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Sprint

F. B. (Ben) Poag
Director - Regulatory Affairs

Southern Operations
Box 2214
Tallahassee, FL 32316
Mailstop FLTLHO01017
Voice 850 599 1027
Fax 850 878 0777

April 23, 1999

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: Docket No. 980253-TX

Dear Ms. Bayo:

On behalf of Sprint Corporation, enclosed for filing is the original and fifteen (15) copies of my Comments regarding Fresh Look Rulemaking in the above referenced docket.

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,

for

F. Ben Poag

cc: Parties of Record

Enclosures

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Fresh Look Rulemaking - Docket No. 980253-TX

Comments of F. Ben Poag on behalf of Sprint Corporation.

Filed April 23, 1999

My name is F. Ben Poag. I am employed as Director-Regulatory Affairs for Sprint-Florida, Inc. My business mailing address is Post Office Box 2214, Tallahassee, Florida 32301.

I have over 30 years experience in the telecommunications industry. I started my career with Southern Bell, where I held positions in Marketing, Engineering, Training, Rates and Tariffs, Public Relations and Regulatory. In May, 1985, I assumed a position with United Telephone Company of Florida as Director-Revenue Planning and Services Pricing. I have held various positions since then, all with regulatory, tariffs, costing and pricing responsibilities. In my current position I am responsible for regulatory matters regarding Sprint's local telecommunications operations. I am a graduate of Georgia State University with a Bachelor's Degree in Business.

Listed below are my comments regarding the fresh look rulemaking:

Sprint generally supports the proposed rule (hereafter referred to as "rule") in its current form and suggests very moderate adjustments. Pending the comments of other parties and possible modification of the rule, Sprint submits the following comments in support of the rule with a few suggested changes. Attachment 1 to these comments are the changes to the rule in legislative format necessary to implement them. Sprint reserves the right to suggest additional or different changes based on developments at the hearing and in response to modification suggested by other parties.

As proposed the rule represents a reasonable compromise between the interests of Incumbent Local Exchange Companies (ILECs) and new entrants to the local exchange marketplace (Competitive Local Exchange Companies or CLECs). In some respects Sprint could support additional modifications and safeguards such as those proposed in its comments submitted on May 15, 1998 in this docket. Sprint incorporates those comments herein and reserves the right to advocate the positions taken therein as circumstances in the hearing process dictate. Nevertheless, Sprint believes that the rule generally represents a good balancing of the interests of the local service providers

These comments address three aspects of the rule. First, Sprint endorses the Commission's approach to establishing a cut-off date for eligible contracts and duration of the Fresh Look window (Section 25-4.301.(2) & (3)) with one suggested modification. Second, Sprint suggests clarification of the language where the customers are given the option to choose the termination liability (25-4.302(5)). Finally, language is proposed which clarifies that the limitation of termination liability in the rule applies <u>only</u> when a customer seeks to cancel a contract with an ILEC in order to take service from a competitive local service provider.

1. Start date of the eligibility "cut-off" and duration of the Fresh Look window.

Sprint supports a forward looking "cut-off" for which contract eligibility would be established. As originally drafted, the rule would have established two periods. One for determining which contracts were eligible and the other a "Fresh Look" window within which customers can exercise their rights under the rule. Originally, the eligibility cut-off would have been January 1, 1997. Sprint and other providers appearing at the March 16, 1999 Agenda Conference argued and the Commissioners agreed that the effect of this provision would be to leave very few contracts for which competitors could compete since the average contract duration is three years and relatively few eligible contracts would be up for competition by the end of 1999 when the rule would be effective at its earliest. The flaw in the initial approach was obvious. If the average duration of contracts is 3 years and the eligibility cut-off were to begin three years back, there would be not much reason to have a rule. Appropriately, the Commission has seen fit to propose the forward-looking cut-off date of the rule effective date (currently estimated to be November 25, 1999).

Concurrent with the forward looking cut-off, Sprint also urges that the proposed Fresh Look window be established at one year. In the initial comments, Sprint originally proposed a six month Fresh Look window as part of our internal consensus process. From a competitive entrant standpoint, we recognize that six months is adequate time for customers who want to change carriers or respond to competitive solicitations and take action to cancel contracts pursuant to the rule. This compromise resolution would allow competitive providers a fair opportunity to compete for customers and could stimulate competition earlier, but would recognize that the two year window may be longer than necessary. Most likely candidates for Fresh Look would be targeted within the first few months of the window opening. Closing the window after a reasonable period of one year would introduce certainty into the ILECs' business operations and would allow them to focus on competing for customers instead of processing requests for termination liability calculation and undertaking the time and cost of terminating services.

In sum, the most important aspect of this issue is the forward looking establishment of the eligibility cut-off which should remain <u>as proposed</u> in order to give a meaningful opportunity for competitive local providers to compete for customers under contract. Setting the Fresh Look window at one year should also allow plenty of time for competition while giving the ILECs reasonable certainty in their operations. Sprint has suggested language to implement these comments.

