

State of Florida



Public Service Commission

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DATE: SEPTEMBER 9, 2003

TO: DIRECTOR, DIVISION OF THE COMMISSION CLERK &
ADMINISTRATIVE SERVICES (BAYÓ)

FROM: OFFICE OF THE GENERAL COUNSEL (B. KEATING, L. FORDHAM, ^{PK} ¹²⁷
CHRISTENSEN, BANKS) ^{PK} ^{PK} ^{SAS}
DIVISION OF COMPETITIVE MARKETS & ENFORCEMENT (SIMMONS)
DIVISION OF COMMISSION CLERK AND ADMINISTRATIVE SERVICES
(S. MOSES) SM

RE: DOCKET NO. 030867-TL - PETITION BY VERIZON FLORIDA INC. TO
REFORM INTRASTATE NETWORK ACCESS AND BASIC LOCAL
TELECOMMUNICATIONS RATES IN ACCORDANCE WITH SECTION
364.164, FLORIDA STATUTES.

DOCKET NO. 030868-TL - PETITION BY SPRINT-FLORIDA,
INCORPORATED TO REDUCE INTRASTATE SWITCHED NETWORK ACCESS
RATES TO INTERSTATE PARITY IN REVENUE-NEUTRAL MANNER
PURSUANT TO SECTION 364.164(1), FLORIDA STATUTES.

DOCKET NO. 030869-TL - PETITION FOR IMPLEMENTATION OF
SECTION 364.164, FLORIDA STATUTES, BY REBALANCING RATES IN
A REVENUE-NEUTRAL MANNER THROUGH DECREASES IN INTRASTATE
SWITCHED ACCESS CHARGES WITH OFFSETTING RATE ADJUSTMENTS
FOR BASIC SERVICES, BY BELL SOUTH TELECOMMUNICATIONS, INC.

AGENDA: 09/16/03 - REGULAR AGENDA - PROCEDURAL MATTER - INTERESTED
PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\GCL\WP\030867.RCM

DOCUMENT NUMBER DATE

08494 SEP-98

FPSC-COMMISSION CLERK

CASE BACKGROUND

During the 2003 Regular Session, the Florida Legislature enacted the Tele-Competition Innovation and Infrastructure Enhancement Act (Tele-Competition Act or Act). The Act became effective on May 23, 2003.

Part of the new Tele-Competition Act is the new Section 364.164, Florida Statutes, whereby the Legislature established a process by which each incumbent local exchange telecommunications carrier (ILEC) may petition the Commission to reduce its intrastate switched network access rate in a revenue-neutral manner. The Commission is required to issue its final order granting or denying any such petition within 90 days of the filing of a petition. In reaching its decision, Section 364.164 sets forth the criteria the Commission shall consider in determining whether to grant the petition. The Commission must consider whether the petitioners' proposals will:

- (a) Remove current support for basic local telecommunications services that prevents the creation of a more attractive competitive local exchange market for the benefit of residential consumers;
- (b) Induce enhanced market entry;
- (c) Require intrastate switched network access rate reductions to parity over a period of not less than 2 years or more than 4 years; and
- (d) Be revenue neutral.

Due to the expedited nature of the proceedings contemplated by the new legislation, Commission staff submitted a recommendation on August 21, 2003, in Docket No. 030846-TL, addressing a variety of procedural aspects of the Commission's proceedings to address the anticipated petitions. Staff's recommendation was considered at the September 2, 2003, Agenda Conference.

On August 27, 2003, Verizon Florida Inc. (Verizon), Sprint-Florida, Incorporated (Sprint), and BellSouth Telecommunications, Inc. (BellSouth), each filed petitions pursuant to Section 364.164, Florida Statutes, and respective Dockets Nos. 030867-TL, 030868-TL, and 030869-TL have been opened to address these petitions in the

time frame provided by Section 364.164, Florida Statutes. On September 4, 2003, the Prehearing Officer issued an Order Establishing Procedure and Consolidating Dockets for Hearing, Order No. PSC-03-0994-PCO-TL. Because of the expedited nature of these proceedings, the schedules and procedures set forth therein recognized and applied the Commission's decisions made at the September 2, 2003, Agenda Conference in Docket No. 030846-TL.¹

This recommendation addresses the Office of Public Counsel's/Citizens' (hereafter OPC) Motion(s) to Hold, and to Expedite Scheduling of, Public Hearings filed in each of the identified Dockets on August 28, 2003. At the September 2, 2003, Agenda Conference, the issue of public hearings was discussed, and staff was directed to bring a recommendation further addressing the issue. Staff was also directed to work with the parties regarding certain aspects of the public hearings, and to that end, staff conducted a conference call with the parties on Monday, September 8, 2003. Staff notes that only Sprint filed a written response to the Motion as it applies in Docket No. 030868-TL. The response was filed September 5, 2003.

DISCUSSION OF ISSUES

ISSUE 1: Should OPC's Motion(s) to Hold, and to Expedite Scheduling of, Public Hearings be granted?

