ORIGINAL

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September 25, 2002

Ms. Blanca S. Bayó, Director
Division of the Commission Clerk and
Administrative Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Re: Docket No. 000075-TP (Phase IIA) Sprint's Motion for Reconsideration of Order Nos. PSC-02-1248-FOF-TP & PSC-02-1248A-FOF-TP or in the Alternative Motion for Stay Pending Appeal

Dear Ms. Bayó:

Enclosed for filing is the original and fifteen (15) copies of Sprint's Motion for Reconsideration of Order Nos. PSC-02-1248-FOF-TP & PSC-02-1248A-FOF-TP or in the Alternative Motion for Stay Pending Appeal in Docket No. 000075-TP (Phase IIA).

Copies are being served on the parties in this docket, pursuant to the attached Certificate of Service.

Please acknowledge receipt of this filing by stamping and initialing a copy of this letter and returning same to the courier. If you have any questions, please do not hesitate to call me at 850/599-1560.

Sincerely,

Susan S. Masterton

Susan S. Masterton

Enclosure

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CERTIFICATE OF SERVICE
DOCKET NO. 000075-TP (Phase IIA)

I HEREBY CERTIFY that a true and correct copy of the foregoing was served by hand delivery* or U.S. Mail this 25th day of September, 2002 to the following:

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Susan S. Masterton

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Investigation into Appropriate Methods to Compensate Carriers For Exchange of Traffic Subject to Section 251 of the Telecommunications Act of 1996	) DOCKET NO. 000075-TP (Phase IIA))) Filed: September 25, 2002))))

SPRINT'S MOTION FOR RECONSIDERATION OF ORDER NOS. PSC-02-1248-FOF-TP & PSC-02-1248A-FOF-TP OR IN THE ALTERNATIVE MOTION FOR STAY PENDING APPEAL

Pursuant to Rules 25-22.060 and 28-106.204, F.A.C., Sprint-Florida, Incorporated and Sprint Communications Company Limited Partnership (hereinafter "Sprint") file this Motion for Reconsideration of Order No. PSC-02-PSC-1248-FOF-TP, issued by the Florida Public Service Commission ("Commission") on September 10, 2002, as amended by Order No. PSC-02-1248A-FOF-TP issued on September 12, 2002, (collectively "Order").[1] Specifically, Sprint seeks reconsideration of the Commission's decision relating to the appropriate default definition of local calling area for reciprocal compensation purposes (Issue 13).

Reconsideration is appropriate when the decision-maker ignored, misinterpreted or misapplied the law applicable to the evidence in the proceeding or overlooked and failed to consider the significance of certain evidence. See, Diamond Cab Co. V. King,

[1] Sprint interprets Rule 25-22.060, F.A.C., to establish the timeframe for filing a Motion for Reconsideration based on the date an order is final. In this case, the original order was issued September 10, 2002, and an amendatory order was issued on September 12. Sprint believes that the date the order is final, pursuant to the rule is the date of the issuance of the amendatory order, which would make any Motions for Reconsideration due on September 27, 2002. However, in an abundance of caution Sprint is filing this Motion based on the issuance date of the original order.

146 So. 2d 889 (Fla. 1962). Sprint respectfully submits that in its resolution of Issue 13 the Commission misinterpreted the applicable law and overlooked or failed to consider the significance of several key points. Therefore, Sprint requests that the Commission reconsider its ruling on this issue for the reasons set out below.

