Sprint

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August 16, 2000

ORIGINAL

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

Re: Docket No. 990994-TP; Sprint's Responsive Comments

Dear Ms. Bayó:

Enclosed for filing is the original and fifteen (15) copies of Sprint's Responsive Comments in this Docket No. 990994-TP.

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

Sincerely,

Charles J. Rehwinkel

Enclosure

CJR/th

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

ORIGINAL

In re: Proposed amendments to Rules 25-4.003, F.A.C., Definitions; 25-4.110, F.A.C., Customer Billing for Local Exchange Telecommunications Companies; 25-4.113, F.A.C., Refusal or Discontinuance of Service by Company; 25-24.490, F.A.C., Customer Relations; Rules Incorporated; and 25-24.845, F.A.C., Customer Relations Rules Incorporated.	DOCKET NO. 990994-TP Filed: August 16, 2000

Responsive Comments of Sprint

COMES NOW Sprint Communications Company Limited Partnership ("Sprint") and, pursuant to Section 120.54, Florida Statutes, and Rule 28-103.004(7), Florida Administrative Code, provides these responsive comments to the Florida Public Service Commission (FPSC or Commission) on the Proposed Amendments to Rules 25-24.490(1) and 25-24.485 insofar as they would apply proposed new Sections (2) and (19) of Rule 25-4.110 to interexchange carriers (IXCs) and alternative local exchange carriers (ALECs). These provisions are newly adopted in Order No. PSC-00-1117-TP (Order), issued June 19, 2000. That order

made the amendments applicable only to incumbent local exchange carriers (ILECs). The amendments were adopted in a Notice of Rulemaking (Notice) issued March 10, 2000. See, Order No. PSC-00-0525-NOR. Sprint's comments are divided into two sections. The first section consists of Comments that will be presented at the hearing By Michael Ragan Manger, State Regulatory Compliance. The second section will consist of responsive legal comments, which will be presented by the undersigned counsel.

A. Comments of Michael Ragan

1. General responsive comments.

The purpose of my Comments is to respond to the Comments filed by BellSouth and the Florida Public Service Commission staff, who both filed in support of the rule. On behalf of Sprint's ALEC operations, I also endorse and adopt the Comments Sprint filed on August 8, 2000 beginning with the first full paragraph on page 10, through the end of page 11, insofar as those comments relate to the ALEC. I can also represent that these comments are generally applicable to the IXC operations. The remainder of those Comments are Legal/Policy arguments that will be addressed by counsel.

As a general proposition, the premise underlying the rule proposal is faulty. Even if the Commission ignores the legal position advanced

elsewhere by counsel for Sprint, there is no compelling reason for the Commission to dictate "command and control" style rules for customers who are free to choose their telecommunications provider. The proposed rules fail to recognize that the competitive marketplace must be given a chance to work for the benefit and protection of customers.

In a closed market environment, the consumer market needs regulatory oversight to assure that the service provider is operating in a fair and reasonable manner. This oversight would include all aspects of invoice presentation. With the introduction of competition, the need for third party oversight is reduced and/or eliminated.

In the competitive market place, service quality, features, and bill presentation will be established through customer demand. Service providers with inferior service quality and features will be forced to meet the customer requirements or be eliminated from the market entirely. The demands for various features will vary by customer segment. Certain consumers will place a stronger value on product price, while other segments will place a greater value on product convenience or packaging. The packaging may take form in the customer invoice process.

To impose regulatory oversight on the bill presentation is unnecessary, economically ineffective, and does not add any additional

value to the customer. By the nature of the market, the new service entrant must provide some economic incentive for the consumer to select the ALEC's service over the incumbent provider. The economic incentives will vary by ALECs. As in the long distance market, the economic incentives will provide the consumer market a wide variety of choices and incentives. The invoice presentation will serve as one of many avenues for the ALECs to differentiate their offerings and attract new customers. Regulatory oversight of the invoice presentation will limit the ALECs' ability to fashion the invoice process to attract and maintain new customers. These issues are discussed more specifically below.

