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July 8, 2005

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COMMISSION
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Ms. Blanca S. Bayó, Director
Division of the Commission Clerk
and Administrative Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0870

RE: Docket No. 050374-TL, Petition for approval of storm cost recovery surcharge, and stipulation with Office of Public Counsel, by Sprint-Florida, Incorporated.

Dear Ms. Bayó:

Enclosed for filing in the above-referenced docket are the original and fifteen (15) copies of the Office of Public Counsel's Brief for filing in the above referenced docket.

Also enclosed is a 3.5 inch diskette containing Office of Public Counsel's Brief in Microsoft Word format. Please indicate the time and date of receipt on the enclosed duplicate of this letter and return it to our office.

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Sincerely,

Patricia A. Christensen
Associate Public Counsel

PAC/dsb
Enclosures

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for approval of storm cost recovery surcharge, and stipulation with Office of Public Counsel, by Sprint-Florida, Incorporated.	))))	Docket No. 050374-TL Filed: July 8, 2005

OFFICE OF PUBLIC COUNSEL'S BRIEF

Pursuant to Rule 28-106.215, Florida Administrative Code, the Citizens of the State of Florida, by and through undersigned counsel, Office of Public Counsel, hereby filed their Brief and Statement of Issues and Positions.

INTRODUCTION

In 2004, four hurricanes struck Florida, Hurricanes Charley, Frances, Ivan, and Jeanne. Hurricane Charley hit Florida's west coast at Charlotte Harbor as a Category 4 storm. The second storm, Hurricane Frances, struck Florida's east coast around Sewell's Point as a Category 2 storm. Hurricane Ivan, the third storm, reached the State as a Category 3 storm hitting the Panhandle area, particularly Pensacola. The fourth and final storm of the 2004 storm season to hit Florida was Hurricane Jeanne, which struck the east coast at Hutchison Island as a Category 3 storm. Since it is undisputed that four hurricanes struck the State of Florida in 2004 causing damage to infrastructure throughout the State, Citizens and Sprint-Florida, Incorporated (Sprint) worked to reach a stipulation of undisputed facts related to the hurricanes.

In addition, Sprint and Citizens were able to reach agreement regarding the accounting treatment for the costs Sprint contends it incurred as a result of the four hurricanes damage to its territory. Based on the application of this accounting treatment, the parties derived a maximum potential amount for storm cost recovery of

approximately $30 million. However, whether Sprint is entitled to any of this approximately $30 million through cost recovery is the disputed issue in this docket.

On May 25, 2005, Sprint filed a Petition for Approval of Storm Cost Recovery Surcharge and Stipulation. By agreement of the parties, the Stipulation attached to Sprint's Petition provides the factual basis for the briefs to be filed in this matter.

SUMMARY OF ARGUMENT

Sprint is not entitled to recover any of the $30 million through a cost recovery surcharge to customer's basic access lines. Section 364.51(4), Florida Statutes, requires that a telecommunications company demonstrate a compelling showing of a substantial change in circumstances to justify any increase in the rates for its basic local telecommunications services. Based on the stipulated facts, Sprint has failed to demonstrate that it has suffered a substantial change in circumstances.

ISSUES AND POSITIONS

ISSUE 1: Do the costs incurred by Sprint as a result of the 2004 hurricanes constitute a compelling showing of a substantial change in circumstances pursuant s. 364.051(4), Florida Statutes?

OPC: *No. Under Section 364.051(4), Florida Statutes, the costs incurred by Sprint as a result of the 2004 hurricanes do not met the criteria necessary to demonstrate a compelling showing of substantial change in circumstance.*

ARGUMENT

It is undisputed that four hurricanes struck the State of Florida in 2004 causing damage to infrastructure throughout the State. In an effort to streamline the process, Citizens and Sprint reached a stipulation of undisputed facts related to the hurricanes. In addition to stipulation of facts related to the hurricanes, Citizens and Sprint reached agreement as to the maximum potential amount that could be recovered under any storm cost recovery scenario. Given that there is no factual dispute, there remains the legal issue whether the costs incurred by Sprint as a result of the 2004 hurricanes constitute a compelling showing of a substantial change in circumstances pursuant Section 364.051(4), Florida Statutes.

a. Statutory Analysis

Section 364.051(4), Florida Statutes, states that:

> . . . any local exchange telecommunications company that believes circumstances have changed substantially to justify any increase in 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.