ISSUE 13: How should a "local calling area" be defined, for purposes of determining the applicability of reciprocal compensation?

a) **What is the Commission's jurisdiction in this matter?**

b) **Should the Commission establish a default definition of local calling area for the purpose of intercarrier compensation, to apply in the event parties cannot reach a negotiated agreement?**

c) **If so, should the default definition of local calling area for purposes of intercarrier compensation be: 1) LATA-wide local calling, 2) based upon the originating carrier's retail local calling area, or 3) some other default definition/mechanism?**

Issue 13 addresses what is the appropriate local calling area for the purposes of determining the applicability of reciprocal compensation exchanged between the incumbent local exchange carriers (ILECs) and alternative local exchange carriers (ALECs). The Commission determined that the appropriate local calling area should be the originating carrier's retail local calling area. (Order at 57) The Commission appeared to base its decision on a desire to achieve "competitive neutrality" and on its understanding that administrative issues regarding the implementation of billing based on the standard could be easily addressed. (Order at 56) In addition, the Commission appeared to believe that applying reciprocal compensation based on the originating carrier's retail local calling scope would enhance competitive local service offerings to the ultimate benefit of consumers. (Order at 57)

THE COMMISSION MISINTERPRETED AND MISAPPLIED THE LAW

The Commission's analysis as it applies to its authority to adopt a local calling scope other than the ILEC's local calling scope is based on a misapprehension of the law. As demonstrated in Sprint's post-hearing brief, Sprint believes that chapter 364, F.S., restricts the Commission's ability to alter the local calling scopes of incumbent carriers, thereby indirectly changing the access charge regime that, by statute, may be altered only through legislative action. Specifically, s. 364.16(3)(a), F.S., prohibits the Commission from deeming certain traffic that is otherwise subject to access charges as local traffic for the purposes of reciprocal compensation. The Commission's decision has the practical effect of doing just this.

The Commission misinterpreted and misapplied the applicable law in determining that the directory provisions contained in section 364.01 (4)(b), F.S., give the Commission substantive authority to determine local calling areas in contravention to the specific requirements of s. 364.16(3)(a), F.S. Well-established rules of statutory construction provide that specific provisions take precedence over general provisions when interpreting interrelated statutory provisions.[2] Similarly, pursuant to s. 120.536. F.S. of the Florida Administrative Procedures Act, a general grant of authority is not sufficient to support an agency action. In addition to the general grant, there must be a specific law implemented. In this case, s. 364.01(4), F.S., by its own terms is intended to provide guidance to the Commission as to how to implement the authority granted in the

[2] *See, McKendry v. State*, 641 So. 2d 45 (Fla. 1994); *see also, Floyd v. Bentley*, 496 So. 2d 862 (Fla. 2d DCA 1986).

specific provisions of ch. 364, F.S.[3] Clearly, the Commission misinterpreted the law when it held that the specific provisions of 364.163, F.S., and 364.16(3)(a), F.S., should be subordinated to the general provisions of 364.01, F.S. (Order at 42)

The FCC's grant of authority to state commission's does not supersede or alter the authority granted the Commission by state statutes. As a general principle, a state agency has only those powers accorded to it by the state Legislature.[4] Based on constitutional principles of federalism, Congress may not create or directly grant powers to a state agency. [5] In this case, the FCC's grant of authority in paragraph 1035 of the Local Competition Order specifically recognized the states' role in determining the parameters of local calling areas for telecommunications traffic.[6]

THE COMMISSION FAILED TO CONSIDER CERTAIN ESSENTIAL FACTS

In addition to misinterpreting and misapplying the provisions of ch. 364, F.S., in rendering its decision, the Commission overlooked or failed to consider the consequences of using the originating carrier's local calling area for certain competitors in the telecommunications market. These effects on competition undermine the intended competitive neutrality of the decision and the Commission's stated intent to increase competitive choices for consumers. The Commission also failed to address certain essential aspects of implementing the default mechanism of the originating carrier's retail

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[3] Subsection 364.01 (2), F.S., gives the Commission exclusive jurisdiction in all matters set forth in this chapter. Subsection 364.01 (4), F.S., states that the "Commission shall exercise its exclusive jurisdiction in order to:"

[4] *United Telephone Company of Florida v. Public Service Commission*, 496 So. 2d 116 (Fla. 1986).

