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Sent: Friday, July 08, 2005 4:44 PM
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Subject: 050374-TL Sprint's Initial Brief
Attachments: 050374-TL Sprint's Initial Brief.pdf

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Docket No. 050374-TL

Title of filing: Sprint's Initial Brief

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7/8/2005

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July 8, 2005

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

Re: Docket No. 050374-TL

Dear Ms. Bayó:

Enclosed for filing on behalf of Sprint-Florida, Incorporated is Sprint's Initial Brief.

Copies are being served on the parties in this docket pursuant to the attached certificate of service.

If you have any questions regarding this electronic filing, please do not hesitate to call me at 850-599-1560.

Sincerely,

Susan S. Masterton

Susan S. Masterton

Enclosure

CERTIFICATE OF SERVICE
DOCKET NO. 050374-TL

I HEREBY CERTIFY that a true and correct copy of the foregoing was served by electronic and U.S. mail this 8th day of July, 2005 to the following:

Florida Public Service Commission
Adam Teitzman/ Beth Keating
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

Florida Public Service Commission
Beth Salak
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

Office of Public Counsel
Charles J. Beck / Patty Christiansen
111 West Madison Street, #812
Tallahassee, FL 32399-1400

Susan S. Masterton

ORIGINAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Sprint-Florida, Incorporated's Petition For Approval of storm cost Recovery surcharge For extraordinary expenditures related to Hurricanes Charley, Frances, Jeanne and Ivan	)	Docket No. 050374-TL
	)	Filed: July 8, 2005

SPRINT-FLORIDA, INCORPORATED'S INITIAL BRIEF

Sprint-Florida, Incorporated (hereinafter "Sprint") hereby submits its initial brief on the issues tentatively identified by the parties to this docket. Factual support for the legal and policy issues discussed in the brief is found in the Stipulation entered into by Sprint and the Office of the Public Counsel (hereinafter "OPC") and approved by the Commission on July 5, 2005.

INTRODUCTION

Section 364.051, Florida Statutes, allows a price-regulated ILEC to request an increase in its basic local service rates if the ILEC makes a compelling showing of a substantial change in circumstance. This safety valve provision of the historic 1995 revisions to the Commission's ratemaking authority has essentially lain dormant for 10 years. The legislature obviously intended for it to be used sparingly. Despite earnings pressure due to competition, Sprint has never sought to invoke this provision. The highly unusual and unprecedented 2004 hurricane season has changed that.

During the six-week period from August 13 to September 25, 2004 Florida suffered the devastating effects of an unprecedented hurricane season with four major hurricanes. Florida electric utilities and telecommunications providers had to cope with substantial damage to their facilities and associated restoration costs with a goal of

getting affected customers back in service as quickly as possible. Because Sprint serves a geographically diverse territory throughout Florida, Sprint's territory was in the direct path and storm swath[1] of, and thus was significantly impacted by all four storms. The costs Sprint incurred to restore service to its customers as a result of the 2004 hurricanes were unprecedented and were not and could not reasonably have been anticipated or included in the cost of service when Sprint's price-capped rates were originally set. Therefore, these extraordinary costs meet the criteria set forth in s. 364.051, Florida Statutes, and Sprint's Petition to recover a portion of those costs through a two-year surcharge (approximately $30 million total or approximately $15 million per year) on basic local service should be granted.

ARGUMENT

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 to Section 364.051(4), Florida Statutes?

This issue addresses whether, both factually and legally, the substantial additional costs incurred by Sprint to restore service to its customers and to repair its damaged facilities as a result of the effect of the four 2004 hurricanes constitutes a substantial change in circumstances from the circumstances that existed at the time Sprint elected price regulation in January 1996. The stipulated facts provide a compelling showing that the extraordinary impact of the unprecedented four hurricanes that hit Sprint's service territory during a six-week period in 2004 constitute a substantial change in circumstances as contemplated by the statute. In addition, an analysis of the language of

[1] See Exhibit A to the Stipulation. The storm path shown is flanked by a gray outline that represents the official wind damage radius of each storm, and is overlaid on Sprint's territory using GIS methodology.

the statute, legislative history relating to the enactment of the statute and Commission and Florida court decisions interpreting the statute justify Sprint's position that these costs represent a "substantial change in circumstances."

The impact of the 2004 hurricane season in Florida and on Sprint was unprecedented

During the 1,040 hours from August 13, 2004 to September 25, 2004, one Category 4 hurricane, two Category 3 hurricanes and one Category 2 hurricane struck Florida causing billions of dollars of damage and affecting the provision of telecommunications and utility services to millions of Florida residents. (Stipulation at paragraph 1) The combination of four major storms in one season was unprecedented in the known history of Florida. Prior to the four storms hitting Florida in 2004, the last time similar multiple storm impacts were felt in a single season in a single state was in Texas in 1886. (Stipulation at paragraph 14) While there have been other active hurricanes seasons in the United States during the twentieth century, none of those seasons compare to the 2004 season as far as the impact on a single state. (Stipulation at paragraphs 15-17)

Sprint's local exchange service territory includes 104 exchanges in widely dispersed geographic areas throughout Florida, including the cities of Port Charlotte, Ft. Myers and Naples in the southwest part of the state, Winter Park and Ocala in the central part of state, and Tallahassee and Ft. Walton Beach in the panhandle. (Stipulation at paragraph 2) Because the various paths of the four hurricanes covered widespread geographic areas throughout the state, Sprint's service territory was directly and materially impacted by all four hurricanes.