RECOMMENDATION: The Motions should be granted, in part, and denied, in part, as set forth in the Staff Analysis below. **(B. Keating)**

STAFF ANALYSIS:

Arguments

In its Motions, OPC states that as part of the Commission's consideration of the Petitions in these Dockets, the Commission must address whether granting the petitions will benefit each

¹Staff notes that on September 3, 2003, OPC filed Motions to Dismiss in each of the Dockets. These will be addressed in a subsequent recommendation.

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petitioning company's residential customers. OPC notes that in considering the bill that resulted in the subject legislation, the Legislature contemplated that the Commission would hold public hearings to receive customer input. As support, OPC references the House floor debate on Committee Substitute for Senate bill S654, during which Representative Clarke was informed by Representative Mayfield that the process contemplated and would allow time for public input. Thus, OPC contends that the Commission should expeditiously begin scheduling public hearings to allow for sufficient customer input in the limited time remaining for the Commission's consideration of the Petitions. OPC proposes that the following cities serve as locations for the public hearings:

Sprint	Fort Walton Beach, Tallahassee, Ocala, and Fort Myers
Verizon	Tampa, St. Petersburg, and Sarasota
BellSouth	Pensacola, Jacksonville, Daytona Beach, Orlando, Miami, Fort Lauderdale, and West Palm Beach ²

At the September 2, 2003, Agenda Conference, Verizon and BellSouth indicated generally that they did not oppose OPC's Motion. Only Sprint filed a written response to OPC's Motion. Therein, Sprint states that it supports the concept of public hearings, but emphasizes that there are a number of issues that need to be resolved before such hearings are scheduled.

First, Sprint contends that conducting 13 hearings, as proposed by OPC, is an overly-aggressive schedule in view of the limited time frame established for these proceedings. Thus, Sprint proposes that the Commission instead hold service hearings in the five geographic areas of the state: northwest, northeast, central, southwest, and southeast. Sprint suggests that the representative hearings be held in Panama City, Jacksonville, Orlando, Tampa, and Miami. During the September 8, 2003, conference call with staff, Sprint agreed with OPC that perhaps Fort Walton Beach may be a

²Added during September 8, 2003, conference call.

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better selection than Panama City due to its more central location along the Panhandle coast.

Sprint further contends that the focus of the public hearings should not be limited solely to whether granting the petitions will result in basic local service rate increases. Rather, Sprint maintains that the other aspects of the Petitions must be given equal weight in any notice and handouts used for these hearings. Sprint also emphasizes that customers should be allowed to offer only sworn testimony and should be counseled to address those issues that the Legislature has directed the Commission to address in its consideration of the Petitions.

Sprint also suggests that at least one Commissioner should attend each hearing. Sprint expresses concern that without a Commissioner present, the public hearings would, ". . . devolve into nothing more than a media event." Response, p. 3. Sprint believes that having a Commissioner present will maintain the decorum of the proceeding, ensure that the testimony offered is truthful, and prevent attendance by "sham" customers.

In addition, Sprint asserts that the hearings should put the rate increases in the proper perspective, addressing each of the factors to be considered by the Commission. As such, Sprint emphasizes that notices for the hearings should explain that rate increases are necessary to remove inter-service cross-subsidies, which should create a more competitive marketplace to the benefit of residential customers. Sprint adds that direct mailings to customers are not possible due to the time frame; thus, noticing should be accomplished through newspapers of general circulation in each of the locales identified in OPC's Motion. During the September 8, 2003, conference call, Sprint, however, clarified that it believes that newspaper notices should only be required in the locales where hearings are actually scheduled.

Finally, Sprint adds that it cannot stipulate to the admission of customer comments into the record. Sprint maintains that it is within the Commission's discretion as to whether it should consider customer comments. Sprint emphasizes that Section 364.164(1), Florida Statutes, does not require that the Commission consider such comments in addressing the Petitions.

During staff's September 8, 2003, conference call, BellSouth and Verizon also indicated that they could not agree to stipulation

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of the public hearing transcripts at this time. All of the ILECs, however, indicated that it was very likely that at the conclusion of the hearings, they would be willing to do so. The companies expressed concern primarily about "sham" customers presenting testimony, although they also indicated concern about testimony that far exceeds the scope of the matter before the Commission. OPC and the American Association of Retired Persons (AARP) indicated that they could agree to stipulate the public hearing transcripts.

Most participants on the call also indicated a preference that: (1) at least one Commissioner attend each hearing; and (2) testimony received be sworn. Suggested alternatives of video teleconferencing and sworn affidavits in lieu of hearings were universally panned.

As for locations, Verizon and BellSouth stated their support for Sprint's suggestion, while AARP indicated its support for OPC's proposal. Each of the ILECs indicated that they would be willing to do a one-fourth (1/4) page ad in the principal newspapers serving the locations identified one week prior to hearing. OPC suggested a second newspaper notice on the day of the hearing, but this suggestion was met with hesitation from the companies due to stated cost concerns. A suggestion of a press release was also met with general agreement, but OPC indicated that such release should not replace the second newspaper notice.

