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June 10, 2004

Blanca S. Bayo, Director  
Division of Commission Clerk and  
Administrative Services  
Florida Public Service Commission  
2540 Shumard Oak Blvd.  
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Re: ~~Docket~~ No. 001503-TP

Dear Ms. Bayo:

Enclosed for filing in the above-referenced docket are the original and 15 copies of Citizens' Brief. A diskette in Word format is also submitted.

Please indicate the time and date of receipt on the enclosed duplicate of this letter and return it to our office.

Sincerely,

Charles J. Beck  
Deputy Public Counsel

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FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Cost recovery and )  
allocation issues for number )  
pooling trials in Florida )  
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Docket No. 001503-TP

Filed June 10, 2004

**CITIZENS' BRIEF**

Pursuant to Florida Public Service Commission order nos. PSC-04-0056-PCO-TP issued January 20, 2004 and PSC-04-0395-PCO-TP issued April 14, 2004, the Citizens of Florida file this brief.

**Issue 1:** May BellSouth and Sprint recover the cost for state-mandated number pooling via a mechanism separate and apart from and in addition to the rate and revenue increases to basic and non-basic service implemented since January 1, 2000?

**Citizens' Position:** \* Revenue increases totaling more than \$60,000,000 for Sprint and \$280,000,000 for BellSouth fully recover the cost of number pooling for the companies. No additional revenue increases should be given to the companies by the Commission. \*

**Discussion:** Prior to 1996 BellSouth and Sprint operated under rate of return regulation. Under this regulatory paradigm, the Commission set the companies' rates at a specific level which allowed the companies the opportunity to recover all of their prudently incurred expenses plus a reasonable profit on their investment used to provide intrastate regulated services to their customers. Importantly, even under rate of

return regulation, there was no guarantee that the company would exactly earn their authorized return on equity.

The Commission typically set a midpoint for the authorized return on equity and allowed the company to earn 100 basis points above or below the midpoint without the prospect of taking any action against the company. If the company earned below the authorized range, it was up to the company to request a rate increase. If the company earned above the authorized range, it was up to the Commission or a party to bring an action against the company to reduce its rates.

All of that changed in 1996. Under the price-cap regulatory paradigm applicable to BellSouth and Sprint since that time, the direct link between rates and cost recovery was broken. Rather than setting rates to recover costs and to target an authorized midpoint return on equity, price cap regulation sets prices independently of costs. If a company can successfully reduce its overall costs or hold costs steady while its revenues increase, it can reap the benefits of the cost reductions for its stockholders.

The price cap system put into effect during 1996 generally froze rates at levels in existence as of July 1, 1995, and allowed the companies to later gradually raise rates by certain percentages unrelated to the costs incurred by the companies. Exhibits 17 and 18 show incremental revenue increases BellSouth and Sprint gained since January 1, 2000, under price cap regulation. Rate changes have allowed BellSouth to increase revenues by more than \$90 million in 2000, another \$96 million in 2001, and another \$94 million in 2002, for revenue increases totaling more than \$280 million by the end of the three year period. See exhibit 17. Compared to the \$2.97 million cost to implement number pooling, BellSouth has recovered the cost of number pooling many times over

through rate increases implemented over the three year period. Price cap filings by Sprint resulted in incremental revenue increases in excess of \$12 million in 2000, another \$17 million in 2001, another \$15 million in 2002, and another \$17 million in 2003 -- over \$60 million by the end of this four year period. Compared to the number pooling cost of \$627,000, Sprint, like BellSouth, recovered the cost of number pooling many times over through rate increases implemented since January 1, 2000.

The Federal Communications Commission has made it clear that it views numbering administration costs as ordinary costs of doing business. In its Third Report and Order<sup>1</sup>, the FCC stated that "numbering administration... is a basic telephone network function. IXCs would not be able to route calls from their subscribers without a numbering system. Thousands-block number pooling is thus different from LNP because it is, essentially, an enhancement of existing numbering administration procedures designed to extend the life of the existing numbering system."<sup>2</sup> Later in the same order the FCC stated that "we agree with those commenters that maintain that the costs of numbering administration are generally and appropriately treated as an ordinary cost of doing business."<sup>3</sup> As ordinary costs of doing business, numbering administrative costs, which include number pooling costs, are the type of costs already recovered by the companies through Florida's price cap regulatory plan.

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<sup>1</sup> *Third Report and Order and Second Order on Reconsideration*, CC Docket No. 96-98 and CC Docket No. 99-2000, released December 28, 2001.

<sup>2</sup> *Id.* at ¶34.

<sup>3</sup> *Id.* at ¶37.

