accordance with the Commission's Order Modifying Procedure ("Order") (Order No. PSC-96-0981-PCO-TL, issued July 31, 1996), stating as follows:

Background

On January 10, 1996, the Commission issued Order No. PSC-96-0036-FOF-TL acknowledging BellSouth Telecommunications, Inc.'s ("BellSouth") election of price regulation. The Order also required BellSouth to revise the rates in the Jensen Beach, West Palm Beach, and the Holley-Navaree exchanges to eliminate alleged rate increases stemming from the rate regroup'ngs that became effective subsequent to July 1, 1995. On January 31, 1996, BellSouth filed a protest to the portion of the Order that required it to eliminate rate increases and requested a hearing on the issue.

On July 22, 1996, the Commission granted Sprint United/Centel's Motion to Intervene. Sprint United/Centel filed its Prehearing Statement in anticipation of being granted

intervention. Thereafter, the parties and Staff agreed that even though BellSouth had filed the testimony of Mr. A.J. Varner, an evidentiary proceeding was not necessary. The parties have agreed that selected portions of Mr. Varner's testimony be placed in the record to lay out the factual basis for this proceeding and that certain stipulations proposed by Sprint United/Centel, which are set forth in Attachment A, be adopted.

In its Order the Commission required that the briefs and arguments address the following issues:

1. Is reclassification of an exchange (rate regrouping) subsequent to election of price regulation by BellSouth, a price increase that is prohibited under Section 364.051, Florida Statutes?
2. If rate regrouping by BellSouth is not allowed, does any resulting disparity in prices constitute undue discrimination in violation of Chapter 364, Florida Statutes?

Summary of Argument

Reclassification of an exchange (rate regrouping) subsequent to the election of price regulation is not prohibited by Section 364.051, Florida Statutes (1995). Section 364.051, Florida Statutes, caps rates for basic residential and single line business local telecommunications services at the rates in effect on July 1, 1995, and prohibits increasing such rates prior to January 1, 1999, or January 1, 2001, where applicable. The local service rates in

effect on that date are based on rates and rate groups which were established prior to July 1, 1995. Rate groups are based on the number of access lines a customer can call in the local calling area. When the access lines in the local calling area of an exchange exceed the upper limit of its assigned rate group, all the customers in that exchange move to the next rate group at the previously established rate. Section 364.051 caps the prices in effect on July 1, 1995, that apply to existing rate groups, not to individual customers. Moving an exchange to the next rate group does not constitute a rate increase, because the rates are not increased.

To read into the statute, a prohibition against rate regroupings will create an undue discrimination in violation of Sections 364.08, 364.09 and 364.10, Florida Statutes. These sections provide that if customers are similarly situated, charging different rates to different customers for the same service with the same calling scope will constitute undue price discrimination.

Argument I

Reclassification of an exchange (rate regrouping) subsequent to election of price regulation is not a price increase that is prohibited under Section 364.051, Florida Statutes (1995).

In Order No. PSC-96-0036-FOF-TL, which order has been protested, the Commission, nonetheless, correctly and accurately described rate regrouping as follows:

> Rate regrouping is a rate design mechanism that has been used historically to insure that the rates for certain customer classes are equalized. Rate groups are premised on the

number of access lines an end user can call on a local flat-rate basis. As the number of access lines an end user can call increases, the rate for flat-rate local service also increases. The increase in rates is rooted in an historic value-of-service pricing philosophy; as the number of lines a person can call increases, the more valuable the person's local flat-rate service becomes. As the service becomes more valuable, customers should pay more for it. The rates for each rate group are set for each LEC. Pursuant to Rule 25-4.056, Florida Administrative Code, rate regrouping has been accomplished on an automatic basis by the LECs based on growth in subscribership in an exchange.

Unfortunately, and without clear analysis or justification, the Commission concluded that rate regrouping constitutes "an increase in the rate for a telecommunications service." Although it is true that a customer whose rate group is moved to a different rate group because of a change in the number of subscribers in the exchange will pay a different rate that does not mean that the already approved rate has been changed. The rates for each rate group which were in effect on July 1, 1995, remain unchanged and, therefore, no "rate increase" has taken place, even though the community is transferred from one rate group to another.

