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ORIGINAL
FILE COPY

July 28, 1997

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

Re: Docket No. **970281-TL**

Dear Ms. Bayo:

Enclosed are the original and fifteen (15) copies of Sprint-Florida, Incorporated's Motion for Reconsideration of Order No. 97-0860-PCO-TL and Request for Oral Argument.

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,

Charles J. Rehwinkel

CJR/th

Enclosures

cc: All Parties of Record

- ACK 2
- AFA 2
- APP _____
- CAF _____
- CMU (circled)
- CTR _____
- EAG _____
- LEG 2
- LIN 5
- OPC _____
- ROH _____
- SEC 1
- WAS _____
- OTH _____

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FPSC-BUREAU OF RECORDS

DOCUMENT NUMBER-DATE

07613 JUL 28 97

FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Establishment of)
 intrastate implementation)
 requirements governing federally)
 mandated deregulation of local)
 exchange company pay phones)

Docket No. 970281-TL

Filed: July 28, 1997

MOTION FOR RECONSIDERATION OF ORDER NO. 97-0860-PCO-TL AND
REQUEST FOR ORAL ARGUMENT

COMES NOW Sprint-Florida, Incorporated ("Sprint-Florida" or "Company") and pursuant to Rule 25-22.0376, F.A.C., files this motion for Reconsideration of the Prehearing Officer's Order No 97-0860-PCO-TL ("Order"). In support, Sprint-Florida states as follows:

1. On June 30, Sprint-Florida filed its Motion for Expedited Ruling on Sprint-Florida's Status in Docket No. 970281-TL, and/or Clarification/Reconsideration of Order No. PSC-97-0721-PCO-TP.
2. On July 16, this Honorable Prehearing Officer issued her Order denying the

¹It is unclear whether the Commission rules contemplate the prehearing officer being able to rule on a Motion for Reconsideration. To the extent allowed, Sprint-Florida would prefer that the reconsideration be heard by the Prehearing Officer in the interest of time. However, if not single Commissioner review is permitted, then review by the full Commission is requested in the alternative.

Motion of Sprint-Florida. It is this Order that the company respectfully seeks reconsideration of on the basis that it is premised on a misapprehension of both fact and law.

3. As is correctly noted in the Order, Sprint-Florida's motion was unopposed. This is consistent with the record of this proceeding both before and after the issuance of the subject order. Beforehand, MCI - the only Party filing a protest to the Notice of Proposed Agency Action, Order No. PSC-97-0358-PCO-TP ("PAA Order"), had made it abundantly clear that the scope of its protest was limited to the Commission's proposed determination of the subsidy levels and the method of removal of GTEFL and BellSouth only².

4. Subsequent to the issuance of the Order, the filing of testimony has been completed and prehearing statements have been filed. Not surprisingly, no rebuttal testimony has been filed challenging Sprint-Florida's testimony nor has any party taken issue with the company's actions. Even the Staff's prehearing statement takes no position on any issue relative to Sprint-Florida. The company submits that these facts have been overlooked or misapprehended and that this alone supports the granting of the motion.

5. The Order also contains the following statement:

Also, Section 120.80(13)(b), Florida Statutes, does not limit the Commission's discretion to address all issues that it determines to be relevant to a full resolution of a case when an initial PAA

² At the June 10, 1997 Agenda Conference, counsel for MCI confirmed on the record that

MCI's petition, protest was filed in the generic docket, but it was filed as to BellSouth and GTE Florida. I don't believe MCI has protested that order as to Sprint and I don't believe they are at issue in the docket.

order is protested. Section 120.80(13)(b), Florida Statutes, is designed to limit the parties to the issues presented by the protest in order to prevent them from relitigating issues that the Commission already decided and that were not protested. It is not designed to prevent the Commission from addressing matters it deems necessary to a full resolution of the case in the manner it deems appropriate.
[Order at 3.]

This portion of the order sets up the factual conclusion that:

The issues the Commission plans to address in this hearing are relevant and necessary to full implementation of payphone deregulation pursuant to the Act and the FCC's implementing orders. Notably, the Commission intends to address each LEC's calculation of the subsidy amount, if any. The Commission has full discretion to address this and other matters in the manner it deems most effective and administratively efficient. Order No. PSC-97-0358-PCO-TP expressly stated that Docket No. 970281-TL would remain open to address exactly these sorts of implementation matters.

Id. [Emphasis Added.]

6. Against this factual background, Sprint-Florida submits that the Order is erroneously based on a misapprehension of fact and law.