[5] *New York v. United States*, 505 U.S. 144 (1992).

[6] Paragraph 1035 provides that "state commissions have the authority to determine what geographic areas should be considered "local areas" for the purposes of applying reciprocal compensation obligations under 251(b)(5), consistent with the historical practice of defining local areas for wireline LECs.

local calling area, hamstringing the ILEC in its ability to implement the decision.

The decision is not competitively neutral

The Commission states in the Order that "[a] default mechanism should be as competitively neutral as possible, thereby encouraging negotiation and development of business solutions." (Order at 57) While noting that it was an alternative that received "less attention" from the parties (Order at 56), the Commission determined that pegging the default mechanism to the originating carrier's local calling scope is a more competitively neutral alternative than the LATA or the ILEC's local calling scope. (Order at 56) This determination is erroneous for several reasons.

First, use of the originating local carrier's local calling scope does nothing to address the competitive disadvantages to IXCs that the Commission recognized are inherent in a LATA-wide local calling scope, because it still allows ALECs to pay reciprocal compensation when IXCs must pay access charges. The Commission rejected the LATA-wide local calling scope on the basis of this competitive disadvantage to IXCs. (Order at 55)

The Commission appeared to believe that this same disparity would not exist with the use of the originating carrier's local calling scope. However, to the extent that an ALEC adopts a retail local calling scope that exceeds the scope of the ILEC's local calling scope, the ALEC will be able to pay reciprocal compensation, rather than access charges for the termination of otherwise indistinguishable traffic. IXCs still will be bound by the ILEC's tariffed local calling areas and will pay access charges for carrying the identical calls. The Commission can do nothing to remedy this disparity because, as the

Commission recognizes, only the Legislature may alter the statutory access charge regime. (Order at 42)

In addition, the use of the originating carrier's local calling scope as ordered by the Commission, also discriminates against ILEC's because it appears to enable an ALEC to have a local calling scope that exceeds the calling areas an ILEC is certificated to serve pursuant to its certificated territory and its tariffs. The decision does not provide parameters within which an ALEC may designate a retail local calling scope, such as within an ILEC's territory or even within a LATA. Therefore, an ALEC could designate, and pay reciprocal compensation for, a larger territory than an ILEC is legally entitled to serve and still maintain the universal service subsidies ordered by the Commission when establishing the existing unified retail and wholesale rate structure prior to 1995. Other statutory and regulatory constraints restrict the flexibility of ILECs to expand their local calling scopes, including the parameters of price regulation set forth in s. 364.051, F.S.[7] This belies the Commission's assumption that the local calling areas would even out over time so that any concerns about the inequities involved in paying compensation based on the direction of the traffic would be moot. (Order at 57) As described by Verizon's witness Trimble, "[b]asing intercarrier compensation on the originating carrier's retail local calling area would be even worse than the LATA." (Phase IIA, Tr. at 97) Mr. Trimble explained that this alternative is worse because it would allow ALECs to "pay lower reciprocal compensation rates for outbound traffic and to receive higher access

[7] For example, an ILEC's basic local calling area is defined by statute pursuant to s. 364.02, F.S. In addition, s. 364.051(5), F.S. prohibits an ILEC from subsidizing nonbasic services with revenues from basic servicesso that the rates for any ILEC nonbasic expanded calling area must be set at a level sufficient to

rates for inbound traffic, or even a combination of the two." (Phase IIA Tr. at 97) Such a skewed compensation scheme is inconsistent with the principles of competitive neutrality.

Because the Commission found that the originating carrier's local calling scope is a more competitively neutral approach than either the LATA or the ILEC's local calling area, the Commission appears to believe that this alternative does not favor any party and thus would facilitate negotiation and the development of business solutions. (Order at 57) Contrary to the Commission's assumption, the alternative has the same competitive advantages and disadvantages as the LATA-wide local calling scope, and therefore would not avoid the negotiation disincentives that troubled the Commission about the LATA-wide alternative. (Order at 55)

The order fails to consider several critical administrative and implementation issues

Since little attention was directed toward the option of the originating carrier's retail local calling scope in Phase IIA of the docket, the Commission failed to consider or address several administrative issues that are critical to the implementation of the originating carrier's retail local calling scope as the default for reciprocal compensation purposes.