The prohibition in the statute is that existing rates may not be increased. The rates in effect on July 1, 1995, were rates approved by this Commission for rate groups, not individual customers. As the Commission noted in its Order, the rate regrouped customer pays more because the customer gets more benefits for the new price than he or she got for the old price. If, however, the Commission were to adopt the policy that a rate regrouping is a rate increase for individual customers, such policy

would have to be premised on a belief that a basic local exchange customer who receives greater benefit because of increased calling scope should, nonetheless, never pay more than he or she is currently paying for local exchange service.

If the policy that there can be no further rate regroupings for price-regulated LECs is adopted, then, for such policy to be consistently adhered to, there also could be no further Extended Area Service arrangements for those price-regulated LECs. Traditionally, when an EAS is created, the benefitted customers are moved to the rate group that reflects the number of additional customers the benefitted customer has access to on a flat-rate basis. But if ordinary rate regrouping constitutes a prohibited rate increase, then so would this EAS rate regrouping. Additionally, the Commission could never impose a differential charge on customers reflecting a change in the cost of providing local exchange service because that would be a "rate increase."

A reading of Section 364.051 to mean that a rate regrouping is a rate increase would forever bar any further rate regroupings. Although the price caps remain in place for three to five years, under Section 364.051(4), any price increases thereafter are limited to once annually and to an amount not to exceed the change in inflation less 1 percent. Thus, unless the difference in rates between two rate groups does not exceed the amount produced by the index, the community may not be moved to the next higher rate group even if it otherwise qualifies according to the Commission Rules. In that event, there will, over time, be many communities whose

customers will be paying rates for local exchange service that will be different from the rates paid by customers in communities of exactly the same size. There will be no rational basis for this pricing anomaly.

Thus, it is readily apparent that a policy that would restrict rate regrouping for price-regulated LECs is a policy that: (a) is not based upon any requirement of Section 364.051, Florida Statutes, and (b) would permanently eliminate rate regroupings by price-regulated LECs for any purpose. As will be discussed in the next section, the resulting pricing anomalies would constitute an unreasonable and undue price discrimination.

Argument II

If rate regrouping is not allowed, the resulting disparity in prices constitutes an undue discrimination in violation of Chapter 364, Florida Statutes.

The Commission has established rules which require reclassification of exchanges (regrouping) in response to access line increases and decreases. The Rule, Section 25-04.056(1), Florida Administrative Code, requires as follows:

> Whenever the number of access lines in the local calling area of an exchange increase or decrease to the extent that such an exchange would fall into a different rate group, the company shall file a revised tariff with the Commission requesting authority to reclassify the exchange to its appropriate group.

(Emphasis added.)

Mechanically, the tariff that is filed does not change the rate for the rate group, but rather the name of the exchange is deleted from the one rate group and added to the new rate group.

As noted above, if rate regrouping is not allowed, there will be an ever increasing number of situations in which customers in different exchanges with substantially similar local calling areas served by the same LEC will be paying different rates for the same basic local exchange service. This disparity, which rate regrouping was traditionally intended to eliminate, constitutes an undue discrimination in violation of Sections 364.08, 364.09 and 364.10, Florida Statutes.

Section 364.08(1), Florida Statutes, provides, in part, that:

> (1) . . . . A telecommunications company may not . . . . extend to any person any advantage of contract or agreement or the benefit of any rule or regulation or any privilege or facility not regularly and uniformly extended to all persons under like circumstances for like or substantially similar service.

Additionally, Section 364.09, Florida statutes, requires as follows:

> A telecommunications company may not, directly or indirectly, or by any special rate, rebate, drawback, or other device or method, charge, demand, collect, or receive from any person a greater or lesser compensation for any service rendered or to be rendered with respect to communication by telephone or in connection therewith, except as authorized in this chapter, than it charges, demands, collects, or receives from any other person for doing a like and contemporaneous service with respect to communication by telephone under the same or substantially the same circumstances and conditions.

Finally, Section 364.10(1), Florida Statutes, states as follows:

> (1) A telecommunications company may not make or give any undue or unreasonable preference or advantage to any person or locality or subject any particular person or locality to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

Read together, these three statutory sections, which were unaffected by the Telecommunications Act of 1995, impose a prohibition against pricing a service provided to similarly situated customers at different rates where no difference in circumstances and conditions exist. In such a situation, it is said that an undue or unreasonable discrimination exists. All other things being equal, requiring or allowing different prices for basic local exchange services provided to customers in geographic areas with substantially similar local calling scopes constitutes an undue or unreasonable discrimination.