<u>2. Customer option on termination liability.</u>

Section 25-4.302(5)(a) & (b) of the rule provides that the termination liability will be calculated based on the <u>end user choosing</u> one of two options. The first option would base the liability on any unrecovered nonrecurring cost

provided for in the contract. The second option would establish the termination liability as a monthly charge equal to the portion of any nonrecurring cost reflected in the customer's recurring rate. Sprint objects to this provision where it might create the unintended windfall of zero termination liability because the contacts do not generally contain a separate recurring charge for nonrecurring investment cost. There may be instances where the nonrecurring costs were waived at the time of installation and left subject to recovery upon early termination (option (a)).

Sprint believes that the language in this section was not drafted with the intent that the customer could chose option (b) (zero all the time) in order to avoid paying termination liability under option (a), when the contract provides for a previously waived nonrecurring cost to be repaid upon early termination.

In sum, it is clear that the Commission intended to limit termination liability to unrecovered investment cost and not allow "lost revenue" type recovery. The suggested change to Section 25-4.302(b) is a reasonable way of clarifying that intent.

3. Customer eligibility for limitation of termination liability.

Finally, Sprint offers a clarification premised on the essence of the rule. But for the effort of competitive providers to compete for, and provide alternatives to, customers, the Commission would not be considering this rule. In no event has it been suggested that the Commission has the authority to allow customers to unilaterally repudiate valid, binding contracts, unless the customer is seeking to exercise the right to contract with a competitive provider. As proposed, the rule does not restrict the limitation of termination liability to these circumstances. Sprint initially proposed such a restriction and again asserts that the Commission adopt this limitation on the rule's scope. Such a provision may also assist in insulating the rule from any legal challenges based on a contention that the rule is over broad and exceeds the Commission's authority to interfere with contracts between customers and ILECs. The introduction of competition provides a rational basis for altering contracts. However, the unilateral desire of a customer to evade the obligations of the contract for reasons other than contracting with a competitive provider would not provide a rational basis for the rule. Sprint has proposed language in 25-4.300(1) closing this loophole.

In conclusion, Sprint generally supports the approach the Commission has taken. We believe that with a few moderate changes that the rule will represent a reasonable balance among the interests of all competing local providers of local exchange service.

CERTIFICATE OF SERVICE
DOCKET NO. 980253-TX

I HEREBY CERTIFY that a true and correct copy of the foregoing was served by U.S. Mail this 23rd day of April, 1999 to the following:

Barbara Auger, Esquire
Pennington, Moore, Wilkinson,
Bell and Dunbar
Post Office Box 10095
Tallahassee, Florida 32302-2095

Laura L. Gallagher, Esquire
204 S. Monroe Street
Suite 201
Tallahassee, Florida 32301

Kimberly Caswell, Esquire
GTE Florida Inc.
Post Office Box 110
FLTC0007
Tampa, Florida 33601-0110

Nancy White, Esquire
c/o Nancy Sims
BellSouth Telecommunications Inc.
150 S. Monroe Street, Suite 400
Tallahassee, FL 32301-1556

Monica Barone, Esquire
Sprint Communications Co.
MS: GAATLN0802
3100 Cumberland Circle
Atlanta, Georgia 30339

Vickie Gordon Kaufman, Esquire
McWhirter, Reeves, McGlothlin,
Davidson, Rief, and Bakas, PA
117 South Gadsden Street
Tallahassee, Florida 32301

Marsha Rule, Esquire
AT&T Telecommunications
101 North Monroe Street
Suite 7000
Tallahassee, Florida 32301

Robert Scheffel Wright, Esquire
Landers and Parsons
Post Office Box 271
Tallahassee, Florida 32302

Kenneth A. Hoffman, Esquire
Rutledge, Ecenia, Underwood,
Purnell and Hoffman, PA
Post Office Box 551
Tallahassee, Florida 32302-0551

Rick Melson, Esquire
Hopping Green Sams and Smith
Post Office Box 6526
Tallahassee, Florida 32314

Lynn B. Hall
Vista-United Telephone Company
3100 Bonnet Creek Road
Lake Buena Vista, Florida 32830

Tom McCabe
Quincy Telephone Co.
107 W. Franklin Street
Quincy, Florida 32351

Bill Thomas
Gulf Telephone Company
115 West Drew Street
Perry, Florida 32347

Robert M. Post, Jr.
Indiantown Telephone Systems, Inc.
15925 SW Warfield Boulevard
Indiantown, Florida 34956

John M. Vaughn
St. Joseph Telephone and Telegraph Co.
502 Fifth Street
Port St. Joe, Florida 32456

Jeffry Wahlen, Esquire
Ausley Law Firm
227 South Calhoun Street
Tallahassee, Florida 32301

Richard M. Rindler, Esquire
Swindler and Berlin
3000 K Street NW
Suite 300
Washington, DC 20008

Michael McRae, Esquire
TCG – Washington
2 Lafayette Centre, 1133 Twenty-First St. NW
Suite 400
Washington, DC 20036

Diana W. Caldwell, Esquire
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0862

Charles J. Rehwinkel
Sprint-Florida, Inc.