First, the Commission failed to establish how the parties to an interconnection agreement will demonstrate that a particular local calling scope is, in fact, their "retail local calling scope." This issue is similar to the issue of establishing "comparable geographic area" for the purposes of applying the tandem switching charge, addressed in

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cover cost or otherwise violate that provision.

Issue 12 of this docket. On that issue the parties presented, and the Commission considered, extensive testimony concerning how comparable geographic area was to be determined. The Commission ultimately adopted specific criteria for an ALEC to demonstrate that it meets the comparable geographic area standard. (Order at 20) In contrast, the definition of "retail local calling scope" was never explored, either in the parties' testimony or in the Order. The Commission's failure to address this issue—and the lack of a record basis-- precludes effective implementation of its decision and will likely result in further proceedings before the Commission to resolve disputes that may not be easily resolved.

In a related matter, the Commission does not address whether the originating carrier's local calling area is to be applied on a customer specific basis or by carrier. Since carriers may offer a variety of local calling plans, distinguished by features and price, it is possible that customers of a particular ALEC may subscribe to many different retail local calling areas. (Phase IIA, Tr. at 100) Billing reciprocal compensation rates by customer, rather than carrier, not only is blatantly discriminatory between and among the carriers, but poses significant challenges to implementation, even with the use of "billing factors" cited by the Commission as a mechanism to facilitate administration of the retail local calling area alternative. (Order at 56) The Commission fails to consider or even recognize any issues surrounding the carriers' ability to apply or audit reciprocal compensation billing based on customer specific local calling areas.

Similarly, the Commission's decision that the originating carrier's retail local calling scope should be the default local calling scope for reciprocal compensation

purposes fails to consider the impact of that decision on its decision on Issue 15, addressing reciprocal compensation in the context of virtual NXXs. (Order at 34-35) On this issue, the Commission held that the jurisdiction of a call is determined by its physical originating and terminating end points. (Id.) Under the decision in Issue 13, whether those physical end points are within or without the local calling area will depend on the originating carrier's retail local calling scope, arguably determined by the local calling area of the specific customer originating a call. Applying the Commission's decision in Issue 13 to Issue 15, whether a call made to a virtual NXX was subject to reciprocal compensation or access charges would depend on the customer originating the call. Obviously, severe circularity problems could ensue. As stated above, ILECs' billing systems are not designed to track and bill calls on this basis. (Phase IIA Tr. at 100, 185) There is no evidence that a reliable, auditable billing mechanism could be developed to accommodate the wildly varying calling scopes that might be applicable under these scenarios.

The ILEC's local calling scope is the only option that is nondiscriminatory and administratively feasible

The record supports that the ILECs' Commission-approved local calling scopes are the only option that is both nondiscriminatory (because they would apply equally to all carriers) and administratively feasible (because they are well-established and the basis of all intercarrier billing today). (Phase IIA Tr. at 91) To implement the other mechanisms considered, e.g., the LATA or the originating carrier's local calling scope, would require changes in the service territories and compensation scheme among carriers that are beyond

the scope of the Commission's statutory authority, and outside the scope of this docket. The Commission should reconsider its decision on Issue 13 and find that the ILECs' local calling scopes should be the default local calling scopes for reciprocal compensation purposes.