Since this is a case of first impression, the Commission has not yet addressed what is necessary to demonstrate a compelling showing of a substantial change in circumstance. However, Citizens believe that an essential component of any analysis of substantial change in circumstances must include a demonstration by the company that there has been financial harm.

Sprint elected to be a price cap regulated telecommunications company pursuant to Section 364.051(2), Florida Statutes. In accordance with the statute, prices for basic local service were capped as of the date of the election. Under the current price cap regulatory scheme, Sprint may adjust its basic service revenues once in any 12-month period in an amount not to exceed the change in inflation less 1 percent. Also under the price cap regulatory scheme, Sprint has the ability to raise its non-basic services rates 6 percent per any 12-month period or 20 percent if there is another telecommunications provider in the exchange for any non-basic service category.

The purpose of switching from rate base regulation to a price cap scheme was to allow financial flexibility to transition to a competitive market. Within the current price cap scheme, the company has flexibility to increase its prices within limits based on market conditions and the company's financial interest. Thus, the company is free to make as much profit as it can by reducing its costs or increasing its prices within the statutory scheme. Since the price cap scheme is consistent with the pro-competitive provisions of Chapter 364, the Commission should treat the company in a manner consistent with a competitive market participant. The Commission should disfavor

imposition of a surcharge for hurricane expenses since in a competitive market a competitive business would be unable to impose such a surcharge.

Section 364.051(4), Florida Statutes, provides a safety net to the companies during the transition period. Section 364.051, Florida Statutes, refers to pricing regulation by which a company derives its earnings and thus its profits. It is reasonable to conclude that for the safety net to be triggered, a company must show that despite the pricing flexibility under Section 364.051, Florida Statutes, some substantial change in circumstances is causing the company to suffer financial harm. Further, the financial harm is such that the duration and magnitude of the financial harm going forward can not be corrected without a change to basic rates outside the normal price changing scheme. Otherwise, there would be no need to trigger the financial safety net set forth in Section 364.051(4), Florida Statutes. Additionally, in determining whether the substantial change is of such a nature to trigger the financial safety net, the change should be beyond the control of the company. In summary, in order to demonstrate a "compelling change in circumstances" a company must show that: (1) the substantial change has caused financial harm to the company; (2) the substantial change is of a duration and magnitude that without a change in the basic service rates it cannot be remedied under the current pricing scheme; and (3) the substantial changed is beyond the company's control.

b. Financial Safety Net Criteria

As noted above, the Section 364.051, Florida Statutes, is structured so that the companies have greater flexibility to run their businesses as they determine is best. This move toward greater self determination by the company within the statute means a strictly limited involvement by the regulators in determining the appropriate costs and

profits for a company, which comes with a significantly restricted ability to intervene by the regulators to protection the company against losses. Thus, when applying the financial safety net criteria inherent in Section 364.051(4), Florida Statutes, the Commission's limited role in setting prices must be considered in determining whether to apply the protection afford by the safety net.

1. Financial harm to the Company

There is no dispute that Sprint suffered damage in its territory as a result of the four hurricanes. Further, Citizens do not contest the fact that this damage caused Sprint to incur financial costs to restore service to its customers. As the stipulation bears out, Sprint incurred a total cost of $149,018,707 million as a result of the storms. After removing the "double recovery" items as set forth in Citizens guidelines, potential insurance recovery, and average annual storm expense, the remainder Sprint is seeking to collect from customers is approximately $30 million. Sprint argues that it cannot absorb the remaining $30 million and that it suffered financial harm as a result of the storms.

Although Sprint claims to have absorbed approximately $103 million in storm costs already, Citizens note that a majority of those costs are already recovered through the price of basic service. As part of the Gulf Settlement in its storm docket, the Commission approved accounting principles that eliminated any "double recovery" of costs that were already included in base rates. Order PSC-05-0250-PAA-EI, issued March 4, 2005, in Docket No. 050093-EI, consummating order PSC-05-0341-CO-EI, issued March 29, 2005. Again in the Progress Storm Docket No. 041272-EI, the Commission upheld the principle that any "double recovery" should be disallowed. The exclusions in the Stipulation were based on the OPC's Storm Guidelines approved in the

Gulf Settlement in its storm docket which was designed to eliminate all "double recovery." The items to be excluded because they would cause "double recovery" are outlined below in the Storm Damage Guidelines:

OPC Storm Damage Guidelines

CAPITAL ADDITIONS:

A. All capital additions should be booked to plant in service at current book cost of materials and labor. Only additional, extraordinary capital-related expenses will be booked to the storm reserve.