On August 13, 2004, Hurricane Charley came ashore at Charlotte Harbor as a Category 4 storm, inflicting damage on Sprint's facilities in Sprint's Winter Garden,

Winter Park, Naples, Ft. Myers and Avon Park districts. (Stipulation at paragraphs 3 and 4) At its peak Hurricane Charley rendered 282,000 Sprint customers out of service and also took out of service 651 of Sprint's major network elements, equivalent to 40% of Sprint's major network elements in the exchanges within these districts. (Stipulation at paragraph 4) Within three short weeks, while Sprint was still struggling to mitigate and repair the devastating effects of Hurricane Charley, Hurricane Frances came ashore at Sewell's Point on September 5, 2004 as a Category 2 storm. (Stipulation at paragraph 5) While Hurricane Frances was not as strong a storm as Hurricane Charley, as a slow moving storm its effects were geographically far-reaching, inflicting damages on Sprint's facilities in its Ft. Walton Beach, Tallahassee, Ocala, Winter Garden, Winter Park, Naples, Ft. Myers and Avon Park districts. At Hurricane Frances's peak, it rendered 200,000 Sprint customers out of service and impacted 521 of Sprint's major network elements within the affected districts, equating to 19% of the major network elements in Sprint's exchanges within these districts. (Stipulation at paragraph 6)

Only 11 days after Hurricane Frances made landfall, Hurricane Ivan came ashore (on the Florida/Alabama line) at Gulf Shores, Alabama as a Category 3 storm. (Stipulation at paragraph 7) Hurricane Ivan damaged Sprint's facilities in the Ft. Walton Beach and Tallahassee districts, at its peak rendering 46,000 Sprint customers and 292 of Sprint's major network elements (equating to 42% of the major network elements within the affected districts) out of service. (Stipulation at paragraph 8) Finally, only a little more than a week after the last storm and only six weeks after the devastating impacts of Hurricane Charley, Hurricane Jeanne came ashore at Hutchinson Island as a Category 3 storm on September 25, 2004. (Stipulation at paragraph 9) Sprint's facilities in its

Tallahassee, Ocala, Winter Garden, Winter Park, Naples, Ft. Myers and Avon Park districts were damaged by Hurricane Jeanne, which at its peak rendered 161,000 Sprint customers and 414 major network elements (19% of the Sprint major network elements in these exchanges) out of service. (Stipulation at paragraph 10)

Sprint does not base its claims of a "substantial change in circumstance" upon any one of these hurricanes alone. Rather, it is the cumulative impact of the successive storms hitting Sprint's territory one after the other within a six week period that Sprint believes constitute a single continuous, unprecedented and unforeseen event entitling Sprint to relief. Because the hurricanes hit some Sprint areas more than once, network elements made operational after being damaged in one storm were again damaged or disabled in another storm. Cumulatively, these four storms resulted in the equivalent of rendering 691,000 Sprint customers out of service and 1,878 (or 67%) of Sprint's major network elements out of service. (Stipulation at paragraph 12) Of the other utilities seeking storm cost recovery, it appears only Progress Energy Corporation also was impacted by all four hurricanes. The Commission recently approved $231,839,389 million in cost recovery for Progress. (See, Docket No. 041272-EI (order pending)) The storm reserve established by Progress before the four storms hit was inadequate by 80%, providing further evidence of the unprecedented nature of the storm season. Gulf Power's reserve likewise only contained 20% of that necessary to cover the costs of only one storm (Ivan)(See, Docket No.050093-EI). Florida Power and Light had a similar deficiency that has not been finally determined. (See, Docket No. 041291-EI)

Although hurricanes are a known and contemplated event in Florida, the sheer magnitude of the 2004 event is more akin to a catastrophic event such as an act of

terrorism that would impose enormous costs on a utility. Human and business history did not provide for building the costs of September 11, 2001 into utility business cases any more than the 2004 event could be considered in any Sprint's business plan. While not the equivalent of September 11, the 2004 event shares with it the characteristics of unforseeability and widespread damage. Electric companies using 20-year storm histories (submitted to the Commission) grossly underestimated the provision for the 2004 season. Clearly, this is ample evidence of the highly unusual nature of these four hurricanes.

The costs Sprint seeks to recover are extraordinary costs and not contemplated in Sprint's price-capped rates

As an ILEC with carrier of last resort obligations under section 364.025, Florida Statutes, and pursuant to Commission rules, Sprint's primary objective after the storms was to restore service to its customers and repair its damaged facilities as quickly as possible. The total costs to Sprint to repair its system and restore service reached $148 million through January 2005. (Stipulation at paragraph 13 and Stipulation Exhibit B at lines 7-13) Clearly, this level of costs was not, and could not have been, considered in the rates that were established for Sprint prior to its election of price regulation in 1996. However, through this Petition Sprint is seeking recovery of $30 million from basic rates, which is only 20% percent of these total costs. Pursuant to its agreement with the Office of the Public Counsel reflected in the Stipulation, Sprint has agreed to exclude from its request all but demonstrably extraordinary, incremental costs. (Stipulation at paragraph 19 and Stipulation Exhibit B at page 1, lines 15-24) Sprint believes these extraordinary costs, which by the terms of exclusions Sprint agreed to with the OPC include only those costs over and above budgeted expenses and exclude estimated amounts for ordinary

storm-related costs and insurance, meet the criteria of section 364.051(4), Florida Statutes, Stated another way, although Sprint incurred total incremental storm-related costs of $148 million, it is not seeking recovery of $118 million or 80% percent of those costs from basic rates.

Because the costs for which Sprint seeks recovery include only those costs over and above any normally anticipated or budgeted expenses and because the costs exclude average annual storm-related expenditures, they could never have been anticipated or included in the cost of service inherent in the rates Sprint adopted when it elected price regulation in January 1996.[2] A review of the Commission Orders establishing the rates that Sprint adopted when it elected price regulation in January 1996 shows that the cost of service component of the Company's base rates included no allowance for extraordinary storm costs and no storm cost reserves. (See, FPSC Order No. 24178, Final Order Granting Rate Increase to Central Telephone Company of Florida issued February 28, 1991; Order No. PSC- 93-0005-AS-TL, Order Approving Settlement and Implementing Revised Rates for Central Telephone Company of Florida issued January 4, 1993; and Order No. PSC-92-0708-FOF-TL, Final Order Reducing Revenue Requirement of United Telephone Company of Florida issued July 24, 1992; and Stipulation at paragraph 18.) Rather, in accordance with historical rate setting principles, these costs were established based on a designated test year to represent the average anticipated costs for the future period covered by the new rates.