2. Specific responsive comments.

Staff witness Simmons asserts in her direct testimony (page 5, lines 9-16) that the proposed bill formatting rule is a balanced approach between the ILECs and ALECs/IXCs while not creating a significant burden for either the ALEC or IXC. Sprint respectfully, but strongly, opposes such an assertion. This proposed rule treats the ALEC exactly like the ILEC. The ALEC is attempting to compete against a dominant telecommunications carrier that, by definition, has a significant market share of the local service market. The ILEC starts with 100% market share. The ALEC starts with 0% market share. ALECs must earn new customers while the ILEC must retain existing customers. It is much more difficult

to acquire a customer than it is to retain a customer. Customers must be incented to leave an existing relationship. ALECs must provide that incentive. Bill presentation and formatting is only one of many such incentives. Unfortunately, the proposed rule would act to remove that incentive opportunity. The ALEC should have the flexibility to differentiate itself based on its bill presentation. Otherwise how can it differentiate itself from the ILEC and thus earn the customers right to serve them? Sprint highly recommends that the Commission let the customer make the decision. The may customer decide that this proposed bill format is one of the most important criteria to them when choosing a local service provider. That customer then has a choice of selecting the ILEC, who as a dominant provider and carrier of last resort, must provide this specific bill format. The customer also has a choice of selecting another ALEC that is willing to format the bill that way.

The bill format rule also imposes an unreasonable burden as it relates to national operating efficiencies. Sprint ALEC has plans to be a national local service provider (most ILECs are regional providers) under one national billing platform. Sprint is very concerned that it may be subject to multiple, inconsistent types of bill formatting rules by state. This could lead to operating inefficiencies which leads to higher costs which leads to additional barriers to entering markets which leads to fewer customer choices for service providers. Less choice is not what

the Legislature sought when it opened the door to competition in the local service market.

Also, adoption of the formatting rule imposes a burden on market entry increasing the cost of billing system modifications for all local service providers including Sprint. Those costs must be ultimately passed back to customers. Sprint ALEC has relatively few customers while the ILEC has a significant number of customers. Once again, Sprint ALEC will find itself at a competitive disadvantage regarding financial impacts to its customers.

To summarize, this proposed bill format rule is not a balanced approach that is consistent with fostering competition, is not reasonable, and does create a significant burden for ALECs contrary to Witness Simmons' assertions.

After testifying that cramming complaints in Florida have dropped dramatically and that NO cramming complaints have been lodged against ALECs, staff still advocates that customers need prescribed protection in the form of these rules. For example, Richard Durbin testifies that "There is no reason to believe that [ALEC and IXC] bills will be less susceptible to cramming than [I]LEC bills, and that their customers are entitled to the same level of protection." The testimony fails to recognize that the

fundamental purpose of regulation is to act as a surrogate for competition. Where competition exists, regulation has a lessened role. Certainly ALEC customers are entitled to protection. The staff witnesses assume that only the PSC can provide that protection. The staff position does not even acknowledge that availability of choice can act to provide the protection they contend is needed.

Sprint is also very concerned that the testimony implies that ALECS are guilty by association. Such an assumption completely ignores the power of the marketplace to minimize or prevent cramming problems. It is very important to allow nascent competition in the local service markets an opportunity to work. Mandating for ALECs these "cramming" prevention rules, such as the proposed billing block, without evidence of wrongdoing or any understanding of the cost involved could severely undermine local competition before it even gets a foothold. This would occur through the unnecessary adoption of rules that limit the flexibility ALECs require in a market that is still dominated by the ILEC.