SPRINT

Attachment 1 to Comments of F. Ben Poag

Key – – Sprint Proposed Changes

25-4.300 Scope and Definitions
25-4.301 Applicability of Fresh Look
25-4.302 Termination of LEC Contracts

25-4.300 Scope and Definitions.

(1) Scope. For the purposes of this Part, all contracts that include local telecommunications services offered over the public switched network, between LECs and end users, which were entered into prior to the effective date of this rule, that are in effect as of the effective date of this rule, and are scheduled to remain in effect for at least six months after the effective date of this rule will be contracts eligible for ~~Fresh Look~~ limitation of termination liability. Local telecommunications services offered over the public switched network are defined as those services which include provision of dial tone and flat-rated or message-rated usage. If an end user exercises an option to renew or a provision for automatic renewal, this constitutes a new contract for purposes of this Part, unless penalties apply if the end user elects not to exercise such option or provision. This Part does not apply to LECs which had fewer than 100,000 access lines as of July 1, 1995, and have not elected price-cap regulation. Eligible contracts include Contract Service

Arrangements (CSAs) and tariffed term plans in which the rate varies according to the end user's term commitment. Only end users seeking early termination of otherwise eligible contracts with LECS in order to acquire services from, or enter into a new contract with, another local provider will be eligible for any limitation of termination liability provision provided in this Part.

(2) For the purposes of this Part, the definitions to the following terms apply:

(a) "Fresh Look Window"- The period of time during which LEC end users may terminate eligible contracts under the ~~limited liability~~ limitation of termination liability provision specified in Rule 25-4.302(3).

(b) "Notice of Intent to Terminate"- The written notice by an end user of the end user's intent to terminate an eligible contract pursuant to this rule.

(c) "Notice of Termination"- The written notice by an end user to terminate an eligible contract pursuant to this rule.

(d) "Statement of Termination Liability"- The written statement by a LEC detailing the liability pursuant to 25-4.302(3), if any, for an end user to terminate an eligible contract.

Specific Authority: 350.127(2), FS.
Law Implemented: 364.19, FS.
History: New XX-XX-XX.

25-4.301 Applicability of Fresh Look.

(1) The Fresh Look Window shall apply to all eligible contracts.

(2) The Fresh Look Window shall begin 60 days after the effective date of this rule.

(3) The Fresh Look Window shall remain open for two one years from the starting date of the Fresh Look Window.

(4) An end user may only issue one Notice of Intent to Terminate during the Fresh Look Window for each eligible contract.

Specific Authority: 350.127(2), FS.
Law Implemented: 364.19, FS.
History: New XX-XX-XX.

25-4.302 Termination of LEC Contracts.

(1) Each LEC shall respond to all Fresh Look inquiries and shall designate a contact within its company to which all Fresh Look inquiries and requests should be directed.

(2) An end user may provide a written Notice of Intent to Terminate an eligible contract to the LEC during the Fresh Look Window.

(3) Within ten business days of receiving the Notice of Intent to Terminate, the LEC shall provide a written Statement of Termination Liability. The termination liability shall be limited to any unrecovered, contract specific nonrecurring costs, in an amount not to exceed the termination liability specified in the terms of the contract. The termination liability shall be calculated from the information contained in the contract or the workpapers supporting the contract. If a discrepancy between the contract and the workpapers, the contract shall be controlling. In the Statement of Termination Liability, the LEC shall specify if and how the termination liability will vary depending on the date services are disconnected pursuant to subsections (4) and (6) and on the payment method selected in subsection (5).

(4) From the date the end user receives the Statement of Termination Liability from the LEC, the end user shall have 30 days to provide a Notice of Termination. If the end user does not provide a Notice of Termination within 30 days, the eligible contract shall remain in effect.

(5) If the end user provides the Notice of Termination, the end user will choose and pay any termination liability according to one of the following payment options:

(a) One-time payment of the unrecovered nonrecurring cost, as calculated from the contract or the work papers supporting the contract, at the time of service termination; or

(b) Monthly payments, over the remainder of the term specified in the now terminated contract, equal to that portion of the recurring rate which recovers the nonrecurring cost, as calculated from the contract or the work papers supporting the contract. However, the end user shall not have the option to chose termination liability calculated pursuant to this subsection (b) where the contract does not clearly provide for the recovery of nonrecurring costs in a recurring rate.

(6) The LEC shall have 30 days to terminate the subject services from the date the LEC receives the Notice of Termination.

Specific Authority: 350.127(2), FS.

Law Implemented: 364.19, FS.

History: New XX-XX-XX.