The fact that storm the related costs for which Sprint seeks recovery in this case were not contemplated or inherent in the Company's price-capped rates is clear from a

[2] Order No. PSC-96-0320-FOF-TL. The Order notes that Sprint's basic rates were approved at the rates in effect on January 3, 1996.

review of Sprint's historical experience with storm related costs. In the 12 years prior to the 2004 hurricane season, Sprint incurred, cumulative total storm-related expenditures of $11 million, including $4 million in capital costs, which have been excluded explicitly from the recovery amount stipulated by the parties. (Stipulation at paragraph 11 and paragraph 19 c) These historical costs included expenditures related to 15 named tropical storms and 2 tornadoes. (Stipulation at paragraph 11) Sprint's average annual hurricane expense for the 12-year period was $598,240. As discussed above, this average annual amount has been explicitly excluded from the amount Sprint seeks to recover through this Petition. (Stipulation Exhibit B, page 1, line 23) Clearly, the $30 million of unprecedented costs incurred by Sprint as a result of the 2004 hurricane season could not have been foreseen at the time Sprint's price-capped rates were set and, as shown above, was not included in the cost of service component of the revenue requirement inherent in Sprint's base rates. Had Sprint incurred costs of this magnitude while under rate of return regulation, Sprint would have been entitled to seek recovery on the same basis that the rate-of-return regulated electric companies have sought recovery in current dockets before the Commission.[3] And, while section 364.051(4), Florida Statutes, does not require that the Commission consider a company's return on equity in order for a the company to demonstrate a substantial change in circumstance, Sprint's ROE as set forth in Stipulation Exhibit C indicates that, if Sprint's Petition is approved, Sprint will still be well within a reasonable rate of return. (Stipulation at paragraph 23, Stipulation Exhibit C

[3] Petition for authority to recover prudently incurred storm restoration costs related to 2004 storm season the exceed storm reserve balance by Florida Power and Light Company, Docket No. 041291-EI; Petition for approval of storm cost recovery clause for recovery of extraordinary expenditures related to Hurricanes Charley, Frances, Jeanne and Ivan, by Progress Energy Florida, Inc., Docket No. 041272; Petition for approval of stipulation and settlement for special accounting treatment and recovery of costs associated with Hurricane Ivan's impact on Gulf Power Company, Docket No. 050093-EI.

at page 1, lines 4-11) Therefore, the storms and the costs Sprint incurred to respond to them constitute a substantial change in circumstances as contemplated by the statute.

These unprecedented and uncontemplated costs are the type of costs section 364.051(4), Florida Statutes, was intended to address

Section 364.051, Florida Statutes, states:

> Notwithstanding the provisions of subsection (2), 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. The costs and expenses of any government program or project required in part II shall not be recovered under this subsection unless such costs and expenses are incurred in the absence of a bid and subject to carrier of last resort obligations as provided for in part II. The commission shall act on any such petition in 120 days.

Section 364.051, Florida Statutes, does not define specifically what constitutes a "substantial change in circumstance" entitling a price-regulated LEC to relief. However, the plain language of the statute and the rules of statutory construction support an interpretation that the provision was intended to cover any change in circumstance, whether in the form of a cost increase or a revenue decrease, that substantially alters the financial picture of a price-regulated ILEC from what it was at the time the price-capped rates were established and adopted.

As a matter of law, the plain language of Section 364.051(4), Florida Statutes, only excludes one category of costs, thereby making all other categories of costs caused by substantially changed circumstances eligible for recovery. Section 364.051(4) only excludes as a substantial change in circumstances expenditures required under part II of ch. 364, Florida Statutes, related to support for educational access to advanced telecommunications services, except under certain circumstances. It is a well-recognized

rule of statutory construction that the mention of one thing implies the exclusion of another. See, e.g., *Mosher v. Anderson*, 817 So. 2d 812, 816 (Fla. 2002); *Moonlit Waters Apartments, Inc. v. Cauley*, 666 So. 2d 898, 900 (Fla. 1996). Because the Legislature specifically excluded the specified expenses, which might otherwise be deemed to constitute changed circumstances, it is apparent that they intended the statute to capture any other expenditures not contemplated in the original establishment of a company's rates, except those expenditures that were specifically identified and excluded. In relation to Sprint's Petition, it is clear that the Sprint's unprecedented and unforeseen hurricane-related costs are included as a type of expenditure for which Sprint is entitled to relief under the statute.

Legislative history

While this is not the first time the issue of recovery under section 364.051(4), Florida Statutes, has been raised before the Commission, Sprint's Petition constitutes the first formal request for the Commission to determine that an ILEC has made a compelling showing of a substantial change in circumstances sufficient to justify a basic rate increase. The meaning of section 364.051, Florida Statutes, is clear from the plain language of the statute. However, because this Commission has not issued orders expressing a definitive view of the statute, an examination of the legislative history underlying the statutory enactment is appropriate to shed some light on the purpose and intent of the provision.

Sprint reviewed the Florida House and Senate committee and floor written records and audio tapes for the 1995 legislation that included the language found in s.

364.051(4), Florida Statutes[4] From that review, it appears that the language was first incorporated into the legislation as an amendment adopted in the House Committee on Utilities and Telecommunications. When introducing the amendment, the House sponsor explained that it allowed a price-regulated LEC to petition the Commission if the company thinks circumstances have changed and they need to go before the Commission for relief. Clearly, the provision is intended to act as a "safety valve" for the caps imposed on the rates in existence at the time a LEC elected price regulation. Because the rate cases that established the price cap floor were enacted several years prior to the 1995 legislation, the absence of such a safety valve for the rates capped for an indefinite term could result in substantial hardship to a price-regulated company should an unforeseen change in circumstances occur. Since the price-regulated ILECs were and still are the companies with the carrier of last resort obligation to provide service that meets the Commission's service quality criteria to all customers who request it, the need for a safety valve to ensure the continued viability of the companies was self-evident.

The official bill analysis prepared by the Governor's office at the time the Governor allowed the bill to become law illuminates the Governor's understanding of the scope of the "changed circumstances" provision. (See Attachment 1 attached hereto) Therein, the Governor's staff describes the provision as allowing for the lifting of the statutory caps on an ILEC's basic local service rates if the ILEC petitions the Commission for a finding of substantially changed circumstances. While the analysis notes that the legislation is unclear about what might constitute "substantially changed circumstances" it refers to a definition suggested by the PSC that defined substantially

[4] Prior to 2000, the identical language contained in subsection (4) of section 364.051, Florida Statutes, was found in subsection (5) of section 364.051, Florida Statutes In 2000, Section 364.051, Florida Statutes, was renumbered to reflect the current subsection (4).

changed circumstances as "extreme inflation or an onerous and unforeseen increase in operational or personnel costs." As described above, the costs incurred by Sprint as a result of the 2004 hurricanes clearly satisfy the PSC's suggested definition in that they are an increase in operational and personnel costs unforeseen by Sprint and not encompassed in the costs that formed the basis of its price-capped rates.