B. All retirements resulting from 2004 storms should be booked based on existing, approved depreciation/retirement procedures.

C. The cost of removal expense related to the plant items that have been retired due to 2004 storm damage should be excluded from storm recovery expenses that are charged to the storm damage reserve account and should instead be charged to the reserve for accumulated cost of removal.

OPERATING AND MAINTENCE EXPENSES:

D. All base salaries from all bargaining unit labor costs should be excluded from storm recovery expenses charged to the storm damage reserve account.

E. Only those costs of materials and supplies that exceed the material and supplies expense anticipated under normal operations should be charges to the storm reserve.

F. All insurance recoveries, less deductibles, should be eliminated from the storm recovery amounts.

G. The amount charged to the storm damage reserve account should exclude all expenses associated with the following activities:

1. Operating expenses and overheads for company-owned vehicles.
2. Storeroom expense.
3. Advertising expense.
4. Employee training expense.
5. Management overheads except for overtime when working on storms.
6. All other allocated expenses included in normal operations and existing budgets.
7. Labor costs associated with repairs and replacements that have been identified as job or work orders, but that have not yet been worked and that will be completed by existing, full time employees or regular, budgeted contract personnel.

8. Labor costs associated with any work or activity related to the storm other than the jobs or work orders identified in (7) above that will be completed by any employees as part of their regular job duties.
9. Call center activities should be excluded except for non-budgeted overtime associated with the storm event.
10. No uncollectible expenses or lost revenues should be booked to the storm reserve.
11. No expense associated with cash advances made to employees should be booked to the storm reserve.

Order PSC-05-0250-PAA-EI at pages 24, 25. Since the majority of the items excluded from Sprint's request are items which were eliminated under the Storm Damage Guidelines for "double recovery," Sprint cannot take credit for absorbing those costs. There is no reasonable financial harm caused to the company by not allowing it to collect twice for the same costs.

After removing all costs included in part of normal operation and maintenance, potential insurance recovery, and averaged annual storm expenses, approximately $30 million in cost remains. The $30 million represents the extraordinary costs incurred by the Company as a result of the hurricanes. The question is whether these extraordinary costs caused Sprint to suffer financial harm during 2004. Part of the stipulated facts includes Sprint's Achieved Intrastate Return on Equity (ROE) from 1999-2004. Confidential Exhibit C shows the trend in Sprint's ROE from 1999 to 2004. Sprint's ROE from 2003 to 2004 shows that Sprint experienced an improvement in its ROE in 2004 despite the hurricanes. As noted in Footnote 2 to the Confidential Exhibit C, the net operating income for 2004 includes the hurricane-related costs that are the subject of its Petition, but not the requested revenue recovery. Thus, Sprint's argument that it has suffered financial harm due to the hurricanes is without merit.

2. Duration and Magnitude of Financial Harm

Citizens would agree that the 2004 hurricane season was extraordinary. However, while 2004 hurricanes caused a greater than normal financial impact, the fact that hurricanes hit Florida and have a financial impact is not an unusual circumstance. All Florida businesses face that same annual risk of hurricanes. Thus, in and of itself the occurrence of hurricanes is not sufficient to justify a substantial change in circumstance necessitating an increase in basic telephone rates. In addition, the issue presented here is not whether the event itself was extraordinary (i.e. the 2004 hurricane season), but rather whether the financial harm caused by the extraordinary event (the 2004 hurricane season) was of sufficient duration and magnitude that the current pricing scheme cannot correct the financial harm.

The duration of the financial harm to the Company in this case, the 2004 hurricane season, is limited to a single year. In other words, the extraordinary circumstances that caused the financial harm are non-recurring. Although the risk of hurricanes occurs every year, the risk of significant financial harm from hurricanes is not an annual event. Unlike recurring events which may have significant financial impact on a going-forward basis, it is unlikely that a one-time, non-recurring financial event would require any relief beyond the current pricing scheme. A single one-time event's duration by its very nature limits the potential harm that can be caused. Such as in the instant case, the impact is confined to the 2004 hurricane season and a maximum potential financial impact of $30 million.