In the alternative, the Commission should leave the decision up to negotiation between the parties. This alternative would be the most likely to facilitate the development of competition through business solutions, rather than regulatory fiat. Throughout Phase II of this docket, the parties generally have agreed that negotiation was the preferred mechanism for establishing the local calling area for reciprocal compensation purposes. Allowing the parties to negotiate the appropriate local calling area based on the total circumstances of the relationship between the two carriers is the most competitively neutral alternative. The primary staff recommendation on this issue acknowledged the fairness of this alternative to all parties. (Staff Recommendation issued August 8, 2002, at 36)

MOTION FOR STAY PENDING APPEAL

If the Commission does not reconsider its decision ordering the originating carrier's local calling area as the default for assessing reciprocal compensation, Sprint will be forced to appeal the ruling for the reasons set forth above. In that event, Sprint asks the Commission to grant a stay pending judicial review, in accordance with Commission Rule 25-22.061, F.A.C., and Florida Rule of Appellate Procedure 9.310.

Rule 25-22.061, F.A.C., requires the Commission to grant a stay, upon a motion by the affected company, if the order being appealed involves a decrease in rates charged to customers. This provision is applicable to the Order, since, if an ALEC chooses to define its local calling area larger than Sprint's tariffed local calling areas, then the ALEC

will pay Sprint TELRIC-based reciprocal compensation, rather than the access charges that are currently due. Because the decision allows a decrease in the rates Sprint may charge for exactly the same traffic, Sprint is entitled to a stay as a matter of right.

Even if the Commission disagrees that it must grant a stay, Sprint meets all the conditions for obtaining a discretionary stay pending judicial review set forth in 25-22.061(2), F.A.C. First, Sprint will likely prevail on appeal. As set forth in Sprint's Motion for Reconsideration, the Commission's decision is arbitrary because the originating carrier default it chose will cause the same anticompetitive outcomes that led the Commission to reject the LATA-wide reciprocal compensation approach. There is no evidence supporting the Commission's choice of the originating carrier's local calling area for reciprocal compensation purposes. The decision is also contrary to federal and state law. Any one of these reasons would be sufficient to overturn the decision.

Second, Sprint (and the ILEC and intraLATA industry) will suffer irreparable harm in the absence of a stay. If access traffic is converted into local traffic, as it would be under an originating carrier approach, "there are clearly millions of dollars at risk for both IXCs' and ILECs 'intraLATA toll revenues as well as millions of dollars for ILECs' intraLATA access revenues." (Phase IIA Tr. at 74.) Sprint estimates that LATA-wide local calling for reciprocal compensation purposes would cause it to lose $16 million in revenue annually. (Hearing Ex. 11, at 2.) Verizon also estimates that, conservatively, its losses would run into the millions of dollars annually. (Trimble, Tr. 145 and Hearing Ex. 15, confidential response to item 7 of Staff's First Request for Production of Documents to Verizon; see also Order at 47-48.)

Sprint's losses resulting from the anticompetitive effects of the originating carrier approach are irremediable. If the Commission's ruling takes effect, it will give the ALECs a definitive competitive advantage over their ILEC and IXC (particularly stand-alone IXC) competitors. Once lost, market share is extremely difficult and expensive to regain. In addition, Sprint will incur substantial expense to try to develop a billing system that can accommodate multiple local calling areas for intercarrier compensation purposes. Sprint would not incur these expenses, except for the Commission's decision.

Third, maintaining the status quo will not cause "substantial harm or be contrary to the public interest." There is no evidence that the public has been harmed by lack of a Commission-mandated default for the local calling area for reciprocal compensation purposes. Indeed, ALECs already have the undisputed ability to define their retail local calling areas as they wish, including offering LATA-wide local calling plans. And there is no evidence that intercarrier compensation costs constrain their freedom to define their retail local calling areas differently from the ILECs'.

If the Commission does not reconsider its ruling adopting the originating carrier's local calling area as the default for reciprocal compensation purposes, then Sprint respectfully asks the Commission to stay this aspect of its Order until an appellate court rules on the issues Sprint has raised in its Motion for Reconsideration.

RESPECTFULLY SUBMITTED this 25th day of September 2002.

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