Commission decisions

While no petition for cost recovery previously has been filed with the Commission, the Commission has discussed the scope and application of the provision on a few occasions. The first mention of the provision (formerly section 364.051(5), Florida Statutes, renumbered to 351.051(4), Florida Statutes in 2000) was in a Commission proceeding to implement the local competition provisions of the 1995 Florida law. See, *In Re: Resolution of petition(s) to establish nondiscriminatory rates, terms, and conditions for resale involving local exchange companies and alternative local exchange companies pursuant to section 364.161, Florida Statutes,* Order No. PSC-96-0811-FOF-TP in Docket No. 950984-TP, issued June 24 1996. In that Order the Commission found that GTE (n/k/a Verizon) could pursue relief under section 364.051(5), Florida Statutes, if GTE determined that as a result of the Commission's rulings it had suffered revenue losses sufficient to constitute a substantial change in circumstances under the statute. Again, in an arbitration proceeding involving GTE and Sprint Communications Company Limited Partnership, the Commission found that if its decision regarding unbundled network element pricing resulted in revenue losses for GTE, GTE could petition the Commission under section 364.051(5), Florida Statutes, based on a substantial change in circumstances. See, *In Re: Petition by Sprint Communications Company Limited*

Partnership d/b/a Sprint for arbitration with GTE Florida Incorporated concerning interconnection rates, terms and conditions, pursuant to the Federal Telecommunications Act of 1996, Order No.PSC-97-0230-FOF-TP, in Docket No.961173-TP, issued February 26, 1997).

The Commission discussed section 364.051(4), Florida Statutes, in somewhat more detail as an available remedy for a loss in revenues in a proceeding involving the elimination of the interLATA access subsidy received by GT Com (f/k/a St. Joseph Telephone and Telegraph Company). The Commission stated that "If GTC believes that the termination of the subsidy payment to GTC amounts to a changed circumstance that justifies a rate increase, GTC may seek relief pursuant to Section 364.051(5), Florida Statutes." (*In re: Petition of BellSouth Telecommunications, Inc. to remove interLATA access subsidy received by St. Joseph Telephone & Telegraph Company,* Order No. PSC-98-1169-FOF-TL issued August 28, 1998 in Docket No. 970808-TL, at page 12)[5] The Florida Supreme Court upheld the Commission's decision in the GT Com intraLATA subsidy case in *GT Com v. Garcia,* 791 So. 2d 452 (Fla. 2000). The Court echoed the Commission's finding that section 364.051(5), Florida Statutes allowed GTC to apply for a rate increase if it demonstrated that its circumstances had changed due to the elimination of the interLATA subsidy. (at page 460) Although these three cases strongly suggest that a telecommunication company could seek recovery of lost revenues through the statute, and Sprint did lose significant revenues during the four 2004 hurricanes, the

[5] The Commission further elucidated the requirements of section 364.051(4), Florida Statutes, in response to a request for a declaratory ruling by GTC concerning the meaning and implementation of the provision. See, *In re: Petition for declaratory statement by GTC,Inc. d/b/a GT Com regarding section 364.051, Florida Statute.*, Docket No. 990316-TL, Order No. PSC-99-1194-FOF-TL, issued June 9, 1999. In that decision the Commission rejected a declaratory statement proceeding as the proper mechanism for ruling on a request for a rate increase based on changed circumstances. (at page 3)

$30 million for which Sprint seeks recovery does not include an amount to cover lost revenues, only incremental, extraordinary storm related costs.

For a telecommunications company's bottom line, $30 million of additional expenses has the same effect as a $30 million loss of revenue, so if lost revenues are recoverable under Section 364.051(4), it follows that incremental expenses should be recoverable. While previous Commission decisions addressing the changed circumstances provisions have focused more on the revenue side of the equation than the expense side, it is clear that the Commission has considered that a variety of circumstances affecting a company's financial situation compared to the situation that existed at the time a company elected price regulation entitle an ILEC to petition for relief under the statute. Certainly, a substantial change in circumstance would include the extraordinary incremental costs associated with the 2004 storm season. These costs are substantially in excess of any storm related costs that were experienced or contemplated at the time of the initial adoption of Sprint's rates or Sprint's election of price regulation and are clearly recoverable under the statute.

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 service customers?

This section addresses the appropriate amount of the stipulated costs that may be recovered from Sprint's basic local service customers. Section 364.051(4), Florida Statutes, specifically addresses a price-regulated ILEC's ability to seek an increase in its basic local service rates based on a substantial change in circumstances. Recovery of storm costs from nonbasic service rates is governed by section 364.051(5), Florida Statutes since Sprint incurred costs to restore service to both basic and nonbasic service

access lines, Sprint proposes to recover its costs from both basic and nonbasic service customers proportionate to the number of access lines in each category. The methodology does not appear to be in dispute.

Mechanism of assigning basic and nonbasic costs

The Office of the Public Counsel has agreed that Sprint incurred a total of $44.3 million in recoverable costs related to the 2004 hurricanes. (Stipulation at paragraph 21) Sprint applied a jurisdictional factor of 74.6% to determine the intrastate portion of the costs, which amounted to $36.8 million. (Stipulation at paragraph 22 and Stipulation Exhibit B at page 1, lines 26-28) Of these intrastate costs, $30,319,521 are attributable to Sprint's basic service access lines and the Commission approved this stipulated amount at the July 5, 2005 Agenda Conference.

The storm costs appropriately should be recovered on an access line basis, because restoration of all services depends on the restoration of the underlying access line. For example, vertical services are generally not available if the underlying access line is out of service. Similarly, to restore DSL service the underlying access line must also be restored. Access lines can either be basic service, that is single line residential or single line business service or nonbasic service, that is multi-line business service. (See section 364.02(1) and (9), Florida Statutes) 82.4% of Sprint's Florida access lines are basic service access lines. (Stipulation at paragraph 24) Sprint should be entitled to recover a pro rata share of the total storm costs attributable to basic service access lines from its basic services customers.