7. Sprint-Florida submits that the Order erroneously is based on the view that Section 120.80(13)(b), Fla. Stat. , operates only as a limitation on the parties' ability to raise issues in a hearing. The plain language of the statute indicates otherwise. That section reads:

(b) Notwithstanding ss. 120.569 and 120.57, a hearing on an objection to proposed action of the Florida Public Service Commission may only address the issues in dispute. Issues in the proposed action which are not in dispute are deemed stipulated.
[Emphasis added.]

8. Clearly the language of the statute also limits the Commission's jurisdiction to hold a hearing only where there are issues in dispute and raised in a protest. When the issues in dispute are narrowly limited as MCI has presented them in this case, the statute certainly operates to restrict both the parties' and the Commission's ability to expand the proceeding to matters outside the limited protest.³ The record of this docket indicates no issues in dispute and none that were raised as to Sprint-Florida by the protest triggering the hearing.

9. For this reason, Sprint-Florida contends that the Order misapprehends the limitation on the scope of the hearing being isolated to just the parties. If the Commission is to be "hamstrung" it is by legislative design and not because of Sprint-Florida's desired interpretation of the statute.

10. Beyond the narrow issue of the legal status of the protest filed by MCI, there is a suggestion in the Order that the proceeding is a generic one in any event and that the Commission, through the language of the PAA Order, "expressly" contemplated that a proceeding would follow that would involve a hearing. Again, the premise underlying this aspect of the order is based on a misapprehension of the fact that somehow the Commission itself has set this matter for hearing on a basis independent of the Protest filed by MCI.

11. Sprint-Florida submits that Order No. PSC-97-0358-PCO-TP nowhere states an "intention" -- express or otherwise-- by the Commission that "exactly these sorts of matters" would be addressed in a hearing. Nowhere within Order No. PSC-97-0358-PCO-TP is there an expression of the

³As this section was the product of an amendment sought by the PSC in the 1995-96 timeframe as part of a cost reduction/streamlining response to a legislative call for budget limitations, it is clear that the Commission saw this as being a limitation on the resources it would be devoting to the hearing process in future budget years.

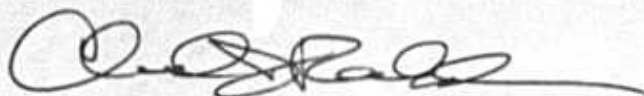
Commissioners' intent to conduct a hearing on any matter outside of the protest. The record of the Agenda Conference does not reveal such an expression nor does the text of the staff recommendation. Such intention was not communicated to the Commission and did not translate into Commission action. The only hearing that was expressly contemplated and recommended was one based on the MCI protest. How would the Commission's intent in this regard have been acted upon if no protest had been filed. It seems incontrovertible that the Commission would not have issued a PAA for a matter on which it would have intended to hold a hearing.

12. It is abundantly clear that the "Implementation matters" referred to in the PAA Order referred to the filing and review and case-by-case challenging of deficient tariff filings. In other words administrative matters would be handled rather than the conduct of official legal proceedings that affect the rights and economic interests of the companies involved in these matters. This too, is consistent with the issuance of a PAA, given that these are actions to be taken subsequent to no protest being filed to the PAA.

13. Sprint-Florida recognizes that the Staff and Commission have worked in good faith to expedite matters to the benefit of the affected parties and have conducted the proceeding in a very professional manner. The dispute here is with the process by which hearings should be conducted now and in the future as competition in the marketplace supplants traditional rate base regulation. At the heart of the Company's objection is that the hearing process is being handled as a generic hearing without any clear direction by the Commission, authority by the APA or the existence of a dispute upon which to conduct a "hearing".

WHEREFORE, for the reasons stated above, Sprint-Florida, Incorporated respectfully requests that the Prehearing Officer reconsider the basis for Order No 97-0860-PCO-TL, and issue a ruling confirming that Sprint-Florida is not the subject of the hearing to be conducted in this Docket. Furthermore, Sprint-Florida requests the opportunity to make a brief oral argument at the prehearing conference⁴ in support of this motion since argument on the first motion was foregone in the interest of expediency in the context of the tight time frames of this proceeding.

Respectfully Submitted, this 28th Day of July, 1997



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⁴The Prehearing Officer should not anticipate that opposition would be raised since no opposition was filed to the initial Motion.

**CERTIFICATE OF SERVICE
DOCKET NO. 970281-TL**

I HEREBY CERTIFY that a true and correct copy of the foregoing was served by U.S. Mail this 28th day of July, 1997 to the following:

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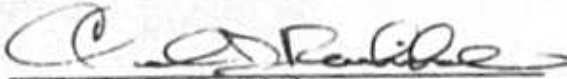
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