In addition to the regular price increases allowed under price cap regulation, the statutes governing price regulation provide a method for the local exchange companies to seek additional rate increases. According to §364.051(4), Fla. Stat. (2003),

" ... any local exchange telecommunications company that believes circumstances have changed substantially to justify any increase in the rates for basic local telecommunications services may petition the commission for a rate increase, but the commission shall grant such petition only after an opportunity for a hearing and a compelling showing of changed circumstances."

No local exchange telecommunications company, including BellSouth and Sprint, has filed such a petition at the Commission, presumably because the profits the companies are earning under the price cap regulatory paradigm are fully adequate.

Neither of the petitions seeking to recover number pooling costs from customers in this proceeding claim to be filed under the provisions of §364.051(4), Fla. Stat. (2003). Instead, the petitions filed by the companies seek a one-time increase in rates without purporting to comply with the price cap regulation statutes. By failing to claim or show that they qualify for an exception to the price cap restrictions (as set forth in §364.05(4), Fla. Stat.), the companies must comply with all of the price cap restrictions governing their rates. The price cap statutes do not allow the additional one-time rate increases granted by the Commission in the proposed agency action orders.

**Issue 2:** What is the basis of authority under which the Florida Public Service Commission allowed BellSouth and Sprint to recover the costs of number pooling and to do so through a separate end-user charge?

**Citizens' Position:** \* Florida Statutes do not authorize the surcharge imposed by the Commission. \*

**Discussion:** The Florida Public Service Commission has no general power to authorize rate increases, much less any specific power to grant a rate increase beyond those allowed by the price cap regulation statutes. The price cap statute specifically contemplates an exception to otherwise applicable price cap restriction and sets forth guidelines that must be followed in order to increase rates beyond those allowed by the price cap provisions. The exception to the price cap provisions -- §364.051(4), Fla. Stat. (2003) -- sets forth standards that the companies have not satisfied in this proceeding. Indeed, the companies do not even purport to comply with the provisions of §364.051(4). The power exercised by the Commission in relation to telecommunications companies is the power conferred by chapter 364, Florida Statutes. See §364.01(1), Fla. Stat. (2003).

Commission order PSC-02-0466-PAA-TP recognized that any petitions for number pooling cost recovery would have to be consistent with federal and state statutes.<sup>4</sup> Nothing in order no. FCC 99-249 preempts state law in any manner. Any order from the Florida Public Service Commission authorizing the companies to surcharge local rates must therefore comply with Florida law.

There is no power set forth in chapter 364, Florida Statutes, allowing an extra one-time rate increase to pay for number pooling costs. §364.16(4), Fla. Stat. (2003) recognizes the scarcity of telephone numbering resources and the need for all local

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<sup>4</sup> The relevant quote from Commission order PSC-02-0466-PAA-TP appears on page 12 of both proposed agency action orders.

exchange service providers to have access to local telephone numbering resources on equitable terms. This provision *could* have also addressed and authorized a extra rate increase to pay for number pooling costs, but it does not. There are no provisions allowing increases other than (1) the gradual increases to basic and non-basic service rates which BellSouth and Sprint have already used to increase their revenues by more than \$280,000,000 and \$60,000,000, respectively, and (2) the exception allowed by §364.051(4), Fla. Stat. (2003), which the companies have neither sought nor satisfied. Accordingly, the Commission may not grant the additional revenue increases set forth in the proposed agency action orders.

**Issue 3:** Is the manner by which the Florida Public Service Commission allowed BellSouth and Sprint to recover the costs of number pooling consistent with FCC policy and decisions?

**Citizens' Position:** \* The Federal Communications Commission directly opposes the use of end user charges, such as the ones authorized by the Florida Commission in this docket, to recover number pooling costs. \*

**Discussion:** The Federal Communications Commission has made it abundantly clear that it opposes end-user charges to pay for the costs of number pooling. Florida may become the only state in the nation to impose an end-user charge on customers for number pooling costs if the Commission does not change the decisions set forth in the proposed agency action orders.

Paragraphs 33 through 37 of the FCC's Third Report and Order and Second Order on Reconsideration in CC Docket No. 96-98 and CC Docket No. 99-2000

Released December 28, 2001, set forth the reasoning behind the opposition of the FCC to end-user charges paying for number pooling costs:

33. *Characterization of Number Pooling Costs.*

⌘ **Despite the urging of many commenters, we resist imposing another direct charge on end-users.** In the *LNP Third Report and Order*, the Commission chose not to include LNP costs in access charges because LNP is not an access-related service, and instead imposed a direct end-user charge. The Commission therefore found that recovering LNP costs through access charges would be inappropriate and would not be competitively neutral. With respect to thousands-block number pooling, however, we find the opposite to be true. Although thousands-block number pooling and LNP utilize the same LRN architecture, we find that because they are very different types of services, different types of recovery are appropriate.