Sprint should be entitled to recover costs attributable to restoration of basic services from its basic service customers

It makes sense for Sprint to recover its storm costs from its basic services customers in proportion to the number of basic services access lines for several reasons. Sprint's carrier of last resort responsibilities require it to provide basic services to any and all customers who request it. (Section 364.025, Florida Statutes) Basic service customers make up the majority of Sprint's access line base. Because Sprint is required by statute to provide basic service, and because Commission regulations set forth Sprint's obligations to provide and maintain this service, Sprint's hurricane recovery efforts were by necessity directed towards the goal of restoring basic service. To be sure, Sprint equally hastened to restore its nonbasic service customers, but these customers are a small percentage of the total. Because the storm costs Sprint incurred are logically proportionate to Sprint's customer base, Sprint's cost recovery should also be proportionate to that base. Once Sprint has made a compelling showing of changed circumstances under section 364.051(4), Florida Statutes, then it is entitled to raise its basic local rates to address these circumstances. It would be inequitable and inconsistent with the statute to find that Sprint had met the statutory criteria for recovery, but was not entitled to a rate increase for basic local services commensurate with the impact of the changed circumstances (i.e., the storms and storm costs) on Sprint's provisioning of these services. And, importantly, because Sprint recognizes that nonbasic customers also caused Sprint to incur costs related to storm recovery, Sprint has committed to also assess nonbasic customers the same recovery surcharge that is authorized to be assessed basic services customers.

Issue 2(b) If any costs are determined to be recoverable, how should those costs be recovered.

Section 364.051(4), Florida Statutes, allows a price-regulated ILEC to increase its basic rates if it makes a compelling showing of a substantial change of circumstances. The provision appears to allow a permanent increase in rates if the demonstration involves a permanent change in circumstances, but it does not preclude a time-limited increase (i.e. a surcharge) to recover costs associated with a time-limited change in circumstances, such as the hurricane costs incurred by Sprint in 2004.

In its Petition, Sprint proposes to impose a surcharge for a maximum of 24 months, at a level that will recover the stipulated costs approved by the Commission. To determine the amount of the surcharge, Sprint proposes to use the basic access line methodology approved by the Commission at the July 5, 2005 Agenda Conference. Sprint has committed that if it achieves recovery of the storm cost amount assigned to its basic services customers prior to the end of the 24 month period, Sprint will cease its assessment of the surcharge. (See letter to Blanca Bayó from Charles J. Rehwinkel dated on July 5, 2005 and filed in this docket) In addition to the surcharge assessed on basic access lines, Sprint proposes to impose the identical surcharge on its nonbasic access lines, pursuant to its nonbasic pricing authority under section 364.051(5), Florida Statutes Sprint's proposed recovery mechanism is reasonable and consistent with s. 364.051(4), Florida Statutes, and should be approved by the Commission.

CONCLUSION

Based on the stipulated facts and the applicable law, as set forth in this brief, Sprint has demonstrated that the costs Sprint incurred as a result of the unprecedented 2004 hurricane season constitute a substantial change in circumstances under s. 364.051(4), Florida Statutes All costs that the Commission determines to result in a

substantial change in circumstances are recoverable under s. 364.051(4), Florida Statutes, except expenditures related to certain governmental programs as specified in the statute. Therefore, the Commission should approve Sprint's Petition to raise its basic local rates to recover the full $30,319,521 in costs set forth in the Stipulation approved by the Commission. As a recovery mechanism Sprint proposes a surcharge to be imposed on its basic service access lines (as well as, in a separate filing, its nonbasic service access lines) for a period not to exceed 24 months or when the approved costs have been recovered, whichever is earlier. Sprint's proposal is a reasonable recovery mechanism and should be approved by the Commission.

RESPECTFULLY submitted this 8th day of July 2005.

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ATTORNEYS FOR SPRINT-FLORIDA, INCORPORATED

Attachment 1

6/23/95

Date: June 14, 1995
Analyst: Nels C. Roseland
Don Langston
Pam Bunkley

EXECUTIVE OFFICE OF THE GOVERNOR
OFFICE OF PLANNING AND BUDGETING
LEGISLATIVE BILL ANALYSIS

Bill Number:	CS/SB1554
An act relating to:	Local Exchange Telecommunications Companies
Sponsor(s):	Senator John McKay and the Senate Committee on Commerce and Economic Opportunities
Primary Companion Bill:	CS/HB 2707 Sponsor(s): Rep. Scott Clemons and the House Committee on Utilities and Telecommunications
Florida Statutes Affected:	Substantially revises Chapter 364, Florida Statutes. Amends s. 166.231, Florida Statutes, concerning municipal utility taxes, s. 203.01, Florida Statute concerning the gross receipts taxation, s. 212.05, Florida Statutes, concerning the state sales and use taxation. Creates s. 817.4821, Florida Statutes, prohibiting cloning of cellular telephone services.
Affected Agencies:	The Florida Public Service Commission, the Office of Public Counsel, the Department of Management Services, the Department of Education, the Division of Community Colleges, the State University System, and the Department of Revenue.
Effective Date:	July 1, 1995.

****

RECOMMENDED ACTION:

Included in Governor's Legislative Package:
Included in Approved Agency Legislative Package:
Implements the Governor's Budget Recommendations:

Law without Governor's Signature

Sign into Law without Ceremony
Sign into Law with Ceremony Groups to contact: (for ceremony)

Veto (Explain Recommendation): XXX

The approach adopted by this bill to convert and transition the legal monopoly status of Florida's local phone companies to a competitive marketplace is narrow, unbalanced, and favors facility based providers of phone services. That is, organizations who have the facilities or extensive wire networks are allowed to compete. However, this bill contains significant restrictions to stifle 'non-facilities' based entrants who wish to compete by accessing existing local networks, or through wholesale purchasing and resale of services, or through wireless or cellular means.

The bill also provides incumbent phone companies with a significant competitive advantage over potential rivals through the enactment of price regulation and other de-regulatory measures. Given this bill's framework, it is highly probable that incumbent local phone companies will enjoy extraordinary regulatory relief *before* the onset of meaningful effective competition. Incumbent companies are equipped with formidable legal barriers to forestall effective competition. This prescription for competition is unbalanced and its impact on consumers highly uncertain.