The next issue is whether the event is of such a magnitude that the financial harm cannot be addressed sufficiently under the current pricing scheme. The answer in the present case is no. The total amount of extraordinary expenses that constitutes the basis

for the financial harm suffered by the Company is $30 million. The next answer to be obtained is how the $30 million has affected the Company's bottom line. The Company's ROE is a reasonable method for determining whether the Company's has suffered financial harm. As noted above, even with $30 million of unexpected financial costs, the Company's profits improved in 2004.

3. Beyond the Company's Control

As noted above, the 2004 hurricane season was extraordinary and unprecedented, in that, four hurricanes hit a single state in one season causing extraordinary financial damage. Even in the busiest hurricane season which experienced seven land-falling hurricanes, no single state experienced four land-falling hurricanes. During the 1886 hurricane season, Texas was hit by three hurricanes, Florida was hit by three hurricanes; and Louisiana was hit by 2 hurricanes.

Citizens do not dispute that hurricanes are beyond the control of the Company. However, a Company does have an obligation to plan for the financial impact of hurricanes in an average year. Sprint recognizes this fact since it notes a deduction for the average annual storm expense in the amount of $598,240. While hurricanes are beyond the control of the Company, the Company has the ability to mitigate the financial impact of hurricanes for an average season.

c. New Legislation

In the recent 2005 legislative session, the Legislature created an exception for hurricanes related to the "change in substantial circumstances." Section 364.051(b), Florida Statute, the new legislation, states:

(b) For purposes of this section, evidence of damage occurring to lines, plants, or facilities of a local exchange telecommunications company that is subject to the carrier-of-last-resort obligation, which damage is the result of a tropical system occurring after June 1, 2005, and named by the National Hurricane Center, constitutes a compelling showing of changed circumstances.

However, as set forth in the exception itself, the new legislation is to be applied to hurricanes after June 1, 2005. Obviously, this created exception does not apply to the 2004 hurricane season.

As noted above, this Commission has not previously addressed Section 364.051, Florida Statutes, and what it means to demonstrate a "substantial changed in circumstances." Hurricanes, prior to the new legislation, should be evaluated under a general standard for what demonstrates a compelling showing of substantial changed in circumstances. The general standard should be developed with all circumstances in mind rather than be tailored specifically for hurricanes. Thus, the criteria outlined above, is the appropriate test to be applied to the 2004 hurricane season.

d. Conclusion

Citizens believe that in order to demonstrate a "compelling change in circumstances" a company must show that: (1) the substantial change has caused financial harm to the company; (2) the substantial change is of a duration and magnitude that without a change in the basic service rates it cannot be remedied under the current pricing scheme; and (3) the substantial changed is beyond the company's control. Based on these criteria, Sprint has failed to demonstrate a compelling showing of substantial

change in circumstances. Further, although the Legislature has created an exception for hurricanes related to a compelling showing of changed circumstances, the exception itself makes clear that it is not to be applied to storms before June 1, 2005.

ISSUE 2(a): If Issue 1 is answered in the affirmative, how much, if any, of the costs set forth in the stipulation may be recovered from Sprint's basic local services customers?

OPC: *Sprint should not be entitled to any recovery since it failed to demonstrate a compelling showing of a substantial change in circumstance. However, if the Commission determines that the criteria has been meet based on rationale related to the new legislation, then the amount should be limited to 50 cents per access line for no more than 12 months, which is approximately $9 million.*

ARGUMENT

In addition to the undisputed facts regarding the hurricanes, the Stipulation includes the amount of infrastructure and financial damage suffered by Sprint as a result of the damage caused by four hurricanes which impacted in its territories. As part of the Stipulation, Citizens and Sprint agreed to a maximum potential amount for recovery of approximately $30 million.