From its inception, rate regrouping was designed and intended to eliminate undue price discrimination. The record in this proceeding demonstrates the magnitude of this undue discrimination. For example, Mr. Varner testified:

> Presently there are ten (10) exchanges within Florida that are classified as Rate Group 9, with an average calling scope of approximately 433,000 access lines and trunks. Currently, West Palm Beach has access to 485,000 access lines and trunks, which is 52,000 greater than the average Rate Group 9 exchange, and 35,000 greater than the upper limit on Rate Group 9. At the same time, there are three other existing Rate Group 10 exchanges which have a calling scope of between 450,001 and 555,000

> local access lines (as does the West Palm Beach exchange).

Tr. 5 and 6.

Mr. Varner goes on to point out:

> Under the normal regrouping process, customers in the West Palm Beach exchange would be charged the tariffed rates for services in Rate Group 10.

Tr. 6.

As Mr. Varner notes, the undue discrimination is obvious:

> Without regrouping, customers in the West palm Beach exchange would pay less than the customers in the three exchanges that are currently in Rate Group 10, even though these exchanges have the same numerical range of access lines to which they can place a call. Conversely, customers in the West Palm Beach exchange would pay the same price for local service as these customers in the ten exchanges that are currently in Rate Group 9, even though customers in these exchanges have a smaller calling scope.

Tr. 6.

This resulting undue discrimination has long been solved by rate regrouping. As was noted by the Maine Public Utilities Commission when addressing the need for regrouping exchanges:

> It obviously becomes a matter of discrimination when the users of one exchange are charged less for telephone service than the users of another exchange, even though both exchanges should be, by virtue of total number of telephones, in the same rate grouping. We not only concur that this is discrimination, but we fully expect, at some future date, to explore the system being used in other jurisdictions whereby there would be an automatic regrouping to bring such exchanges into their proper rate category.

(Re: New England Telephone & Telegraph Company, 46 PUR 3d 143 (Me. P.U.C. 1962).)

Similarly, the New York Public Service Commission, when confronted with a situation in which exchanges of approximately equal size were charged different rates, concluded that:

> Absent any special or compelling reason to depart from the principle [statewide rate group classification] in a given case, a failure to apply the appropriate group classification to an exchange would create either an unreasonable preferential or discriminatory situation.

(Re: New York Telephone Company, 72 PUR 3d 309, at 310 (N.Y. P.S.C. 1968).)

Likewise, the Kansas State Corporation Commission, in addressing the need for exchange regrouping, found that:

> The application of charges prevailing in one particular exchange group for service rendered to subscribers in an exchange which has grown out of or retrogressed from that particular rate group constitutes a preference or discrimination prohibited by Kansas law. Section 66-107, Kan GS 1949, provides in part as follows: . . . . every unjust or unreasonable discriminatory or unduly preferential . . . rate . . . . or charge demanded, exacted, or received is prohibited and hereby declared unlawful and void.

(Re: Southwestern Bell Telephone Company, 34 PUR 3d at 321 (Ka. S.C.C. 1960).)

In a more recent proceeding, the Virginia State Corporation Commission, in a review of its LEC incentive regulation plan, which includes a moratorium on basic local exchange service rate increases, held, nonetheless, that "rate regrouping due to growth in access lines will continue in order to avoid rate discrimination

between similarly sized exchanges." (Re: Incentive Regulation, 157 PUR 4th 465, at 506 (Va. S.C.C. 1994).)

Conclusion

Section 364.051, Florida Statutes (1995), does not prohibit rate regrouping for LECs that elect price regulation because the prices in effect on July 1, 1996, were the prices for rate groups, not individual customers, and those prices are not increased by rate regrouping. Moreover, denying rate regroupings will require the LECs to charge different rates to similarly situated customers for the same service. This results in an unreasonable or undue discrimination in violation of Florida law. Accordingly, the Commission should approve BellSouth's proposed regroupings and any future regroupings by price-regulated LECs.

Respectfully submitted,

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ATTORNEYS FOR SPRINT/CENTEL and SPRINT/UNITED

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Hand Delivery (*) or U.S. Mail this 11th day of September, 1996 to the following:

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