Becomes Law Without Governor's Signature On: **June 18, 1995**

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EXPLANATION OF THE BILL:

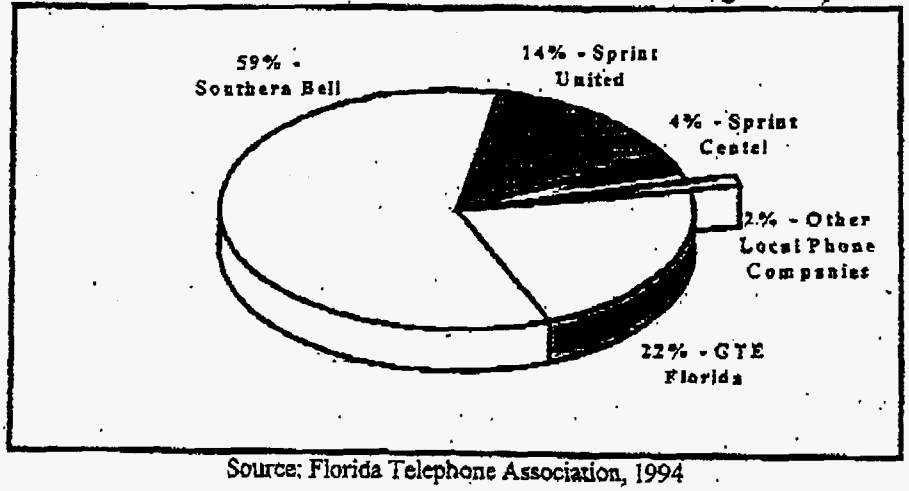
The intent of this bill is to shift Florida's local telecommunications industry from a monopoly market environment to a competitive market environment. Currently, 13 companies provide basic affordable phone service to 94 percent of all Floridians. These 13 local exchange companies (LECs) were provided legal monopoly status as long as they provided affordable dependable telephone services to anyone who requested such service. This concept of 'universal service' was developed at the turn of the century when telephone technology was at its infancy and multiple providers of telephone services and networks was impractical. Four of these 13 LECs represent nearly 98 percent of the local telephone market. The big four LECs include Southern Bell, GTE Florida, Sprint-Centel, and Sprint United. **Figure 1** shows the relative market share of these companies based upon the number of phone lines they provide.

Background and History

Since the divestiture or breakup of AT&T in 1982, the number and types of telecommunications providers have increased significantly. Prior to the divestiture, the primary providers of telecommunications service were AT&T, the local exchange companies and a few interexchange (IXC) or long distance, and mobile telephone companies. Today, the number and types of telecommunications services have increased substantially due to advances in technology, increases in demand for new services, and changes in regulatory policy to increase and promote competition in the telecommunications marketplace. The deployment of digital infrastructure

(e.g. fiber optics and computerized switching) has enabled the blending of data, voice, and video over the same facilities. This blending, changing, and evolving marketplace has obscured historical regulatory distinctions.

Figure 1: 1993 Market share of Florida's Local Exchange Companies



Source: Florida Telephone Association, 1994

The shear size and volume of Florida's local telecommunications industry has also attracted competitive providers thereby challenging conventional monopoly approaches to regulation. As shown in Figure 2, local exchange company revenues for Florida totaled $5.4 billion in 1994.

Figure 2: LEC Revenue Sources (in millions) for 1993

Local Exchange Company:	SERVICES:				
	Local	Access	Long Distance	Misc.	Totals
Southern Bell	$1,505	$1,060	$360	$287	$3,212
GTE-Florida	573	412	81	132	1,198
Sprint United	273	315	61	63	712
Sprint Centel	76	84	11	17	188
Small LECs	27	58	13	7	105
TOTALs	$2,454	$1,929	$526	$506	$5,415
Total as %	45.3%	35.6%	9.7%	9.3%	100%

Source: The Public Service Commission, Division of Accounting and Auditing, 1995.

Cable companies, alternative access vendors, cellular phone companies, and others have emerged out of this new telecommunications environment with the capability to provide local telecommunication services and desire to compete with existing monopoly providers.[1] Anyone

[1] These new market entrants include yet are not limited to:

Interexchange Companies (IXCs): Long distance carriers, which include AT&T, MCI, Sprint, and others. Over 350 small companies are licensed in the state to provide long distance and long distance resale services.

with a wire that is hooked up to a home or business has the potential to provide local phone service (including electric utilities). Private or public organizations who can access existing local phone wires or network systems also serve as viable new entrants. This rapidly changing environment and tremendous economic potential has created substantial pressure to have the Florida Legislature reexamine our historical regulatory frameworks.

Legislative Review Efforts

After the 1994 regular legislative session, Speaker Bolley Johnson appointed a Select Committee on Telecommunications to examine whether competition should be permitted in the local phone market. This Select Committee held public hearings and site visits in Miami, Orlando, Tampa, and Tallahassee. Incumbent local exchange companies (I-LECs), new alternative local exchange companies (A-LECs), and other interested parties provided extensive testimony and made presentations at these public hearings.

In late 1994, Speaker Rudy Wallace created a standing Committee on Utilities and Telecommunications to take over the responsibilities of the Select Committee. Early in the 1995 regular legislative session, both the House and the Senate introduced similar bills providing for virtual de-regulation of local phone companies and the competitive provision of local telephone services.

CS/SB 1554, represents the final product of these efforts. It contains three fundamental components dealing with telecommunications industry de-regulation, telecommunications taxation, and distance learning.

Telecommunications Industry Deregulation: This bill authorizes competition in Florida's local telecommunications marketplace and eliminates the monopoly status of Southern Bell, GTE-

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Alternative Access Vendors (AAVs): These companies provide fiber optic rings in urban areas or business districts and provide an alternative to or backup to local phone systems. AAVs currently may only provide local service to 'affiliated entities'. For example, a Winn Dixie store may only provide services to other Winn Dixie stores through their AAV providers. A Winn Dixie could not call a Barnett Bank office using their AAV service.

Cable Companies: Time Warner, Comcast, and similar companies are currently regulated by the Federal Communications Commission to provide video programming and by local governments who franchise cable companies for specific geographic service areas. Cable companies do not currently fall under the purview of the PSC.

Cellular and Mobile Telephone Companies: McCaw Cellular and other wireless carriers are currently regulated by the Federal Communications Commission to provide wireless communication services. Cellular companies are currently exempt from PSC rate-of-return regulation.

Private Payphone Companies: Florida law permits over 800 companies to provide payphone services statewide. The PSC establishes standards for payphone service quality and minimum required services (e.g. 911, free IXC access, handicap access, and directory assistance).

Florida, and Florida's eleven other LECs in their provision of local phone services. This bill also provides for an alternative form of regulatory oversight, known as 'price regulation', for incumbent phone companies and new entrants.