The maximum potential $30 million figure was based on a set of accounting principles developed through the electric storm dockets. By Order PSC-05-0250-PAA-EI, issued March 4, 2005, in Docket No. 050093-EI, consummating order PSC-05-0341-CO-EI, issued March 29, 2005, the Commission approved these principles as part of the Gulf Settlement.

a. No Recovery

As noted in Issue 1, Citizens do not believe that Sprint has met the standard of demonstrating a compelling showing of substantial changed circumstances that justify an increase in the rates for basic telecommunications services. It is clear that Sprint's profits improved based on Sprint's ROE in 2004. In fact, the improved ROE argues against the

idea that Sprint is unable to recover its loss through the current pricing scheme. Further, Sprint's 2004 ROE argues against the notion that Sprint suffered any financial harm that would require an increase in the basic telecommunications rate. Therefore, Sprint is not entitled to any additional recovery, even if the hurricanes could be considered a "substantial change in circumstance."

b. Partial Recovery

Even if the Commission finds "a substantial change in circumstance," the Commission must also determine that the "substantial change in circumstance" justifies an increase to the rate for basic telecommunications services. As discussed in the previous issue, an increase is not justified if the financial harm can be absorbed through use of the current pricing scheme.

At a minimum, the maximum potential amount of the financial harm, approximately $30 million, should be netted by the Company's ability to raise its basic telecommunications rate in a given year. The basic telecommunication services may be raised the rate of inflation less 1 percent. Non-basic telecommunication service rates may be raised 6% - 20% in a 12 month period. No recovery should be granted if the annual increase is greater than the financial harm. This prevents the Company from seeking a 364.051(4) base rate increase. This offset amount is not set forth in the parties Stipulation, but could either be obtained from the Company or approximated by use of the publicly available Regulatory Assessment Fee Form.

An alternative method to determine a reasonable offset is to use the level of the increase in Sprint's ROE from 2003 to 2004. In the Stipulation, Confidential Exhibit C states the dollar value for 100 Basis points in the ROE. This methodology is appropriate

because if the Company had suffered financial harm one would expect that the Company's profits would decrease not increase. By removing the amount of increase in profit from the recovery, you better match the actual financial harm, if any, to the Company.

c. New Legislation Recovery

If the Commission determines that Sprint has meet the criteria of a "substantial change in circumstances" based on rationale related to the new legislation, the Commission should also apply the remainder of the new legislation. In other words, if you use part of the new legislation, in fairness, the totality of the legislation should be applied.

The new legislation permits a telecommunications company with carrier of last resort obligations to petition for recovery from tropical storms if the damage is greater that specific amount based on access lines. Thus, if Sprint has more than $1.5 million in damage from a tropical system it could petition for relief. In this case there is no dispute that Sprint suffered greater than $1.5 million in damage to its infrastructure. Once this threshold is met, the amount of recovery is limited to 50 cents per customer line for no more than 12 months. Using the average access lines for basic customers would result in approximately $9 million recovery instead of $30 million.

ISSUE 2(b): If any costs are determined to be recoverable, how should these costs be recovered?

OPC: *Since Sprint is not entitled any surcharge recovery, Sprint may implement any mechanism appropriate under the current pricing scheme. If any of the storm costs are deemed recoverable, it is appropriate to assess the average access lines either consistent with the new legislation or for a period of no more than two years with a true-up six month prior to the expiration of the collection period.*

ARGUMENT

Citizens believe that since Sprint is not entitled to any recovery through an increase to basic rates, Sprint may recover its storm costs through any mechanism that is appropriate under the current pricing scheme. Sprint can implement the price increase allowed under the statutes or forego raising its rates.

If the Commission determines that any amount is to be recovered, it would be appropriate to assess the amount on the average access line total. The amount should be collected over a period of not more than two years. There should be a true-up six-months before the end of the collection period so that Sprint can adjust the per basic access line charge, if needed, to ensure that Sprint collects only the authorized amount.

However, if the Commission determines that the "substantial change in circumstances" has been meet based on rationale related to the new legislation, then the methodology set forth in the statute should be followed. Sprint should assess 50 cents per basic access line for a period of no more than 12 months. Given that the collection period will encompass part of two years, an average access line count should be used.

ISSUE 3: Should this docket be closed?

OPC: *This docket should be closed if Sprint's Petition for recovery is denied. If, however, the Commission approves the recovery of any amount, the docket should remain open to ensure the proper collection of said amounts.*

ARGUMENT

This docket should be closed if Sprint's Petition for recovery is denied consistent with the Citizens' position in this matter. If, however, the Commission approves the recovery of any amount, the docket should remain open to ensure the proper collection of said amount.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Brief of the Office of Public Counsel has been furnished by U. S. Mail and Electronic mail to the following parties on this 8th day of July, 2005, to the following:

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