34. **We are led to the view that numbering administration is inherently access-related by the same reasoning that led us to conclude that LNP was *not* access-related.** LNP was an entirely new service and performed no telephone network function that would benefit ILECs. It was implemented for the sole purpose of making it easier for subscribers to change carriers. Numbering administration, on the other hand, is a basic telephone network function. IXCs would not be able to route calls from their subscribers without a numbering system. Thousands-block number pooling is thus different from LNP because it is, essentially, an enhancement of existing numbering administration procedures designed to extend the life of the existing numbering system. Treating pooling as an access-related service is thus entirely appropriate. Access charges are the means by which access customers share in the costs of the telephone network, and all carriers and subscribers will benefit from national thousands-block number pooling to the extent that it postpones or avoids area code relief and ultimately the replacement of the existing NANP.

35. **Characterizing pooling costs as access-related and permitting recovery of the extraordinary**



**costs of thousands-block number pooling accordingly is consistent with the statutory mandate of competitive neutrality.** In the *LNP Third Report and Order*, the Commission noted that, in evaluating the costs and rates of telecommunications services, the Commission ordinarily applies principles of cost causation under which the purchaser of a service pays at least the incremental cost of providing that service. The Commission found that following ordinary cost causation principles for assigning the costs of LNP would affect the ability of carriers to compete because LNP costs arise only when subscribers change carriers. At least initially, the vast bulk of such changes would occur as entrants win incumbents' customers. Imposing the bulk of the costs of LNP on new entrants would have contradicted the purpose of the statutory requirement for LNP, which was to make telephone markets more competitive. For this reason, in the case of LNP, departure from ordinary cost causation principles was necessary.

36. **In the case of thousands-block number pooling, it is not clear who is the "cost causer."** The need for pooling results from extraordinary growth of subscribership and the provision of new services in recent years, as well as the entry of new carriers that require blocks of numbers in each rate center. These factors have combined to make space in the number spectrum scarce. All carriers that provide numbers to subscribers have contributed to the number exhaust problem, regardless of whether they began using the numbers long ago or recently. All carriers can contribute to resolving the exhaust problem by using numbers more efficiently, in part through number conservation measures such as thousands-block number pooling. In this context, **thousands-block number pooling is simply an enhancement to the previous numbering administration plan that facilitates more efficient coordination among all carriers, and thus there is no "cost causer" in the traditional sense.**

37. *Recoverable Costs.* This same reasoning informs our analysis of the kind of costs for which carriers may seek recovery. **We agree with those commenters that maintain that the costs of numbering administration are generally and appropriately treated as an ordinary cost of doing business.** The recent growth in demand for number resources have required that ILECs and other

carriers implement number conservation and numbering management practices, for example, reusing numbers assigned to former subscribers, area code splits, and overlays. We have considered the costs of these numbering administration measures to be ordinary LEC administrative functions that are recovered in LEC rates generally. Under price caps, they are usually considered normal network upgrades that do not qualify for extraordinary recovery (*i.e.*, through an exogenous adjustment to the price cap formula). Under rate-of-return, an adjustment was granted only through the normal review process, that is, upon a showing by the carrier that it would not otherwise earn its authorized rate-of-return. This means that, in principle, recovery of the costs of numbering administration is already provided for in LEC compensation.<sup>5</sup>

The Commission should recognize that while it claims that it must provide additional money to the companies to pay for number pooling costs because it is required to do so by the FCC, the Commission is nonetheless acting directly contrary to the FCC's intent by approving an end-user charge. As discussed in response to previous issues, the FCC does not require any additional money be given to the ILEC's other than what has already been given through the Florida price cap regulatory paradigm. The Commission should issue an order that reverses the Commission's initial decision to grant the companies an additional one-time rate

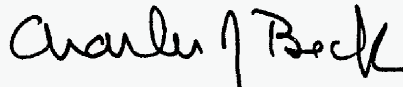
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<sup>5</sup> *Id.* at ¶¶33-37 (bold font added).

increase to pay yet again for number pooling costs.

Respectfully submitted,

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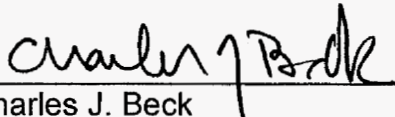
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**DOCKET NO. 001503-TP  
CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a copy of the foregoing has been furnished by U.S.

Mail or hand-delivery to the following parties on this 10th day of June, 2004.

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