To accomplish these de-regulatory objectives, the bill provides new definitions, authorizes temporary and permanent universal service mechanisms, eliminates 4 year industry reporting requirements, provides for flexible regulatory treatment of small local exchange companies, authorizes low-cost lifeline services, provides for the interconnection of telecommunication networks and number portability (keeping the same phone number if you change phone companies), provides for bulk purchasing and resale of local phone services, specifies charges and terms for accessing local phone company networks, prohibits the disclosure of customer information, prohibits the unlawful use of telecommunication services with penalties and liability protections, provides for limited Commission access to company records, authorizes annual payment of regulatory assessment fees, establishes certification requirements for interexchange carriers and new entrants, provides independent payphone providers with an option to purchase lower cost business services, protects a four year Southern Bell rate reduction case, and requires PSC and Attorney General notification of certain mergers and acquisitions involving telephone and cable companies.

Telecommunications Taxation: The tax provisions in the bill set forth the procedure for valuing telecommunications services and cable TV services, for sales tax and gross receipts tax calculation purposes, when such services are sold in combination with each other. If a taxable service is available from a seller separately, then the charge for separate sale is the amount on which the various taxes are computed. If a company does not sell the taxable service separately, the seller must at least separately identify the taxable and exempt amounts in the combined charge. For telecommunications services, the taxable amount is required to be at least the average statewide price of a given service. For cable television, the taxable amount must be at least equal to the cost of providing the service.

The tax provisions also require the state to levy a one-time assessment on companies paying the state Gross Receipts Utilities Tax if total collections in FY 1995-96 are less than in FY 1994-95. The total assessment, prorated among the taxpayers, would equal the amount by which 1995-96 collections fall short of 1994-95 collections. Similar provisions are made with respect to municipal utility taxes. However, cities and charter counties can only recoup a shortfall in municipal utilities taxes if they are levying the maximum possible tax rate in 1995-96. The bill does not provide a mechanism for the state to recoup lost sales tax revenues.

Distance Learning: The bill also creates the Florida Education Facilities Infrastructure Act, providing authority for the Florida Distance Learning Network, a non-profit corporation. The primary charge of this group is to coordinate the deployment of statewide advanced telecommunications services and distance education resources and policy. The Network is governed by a 19 member board of directors with representation by the three educational delivery systems, the Department of Management Services, the State Librarian, labor unions, legislative members, and private sector representatives from the telecommunications and

healthcare industries. The Commissioner of Education serves as the Chair for four years and appoints the executive director.

In addition to establishing distance learning policy for the state, the Board is responsible for overseeing the installation of advanced telecommunication services to the three delivery systems and certain health providers. The board is also responsible for coordinating existing state telecommunication resources including the state's satellite transponder, the Sunstar Network, the SUNCOM Network, FIRN, DMS, Corrections, and HRS satellite communication facilities.

This act requires the telecommunications industry to install advanced telecommunication services to the three delivery systems and certain health providers. The Department of Management Services oversees the procurement of these advanced resources and penalties for industry non-compliance are also provided ($25,000 fine per eligible facility not provided with advanced services).

Other provisions of CS/SB 1554 include:

- A requirement for the PSC to develop a consumer information program;
- A prohibition on the cloning of cellular telephone equipment and services;
- A requirement that local governments not discriminate among telecommunication companies when granting franchises or terms and conditions of rights-of-way; and
- A requiremnt that the Department of Labor and Employment Security provide assistance to dislocated telecommunications employees.

POLICY ANALYSIS:

On April 24, 1995, the Governor's and Attorney General outlined their mutual concerns in draft letters addressed to Representative Scott Clemons and Senator John McKay, the respective sponsors of this legislation. The policy analysis section herein describes these concerns and examines to what degree they were addressed in CS/SB 1554. Figure 3 is a matrix comparing the Governor's and Attorney General's concerns and the degree to which they have been addressed.

Price Regulation and Price Caps

Chapter 364, Florida Statutes, currently provides for traditional rate of return regulation of incumbent LECs, requiring close regulatory scrutiny over company earnings and profits. Price regulation represents an alternative regulatory method in which certain widely used telephone services would be capped at current rates, allowing for increased company flexibility and little or no scrutiny over their earnings and profits. Instead of caps, restrictions on the amount of increases are authorized for more specialized and competitive services called 'non-basic' services. In a competitive environment, price cap regulatory treatment could stimulate economic and job

growth, information infrastructure investment, and technological innovation. Companies may invest more in new technologies, develop new products and services, and take on additional entrepreneurial risks if they do not have to comply with strict profit and earnings requirements and other forms of intense regulatory scrutiny.

Figure 3: Assessment of Concerns and Responses found in CS/SB 1554

Governor/Attorney General's Concerns:	Legislative Actions		
	Adequately Addressed	Nominally Addressed	Insufficiently or Not Addressed
Price Regulation and Price Caps		X	
Tax Treatment		X	
Legislative Intent	X		
Definitions		X	
Universal Service	X		
Expedited Commission Proceedings	X		
Unbundling and Resale			X
Network Access Rates			X
Commission Access to Records		X	
Antitrust Protections		X	
Shared Tenant Services	X		
Education Facilities Infrastructure Improvement Act			X
Mergers and Acquisitions		X	
Employee Protections		X	

The Governor's and Attorney General recognized that implementing price cap regulation with concurrent deregulation of telecommunication services would pose significant problems in an environment where meaningful effective competition does not exist. The mere presence of a certificated alternative local exchange company does not equate to meaningful effective competition. More thoughtful transitional planning and oversight by the Public Service Commission must be in place and an organized approach towards deregulation is required before a price cap approach is warranted.

The Governor's and Attorney General recommended three year price caps on all services, less a four percent productivity adjustment. These caps would not be adjusted until a PSC finding of effective meaningful competition for a geographic area. These caps would be maintained until effective meaningful competition occurred after which pricing flexibility could be granted.

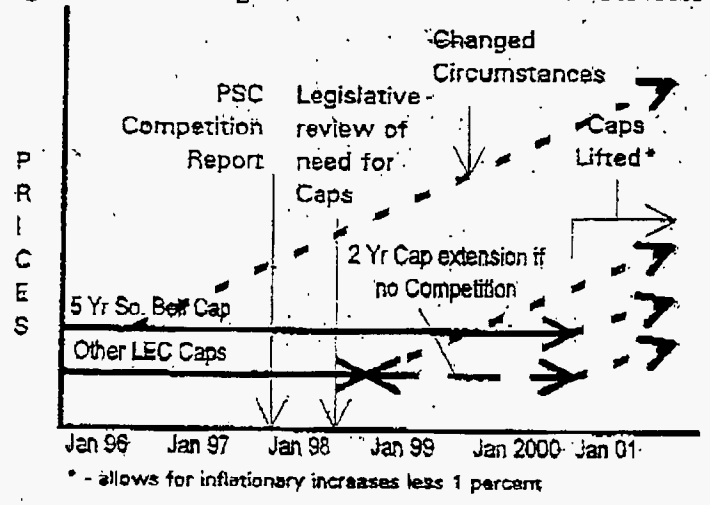
Legislative Response

Through section 9, the Legislature has nominally addressed the Governor's and Attorney General's price regulation and price cap concerns, with respect to basic services and non-basic services.