Analysis

At the outset, staff notes that new Section 364.164, Florida Statutes, does not require that the Commission conduct public hearings to receive customer testimony regarding the Petitions, unlike the proceedings in 1998 to develop the Commission's report to the Legislature on Fair and Reasonable Rates, Docket No. 980000A-SP, in which public hearings were clearly required. In fact, Section 364.164, Florida Statutes, arguably assumes that the result of implementing proper petitions filed pursuant to this Section will be ". . . a more attractive competitive local exchange market for the benefit of residential consumers." Section 364.164(1)(a), Florida Statutes.

Nevertheless, staff sees merit in conducting some customer hearings to receive public input on the factors that the Commission is required to address in considering the Petitions. Thus, staff

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proposes that OPC's Motions be granted to the following extent: (1) Seven customer hearings to be held; (2) Commissioner participation at the hearings as available with at least one Commissioner present at each; (3) Newspaper notices published one week prior to the hearings to be provided by the ILECs in the cities identified below; (4) Customer report prepared by Commission staff to be provided at hearing outlining the purpose of the proceeding and the information the Commission is seeking; (5) Opening statement by the presiding officer, summary presentation by Staff, and brief statements from the parties; (6) Witness testimony to be under oath; and (7) A Commission press release to be issued on the day before each public hearing. Staff's recommendation is more specifically outlined below.

1. Public Hearings

While staff sees merit in conducting public hearings, staff does not believe that the time constraints allow the Commission to conduct the 13 public hearings that OPC has proposed. Thus, staff agrees to some extent with Sprint's Response. Staff, however, suggests that other venues than those suggested by Sprint may be more appropriate. Thus, staff suggests that hearings be conducted in the following areas: Fort Lauderdale, Jacksonville, Tallahassee, Pensacola, Orlando, Tampa/St. Petersburg (either), and Punta Gorda. Staff believes that these locations give fair coverage to each company's territory, as well as each geographic region of the state. In recommending these locations, staff has considered, to the extent possible, locations in close proximity to more than one company's territory. Should the Commission approve staff's recommendation regarding these locations, staff asks that it be allowed to use its discretion in the actual location scheduling in order to take advantage of least cost alternatives.

2. Commissioner Participation

Staff agrees that if these public hearings are conducted, it would be beneficial to have at least one Commissioner participate at each, for the reasons outlined by Sprint.³

³Staff notes that if Commissioners do participate at the public hearings, the issue of stipulation of the transcripts becomes moot.

3. Newspaper Notice

Staff recommends that the ILECs be required to place a one-fourth (1/4) page notice in the newspaper of general circulation in each city listed below one week prior to hearing:

BellSouth	Miami, Fort Lauderdale, West Palm Beach, Jacksonville, Panama City, Pensacola
Sprint	Orlando, Tallahassee, Ocala, Fort Myers
Verizon	Tampa, St. Petersburg, Sarasota, Punta Gorda

The notices should be submitted to staff for review prior to being placed. They should include not only the date, time and location of the hearings, but should also include a brief summary of the issue before the Commission and a description of the information being sought through the public hearings. Staff does not believe a second publication on the day of a hearing is necessary, particularly if the Commission approves the suggestion for a press release as outlined in Item 7 below.

4. Commission Staff Customer Report

Staff should provide a customer report, which should include pertinent background information, as well as clear guidance regarding the information the Commission is seeking from customers through these hearings.

5. Opening statement by Presiding Officer, Summary presentation by Staff, and Statements from Parties

Staff recommends that the Presiding Officer at each hearing make an introductory statement orienting the customers to the process. Thereafter, the Commission staff should make a brief presentation summarizing the history and purpose of the proceedings. Parties should then be allowed to make brief opening statements, which should be limited to two (2) minutes per party.

6. Testimony Under Oath

Staff believes that the most appropriate means to receive truthful, helpful information in this matter is to require that customers testify under oath. All parties agree that this is appropriate.

7. Press Release

Staff recommends that the Commission issue a press release the day before a scheduled public hearing providing the location and time of the public hearing, as well as a brief explanation of the type of information the Commission hopes to elicit from the proceeding.

Conclusion

For the foregoing reasons, staff recommends that the Commission grant, in part, and deny, in part, OPC's Motions to Hold, and to Expedite Scheduling of, Public Hearings. If the Commission approves staff's recommendation, staff will begin scheduling and noticing these hearings as appropriate.

ISSUE 2: Should these Dockets be closed?

RECOMMENDATION: No. These Dockets should remain open for further proceedings and to address the outstanding Motions to Dismiss. **(B. Keating)**

STAFF ANALYSIS: Whether or not the Commission approves staff's recommendation in Issue 1, these Dockets should remain open to address the Motions to Dismiss and for further proceedings as appropriate.