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April 24, 2001

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

RECEIVED-FPSC  
01 APR 24 PM 4:41  
RECORDS AND REPORTING

Re: Docket No. 010102-TP Posthearing Statement  
And Brief Of Sprint

Dear Ms. Bayó:

Enclosed for filing is the original and fifteen (15) copies including a  
diskette of Sprint 's Posthearing Statement and Brief in Docket  
No. 010102-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,

*Susan S. Masterton*

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Susan S. Masterton

DOCUMENT NUMBER-DATE

05148 APR 24 01

FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Investigation of ) DOCKET NO. 010102-TP  
Updates of the Routing Database )  
System (RDBS) and Business )  
Rating Input Database System ) Filed: April 24, 2001  
(BRIDS) affecting the Tampa )  
telecommunications carriers )  
\_\_\_\_\_ )

POSTHEARING STATEMENT AND BRIEF OF  
SPRINT-FLORIDA, INCORPORATED

SPRINT-FLORIDA, INCORPORATED ("Sprint"), pursuant to Order No. PSC-01-380-PCO-TP and Order No. PSC-01-0715-PHO-TP, submits the following Posthearing Statement and Brief:

Introduction and Background

This proceeding began on August 15, 2000, with a letter from Verizon Florida, Inc. (Verizon) to all Tampa area codeholders regarding updates to the Routing Database System and Business Rating Input System to bring the Local Exchange Routing Guide (LERG) in sync with Verizon's current Florida tariffs. In response to concerns expressed by ALECs about Verizon's proposed changes to the LERG, the Florida Public Service Commission issued Order No. PSC-01-0456-PAA-TP requiring Verizon to cease its modifications and setting the matter for administrative hearing. Sprint was made a party of record when the docket was initiated at the request of Commission staff.

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Although a party of record, Sprint had declined to participate in the docket based on its understanding of the issues as set forth in the procedural order, Order No. PSC-01-0380-PCO-TP. Sprint did not sponsor any witnesses, submit a prehearing statement, or participate in the hearing, thereby waiving these issues, pursuant to the prehearing procedures set forth in the procedural order. At the hearing, in response to testimony and questions from Commissioners, a new issue was added to the docket. (Tr. 136) The issue was framed as Issue A: What is the extent of the Commission's authority to order rate center consolidation? (Tr. 310).

The legal issue added at the hearing is an industry-wide issue and the Commission's decision on this issue could affect Sprint as an ILEC in its certificated territory. Sprint shares the belief expressed by BellSouth in its Motion to Submit Amicus Brief, filed in this docket on April 13, 2001, that the Commission will benefit from hearing from other ILECs potentially impacted by its decision on this issue. BellSouth Motion at page 2. Therefore, Sprint submits this posthearing filing for the limited purpose of briefing the legal issue concerning the Commission's jurisdiction that was added at the hearing.

### **Issue, Position and Argument**

**Issue A:** [LEGAL ISSUE] What is the extent of the Commission's authority to order rate center consolidation?

**Position:** \*\* While the Federal Communications Commission has recognized state jurisdiction to order rate center consolidation pursuant to local ratemaking authority, the Commission does not have the authority to implement this jurisdiction under its statutorily delegated authority over telecommunications companies as set forth in chapter 364, F.S.\*\*

**Argument:**

**A. Can the FCC confer authority to a state agency that has not otherwise been granted such authority under state law?**

On April 2, 1999, the Commission requested that the FCC delegate to the state certain responsibilities, including the authority to order rate center consolidation, related to numbering administration.<sup>1</sup> The FCC granted the Commission's request, in part, in an order issued September 15, 1999.<sup>2</sup> In responding to the Commission's request regarding rate center consolidation, the FCC stated that "rate center consolidation, as it involves matters relating to local calling scopes and local call rating, falls under state utility commissions' rate-making authority." (§ 40) The FCC went on to grant the Commission's request for any additional authority it might need to consolidate rate centers. (Id.) The question that the parties have been asked to address in this docket is the effect of the FCC's grant of authority in relation to the Commission's statutory jurisdiction over telecommunications companies, as set forth by the Florida Legislature under ch. 364, F.S. (Tr. 136)