Basic Service Treatment: Basic services are single line residential and single line business services that include touchtone services, unlimited calls in a local area, and access to long distance carriers, long distance carriers, directory and operator services. Basic rates for Southern Bell are capped for five years. The basic service rates for GTE-Florida, Sprint United and Sprint Centel are be capped for three years. After 2 years, the PSC will study effective competition on a geographic (exchange by exchange) basis. After Southern Bell's price cap is lifted, or after competition is found in other LEC exchanges, the companies are authorized to increase rates annually by no more than 1 percent below the rate of inflation.

For non-Bell LECs, basic service caps are extended for an additional two years if the Legislature finds there is insufficient competition. If the Legislature fails to take action, these basic service caps are eliminated on January 1, 1999. These caps could be lifted during the 2 year period if the PSC finds effective competition. A time line for these basic services price cap provisions is shown in **Figure 4.**

Figure 4: Price Regulation Timeline for Basic Services



The CS/SB 1554 price cap approach considers competition on a geographic or telephone exchange basis. Exchanges are geographical areas served by one or more central switching offices that interconnect various telephone lines to provide local phone services. There are currently about 200 exchanges in Florida. This approach is more rigorous when compared to earlier versions of the bill, yet is not as stringent as the price cap suggestions offered by the Governor and Attorney General.

The CS/SB 1554 approach contains a possible opt out clause that could nullify the five and three year price cap provisions. Section 364.051(5), created by the bill, provides for a lifting of the price caps if an I-LEC petitions the PSC for a finding of substantially changed circumstances. It is unclear as to what 'substantially changed circumstances' could include. It may include the recent PSC 1+ dialing parity order, in which the LECs could seek price cap elimination.[2] In contrast, an alternative definition provided by the PSC would define 'substantially changed circumstances' as extreme inflation or an onerous and unforeseen increase in operational or personnel costs.

Non Basic Service Treatment: Price regulation for non basic services involves a three year cap for a limited set of multi line business services and state SUNCOM services. After this three year cap, these services can be increased annually by as much as 6 percent or 20 percent, if there is another basic service provider in the exchange. This 20 percent increase is permitted given the simple presence of another basic service provider and is not based on whether that provider is effectively competing with the incumbent. Examples of these non-basic services and their authorized price increases are found in **Figure 5.**

The rates of some non-basic services commonly used by small businesses are capped through July 1999. These and some other non-basic services may be inelastic in nature. That is the small business or consumer may have little choice but to pay possible price increases because it is an essential service or they may not have any readily available alternative. In contrast, other non-basic services may be elastic in nature. If a consumer's rate for call waiting service is raised by 20 percent, that consumer may refuse the service, because it may not be essential to them.

Tax Treatment Concern

Early versions of the legislation did not address or ensure equitable and progressive tax treatment of the evolving industry. The practical distinction between cable television, phone, and other telecommunication services will become less clear as the marketplace evolves. Therefore, the Governor's and Attorney General recommended that the cable exemption from the gross receipts utilities tax and the local telephone exemption from the sales and use tax should be sunset effective July 1, 1996, and encouraged an extensive review during the 1996 General Legislative Session.

Legislative Response

Through sections 1, 2, 3, and 4, the Legislature has nominally addressed the Governor's and Attorney General's tax treatment concerns (see SECTION-BY-SECTION ANALYSIS, sections 1, 2, 3, and 4 for a description of the bill language).

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[2] The 1+ dialing parity order provides consumers with the option to automatically charge all intraLATA toll calls (or short haul long distance) to their chosen long distance (IXC) provider rather than defaulting to their LEC provider. Because this order could result in a substantive revenue loss for the I-LECs, Southern Bell has requested PSC re-consideration and will likely protest it to the Florida Supreme Court.

Figure 5: Authorized Annual Non-Basic Service Price Increases

NON-BASIC SERVICE:	AUTHORITY	
	Six Percent Increase	20 Percent Increase
Service Connection charges and trouble location charges	Yes	Yes, **
Custom Calling Services		
Call waiting	Yes	Yes, **
Call forwarding	Yes	Yes, **
Three way calling	Yes	Yes, **
Remote call forwarding	Yes	Yes, **
Call return	Yes	Yes, **
Caller ID	Yes	Yes, **
Distinctive Ringing	Yes	Yes, **
MTS/WATS (long distance service)	Yes	Yes, **
Operator assistance	Yes	Yes, **
Additional directory listings (e.g. child's phone)	Yes	Yes, **
Message rated residential service	Yes	Yes, **
Multiple line business service (1 line for voice calls and 1 for credit cards)	Yes, after July 1999.	Yes, after July 1999**
SUNCOM	Yes, after July 1999.	Yes, after July 1999**
PBX and Centrex Services	Yes, after July 1999.	Yes, after July 1999**
Foreign Exchange and Foreign Central Office services	Yes	Yes, **
Hunting and Rotary Service	Yes, after July 1999.	Yes, after July 1999**
Verification and interrupt service	Yes	Yes, **
Call screening/custom code restrictions	Yes	Yes, **
Extra telephone books	Yes	Yes, **
25¢ pay telephone message charges	Yes	Yes, **

Note: ** an annual 20 percent increase is authorized in an exchange if there is another provider of local phone services in that exchange.

The intent of the language relating to valuing services for tax purposes is to avoid adverse or unexpected shifts between the state sales tax and state gross receipts tax bases, and to prevent losses from municipal utility tax bases. This could occur by companies arbitrarily manipulating stated prices of telecommunications and Cable TV services when sold together as a bundled product. The incentive for such price manipulation would be to minimize the combined tax liabilities from sales tax, gross receipts tax, municipal utilities taxes, and local franchise fees. However, a simpler and more certain solution would be to equalize the gross receipts and sales