As competitors, we should have market-driven incentives to closely monitor various types of fraud and act swiftly to minimize risks to customers. It certainly makes sense to punish the bad apples but it is also important not to limit customers' ability to select from among a range of perceived value added services. Sprint strongly believes that the

provisioning of value added services allow for differentiation in a market where bundled product offerings will ultimately be the norm. Value-added services could (and likely will) include relationships with non affiliated partners. For example, with the deployment of Sprint ION, one day it may be possible to download a video for viewing. A relationship might exist with the video store for Sprint to bill the customer on the video stores behalf. Many customers perceive this as a value-added service they desire. Requiring Sprint ALEC to place limitations on its billing system when it builds infrastructure for third party affiliations is costly and not justified in lieu of its attempt to gain a foothold in the local service market. Certainly a significant cost would be the intangible cost of the delay in bringing new services to the market. Again, it is important for the customer to make the choice. There are alternatives if customers do not value the services provided by the ALEC. The ILEC, who as a dominant provider and carrier of last resort (COLR), is the logical entity for mandatory provision of a billing block requirement for as long as the ILEC remains dominant and the COLR.

Staff witness Moses also asserts in his direct testimony (page 5 lines 23-25) that an ALEC should be treated just like an ILEC for billing block. Again, this is not an appropriate conclusion for the same reasons stated in my responses above. If Sprint ALEC cannot earn customer

loyalty through the products, prices, and level of service it chooses to offer, it will not be successful in the local service market.

B. Legal concerns

Sprint also contends that the proposed amendments cannot apply to business customers, even if the commission lawfully adopts the rule amendments. In this process, the staff has sought to selectively implement the Telecommunications Consumer Protection Act (TCPA). Ignored throughout is section 364.602(3), which limits application of Section 364.604 to residential customers. Nowhere in this rulemaking does the staff point to independent authority to prescribe billing itemization and billing block rules for business customers. The absence of specific mention of "business" subscribers, in the face of the specific mention of residential subscribers is fatal to the attempted application of the rule to business subscribers.

BellSouth offers its position that application of Rule 25-4.110(2) to ALECs and IXCs is statutorily mandatory. Sprint respectfully disagrees for the legal reasoning set forth in the August 8, 2000 comments. The commission has failed to follow the competitive checklist of 364.01(3) and (4). Nowhere does the TCPA authorize imposition of a billing block for either residential or business customers. Furthermore, BellSouth's

assertion that there is no permission or authority to deviate from application of the rules to all providers, simply ignores the law. Section 364.337 provides (with respect to both ALECs and IXCs that the Commission can grant a waiver of any portion of chapter 364 (except Section 364.16, .336 and portions of .337) if it finds the waiver to be in the public interest. Clearly the permission to waive the statute exists, separate from the clear mandate that the Commission apply the competitive checklist in Section 364.01. Sprint's comments demonstrate the public interest in promoting competition.

BellSouth further asserts that the failure to apply the rules to ALECs would be "discriminatory and anti-competitive. Nothing could be further from the truth. As Sprint has shown in previous comments and as staff witness Simmons now point out, the legislature decreed that the ALECs should be treated differently from monopoly providers like BellSouth for a transitional time. The clear implication is that at the conclusion of the "transitional" period that regulation of the ILEC might be lessened, not the other way around. Increasing the level of regulation on competitive entrants would be antithetical to the pro-competitive intent of Chapter 364.

Additionally, the proposal is overly broad in that it would apply the itemization and billing block requirements to all charges. The provisions of the TCPA apply only to telecommunications or information services.

Pursuant to Section 364.602(5) these exclude Internet services. In the event that the Commission can and does lawfully adopt the amendments, the scope of the rules should be modified to apply only to charges for telecommunications or information services.

Respectfully submitted this 16th Day of August 2000.

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CERTIFICATE OF SERVICE

Docket No. 990994-TP

I HEREBY CERTIFY that a true copy of the foregoing has been furnished by e-mail transmission, U. S. Mail, or hand delivery (*) this 16th day of August, 2000, to the following:

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