Under general principles of administrative law, an administrative agency only has the power conferred upon it by statute and must exercise its authority in accordance with the controlling law. See, 2 Fla. Jur. 2d Administrative Law §§ 30, 31; 2 Am Jur. 2d Administrative Law §§ 24, 55. The Commission recognized this fundamental limitation on its authority in its ruling on a complaint filed by MCI seeking relief from the intrastate access charges imposed by GTE Florida.<sup>3</sup>

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<sup>1</sup> § 251 (e) of the Telecommunications Act of 1996 accords the FCC exclusive jurisdiction over the North American Numbering Plan for the United States but specifically does not preclude the FCC from delegating such jurisdiction to the states.

<sup>2</sup> *In the Matter of Florida Public Service Commission Petition to Federal Communications Commission for Expedited Decision for Grant of Authority to Implement Number Conservation Measures*, Docket No. 96-68, Order No. 99-249.

<sup>3</sup> See, *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.

A state agency is a creature of the state legislature and all of its authority is that set forth in the state law that creates and confers specific jurisdiction on that agency. 2 Fla. Jur. 2d Administrative Law §30. In Florida, a state agency's jurisdiction is even further restrained by ch. 120, F.S., the state Administrative Procedures Act.

While general principles of law provide that federal law may supersede and preempt state law under certain circumstances, neither Congress nor a federal agency acting pursuant to its delegated legislative authority from Congress may confer authority on a state agency that is not otherwise conferred by state legislative act. When Congress or the FCC purport to authorize the state to carry out certain functions, that authority is conferred to the state, not a specific state agency. It is purview of the state legislature to determine the appropriate administrative structure for carrying out that authority. If the necessary authority is not delegated by the Legislature to an administrative agency, then the power to implement the federal mandates resides within the Legislature. See, generally, 16A Am. Jur. 2d Constitutional Law §§ 230, 236.

In Florida, the Public Service Commission is an arm of the Legislature, created for the purpose of exercising the Legislature's jurisdiction over utilities, including the telecommunications industry.<sup>4</sup> In accordance with the general principles of administrative law, the Commission derives its power solely from the Legislature and must have a legislative grant of authority in order to act.<sup>5</sup> *United Telephone Company of Florida v. Public Service Commission*, 496 So. 2d 116 (Fla. 1986). As recognized by the Florida Supreme Court in *United Telephone* and by the Commission itself in the

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<sup>4</sup> The Commission's jurisdiction generally is set forth in ch. 350, F.S.

<sup>5</sup> For instance, s. 120.80, F.S., gives the Commission procedural authority necessary to implement the 1996 Telecommunications Act.

MCI Access Charge complaint, if there is any doubt about existence of the Commission's power to act, it should be resolved against the exercise of the power. 496 So. 2d at 118; MCI Order at 16.

**B. Does chapter 364, Florida Statutes, authorize/permit the Commission to act upon the FCC's delegation of authority to order rate center consolidation?**

Sprint believes that under ch. 364, F.S., as it currently exists, the Commission is prohibited from ordering rate consolidation for ILECs that have elected price regulation in Florida. Section 364.051, F.S., sets out the parameters for the election of price regulation. Effective January 1, 1996, it capped the rates for basic local telecommunications service of a price-regulated ILEC at the rates in effect on July 1, 1995. Verizon, BellSouth and Sprint all elected price regulation so that, pursuant to the statute, their rates for basic local telecommunications services are capped at the rates in effect on July 1, 1995, subject to an inflation factor.

Section 364.02 (2), F.S., defines basic local telecommunications service to mean certain voice-grade, flat-rate residential and single line business services, including any extended area service (EAS) and extended calling service (ECS) routes that were in effect on July 1, 1995. In addition, section 364.885, Florida Statutes, prohibits new proceedings to establish EAS or ECS routes after July 1, 1995. Pursuant to the law, EAS and ECS service established after that date are nonbasic services<sup>6</sup>, and, therefore, the Commission is prohibited from ordering a price-regulated ILEC to implement such service, although the ILEC may choose voluntarily to establish such service pursuant to the price regulation of nonbasic services set forth in § 364.051, F.S. The Commission

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<sup>6</sup> "Nonbasic service" is defined in s. 364.02(8), F.S., to mean any telecommunications service provided by an ILEC other than a basic local telecommunications service, a local interconnection service or an access service.

has recognized this limitation on its authority to order new EAS or ECS service subsequent to the passage of the 1995 Act.<sup>7</sup>

Rate center consolidation results essentially in the creation of EAS or ECS service, since its practical effect is to expand the local calling areas of the rate centers that are consolidated. Based on the limitation of the Commission's authority to order EAS or ECS service since 1995 as described above, Sprint believes that the Commission is prohibited from ordering rate center consolidation for price-regulated ILECs.

Section 364.051, F.S., also prohibits the Commission from requiring rate center consolidation, if the consolidation would result in an increase in basic local telecommunications service rates. The section caps price-regulated ILECs' rates at the level in effect on July 1, 1995. This provision has been interpreted by the Commission to apply to the individual rates charged customers, rather than the geographic rate groups based on population set forth in the ILECs' tariffs. See, *In re: Notice of Election of Price Regulation by BellSouth Telecommunications, Inc.*, Docket No. 951354-TL, Order No. PSC-97-0488-FOF-TL. In this order accepting BellSouth's election of price regulation, the Commission prohibited BellSouth from regrouping certain local calling areas pursuant to its tariffs, as the regrouping would have resulted in customer rate increases. The Commission found such regrouping to be prohibited by the price caps in section 364.051, F.S. The Florida Supreme Court affirmed the Commission's position on the application of the rate caps in *BellSouth Telecommunications, Inc. v. Johnson*, 708 So.2d 594 (Fla. 1998).

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<sup>7</sup> In re: Resolution by Suwannee Board of County Commissioners for extended area service (EAS) between Dowling Park/Lake City, Florida Sheriff's Boys Ranch/Lake City, and Luraville/Lake City, Docket No. 961238-TL; Order No. PSC-97-1400-FOF-TL

In some instances, rate center consolidation may result in effective “rate regrouping” for customers in some rate centers whose rates might increase to the highest rate of the consolidated rate centers. Based on the Commission’s own precedent, Sprint believes that controlling state law prohibits the Commission from ordering rate center consolidation when it will result in an increase in basic local telecommunications service rates.

In addition, rate center consolidation may also result in a reduction in access charges received by an ILEC, in that it makes calls that were previously toll calls into local calls. The Commission has ruled that it has no authority to reduce access charges other than that specifically set forth in section 364.163, F.S. MCI Access Charge Order at page 18. Rate center consolidation is contrary to the access charge reduction scheme set forth in the law. Therefore, Sprint believes that the Commission is prohibited from ordering rate center consolidation to the extent that it results in access charge reductions in violation of this section.

### **Conclusion**

While the Commission has taken a necessary step in securing from the FCC any needed additional delegation of authority to implement rate center consolidation for number conservation purposes, it is not authorized to implement this delegated authority under applicable state law for price-regulated ILECs. Therefore, Sprint believes that the Commission is prohibited from ordering a price-regulated ILEC to implement rate center consolidation. However, a price-regulated ILEC may voluntarily agree to implement rate center consolidation, to the extent such consolidation would not otherwise violate the price regulation scheme set forth in state law.



RESPECTFULLY SUBMITTED this 24<sup>th</sup> day of April, 2001.

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CERTIFICATE OF SERVICE

DOCKET NO. 010102-TP

I HEREBY CERTIFY that a true and correct copy of the foregoing was served by U.S. Mail this 24th day of April, 2001 to the following:

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